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THE PRESIDENCY

No. 467

29 April 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 68 of 2008: Consumer Protection Act, 2008.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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(English text signed by the President.)
(Assented to 24 April 2009.)

ACT

To promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose 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 behaviour, to promote a consistent legislative and enforcement framework relating to consumer transactions and agreements, to establish the National Consumer Commission, to repeal sections 2 to 13 and sections 16 to 17 of the Merchandise Marks Act, 1941 (Act No. 17 of 1941), the Business Names Act, 1960 (Act No. 27 of 1960), the Price Control Act, 1964 (Act No. 25 of 1964), the Sales and Service Matters Act, 1964 (Act No. 25 of 1964), the Trade Practices Act, 1976 (Act No. 76 of 1976), the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), and to make consequential amendments to various other Acts; and to provide for related incidental matters.

PREAMBLE

The people of South Africa recognise—

That apartheid and discriminatory laws of the past have burdened the nation with unacceptably high levels of poverty, illiteracy and other forms of social and economic inequality;

That it is necessary to develop and employ innovative means to—

- (a) fulfil the rights of historically disadvantaged persons and to promote their full participation as consumers;
- (b) protect the interests of all consumers, ensure accessible, transparent and efficient redress for consumers who are subjected to abuse or exploitation in the marketplace; and
- (c) to give effect to internationally recognised customer rights;

That recent and emerging technological changes, trading methods, patterns and agreements have brought, and will continue to bring, new benefits, opportunities

and challenges to the market for consumer goods and services within South Africa; and

That it is desirable to promote an economic environment that supports and strengthens a culture of consumer rights and responsibilities, business innovation and enhanced performance.

For the reasons set out above, and to give effect to the international law obligations of the Republic, a law is to be enacted in order to -

- promote and protect the economic interests of consumers;
- improve access to, and the quality of, information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs;
- protect consumers from hazards to their well-being and safety;
- develop effective means of redress for consumers;
- promote and provide for consumer education, including education concerning the social and economic effects of consumer choices;
- facilitate the freedom of consumers to associate and form groups to advocate and promote their common interests; and
- promote consumer participation in decision-making processes concerning the marketplace and the interests of consumers.

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1**INTERPRETATION, PURPOSE AND APPLICATION 30****Part A****Interpretation****Definitions**

1. In this Act—
- “**accredited consumer protection group**” means a consumer protection group 35
that has been accredited by the Commission in terms of section 78 for the purposes
contemplated in that section or elsewhere in this Act;
- “**advertisement**” means any direct or indirect visual or oral communication
transmitted by any medium, or any representation or reference written, inscribed,
recorded, encoded upon or embedded within any medium, by means of which a 40
person seeks to—
- (a) bring to the attention of all or part of the public—
(i) the existence or identity of a supplier; or

- (ii) the existence, nature, availability, properties, advantages or uses of any goods or services that are available for supply, or the conditions on, or prices at, which any goods or services are available for supply;
- (b) promote the supply of any goods or services; or
- (c) promote any cause; 5
- “agreement”** means an arrangement or understanding between or among two or more parties that purports to establish a relationship in law between or among them;
- “alternative dispute resolution agent”** means—
- (a) an ombud with jurisdiction; 10
- (b) an industry ombud accredited in terms of section 82(6); or
- (c) a person or entity providing conciliation, mediation or arbitration services to assist in the resolution of consumer disputes, other than an ombud with jurisdiction, or an accredited industry ombud;
- “applicable provincial consumer legislation”** means legislation concerning consumer protection that has been enacted by a province; 15
- “apply”**, when used in relation to a trade description, price, notice or any similar form of information, means to emboss, impress, engrave, etch, print or weave into, work into or onto, annex or affix to, or incorporate within;
- “business”** means the continual marketing of any goods or services; 20
- “business name”** means a name under which a person carries on a business other than the person’s full name;
- “Cabinet”** means the body of the national executive described in section 91 of the Constitution;
- “clearly”**, in relation to the quality of any text, notice or visual representation to be produced, published or displayed to a consumer, means in a form that satisfies the requirements of section 22; 25
- “Commission”** means the National Consumer Commission established by section 85;
- “complainant”** means— 30
- (a) a person who has filed a complaint with the Commission in terms of section 71; or
- (b) the Commission in respect of a complaint that it has initiated, either directly or at the—
- (i) direction of the Minister in terms of section 86(b); or 35
- (ii) request of a provincial consumer protection authority or other regulatory authority, as the case may be;
- “consideration”** means anything of value given and accepted in exchange for goods or services, including—
- (a) money, property, a cheque or other negotiable instrument, a token, a ticket, electronic credit, credit, debit or electronic chip or similar object; 40
- (b) labour, barter or other goods or services;
- (c) loyalty credit or award, coupon or other right to assert a claim; or
- (d) any other thing, undertaking, promise, agreement or assurance, 45
- irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly, or involves only the supplier and consumer or other parties in addition to the supplier and consumer;

“Constitution” means the Constitution of the Republic of South Africa, 1996:

“consumer”, in respect of any particular goods or services, means—

- (a) a person to whom those particular goods or services are marketed in the ordinary course of the supplier’s business;
- (b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier’s business, unless the transaction is exempt from the application of this Act by section 5(2) or in terms of section 5(3);
- (c) if the context so requires or permits, 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
- (d) a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e);

“consumer agreement” means an agreement between a supplier and a consumer other than a franchise agreement;

“consumer court” means a body of that name, or a consumer tribunal, that has been established in terms of applicable provincial consumer legislation;

“consumer protection group” means an entity promoting the interests or protection of consumers as contemplated in section 77;

“court” does not include a consumer court;

“direct marketing” means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of—

- (a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or
- (b) requesting the person to make a donation of any kind for any reason;

“display”, when used—

- (a) in relation to any goods, means placing, exhibiting or exposing those goods before the public in the ordinary course of business in a manner consistent with an open invitation to members of the public to inspect, and select, those or similar goods for supply to a consumer; or
- (b) in relation to a price, mark, notice or other visual representation, means to place or publish anything in a manner that reasonably creates an association between that price, mark, notice or other visual representation and any particular goods or services;

“distributor”, in relation to any particular goods, means a person who, in the ordinary course of business—

- (a) is supplied with those goods by a producer, importer or other distributor; and
- (b) in turn, supplies those goods to either another distributor or to a retailer;

“electronic communication” means communication by means of electronic transmission, including by telephone, fax, sms, wireless computer access, email or any similar technology or device;

“Electronic Communications and Transactions Act” means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

“estimate” means a statement of the projected total price for any service to be provided by a supplier, including any goods or components to be supplied in connection with that service;

“equality court” has the meaning set out in the Promotion of Equality and Prevention of Unfair Discrimination Act;

“facility” means any premises, space or equipment set up to fulfil a particular function, or at, in, or on which a particular service is available;

“franchise agreement” means an agreement between two parties, being the franchisor and franchisee, respectively—

- (a) in which, for consideration paid, or to be paid, by the franchisee to the franchisor, the franchisor grants the franchisee the right to carry on business within all or a specific part of the Republic under a system or marketing plan substantially determined or controlled by the franchisor or an associate of the franchisor; 5
- (b) under which the operation of the business of the franchisee will be substantially or materially associated with advertising schemes or programmes or one or more trade marks, commercial symbols or logos or any similar marketing, branding, labelling or devices, or any combination of such schemes, programmes or devices, that are conducted, owned, used or licensed by the franchisor or an associate of the franchisor; and 10 15
- (c) that governs the business relationship between the franchisor and the franchisee, including the relationship between them with respect to the goods or services to be supplied to the franchisee by or at the direction of the franchisor or an associate of the franchisor; 20

“goods” includes— 20

- (a) anything marketed for human consumption;
- (b) any tangible object not otherwise contemplated in paragraph (a), including any medium on which anything is or may be written or encoded;
- (c) any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a licence to use any such intangible product; 25
- (d) a legal interest in land or any other immovable property, other than an interest that falls within the definition of ‘service’ in this section; and
- (e) gas, water and electricity;

“importer”, with respect to any particular goods, means a person who brings those goods, or causes them to be brought, from outside the Republic into the Republic, with the intention of making them available for supply in the ordinary course of business; 30

“inspector” means a person appointed as such in terms of section 88;

“intermediary” means a person who, in the ordinary course of business and for remuneration or gain, engages in the business of— 35

- (a) representing another person with respect to the actual or potential supply of any goods or services;
- (b) accepting possession of any goods or other property from a person for the purpose of offering the property for sale; or 40
- (c) offering to sell to a consumer, soliciting offers for or selling to a consumer any goods or property that belongs to a third person, or service to be supplied by a third person, 45

but does not include a person whose activities as an intermediary are regulated in terms of any other national legislation;

“investigator” means a person appointed as such in terms of section 88;

“juristic person” includes—

- (a) a body corporate;
- (b) a partnership or association; or
- (c) a trust as defined in the Trust Property Act, 1988 (Act No. 57 of 1988);

“licence”, depending on the context, means the authority, regardless of its specific title or form, issued to a person and in terms of which that person is either— 5

- (a) authorised in terms of a public regulation to conduct business; or
- (b) authorised by another person to—
 - (i) access any facility or use any goods; or
 - (ii) supply any goods or services; 10

“loyalty credit or award” means any—

- (a) benefit accruing to a consumer;
- (b) right to any goods, service or other benefit granted to a consumer; or
- (c) point, credit, token, device or other tangible or intangible thing which, when accumulated in sufficient quantities, entitles the holder to seek, request or assert a claim for any goods, service or other benefit, allocated to a consumer, in terms of a loyalty programme, irrespective of the name, nature, form or characterisation assigned by that loyalty programme to any such goods, service or other benefit, right or thing; 15

“loyalty programme” means any arrangement or scheme in the ordinary course of business, in terms of which a supplier of goods or services, association of such suppliers, or other person on behalf of or in association with any such suppliers, offers or grants to a consumer any loyalty credit or award in connection with a transaction or an agreement; 20

“mark”, when used as a noun, means any visual representation, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour or container for goods or other sign capable of being represented graphically, or any combination of those things, but does not include a trade mark; 25

“market”, when used as a verb, means to promote or supply any goods or services; 30

“MEC” means the Member of the Executive Council;

“Minister” means the member of the Cabinet responsible for consumer protection matters;

“National Credit Act” means the National Credit Act, 2005 (Act No. 34 of 2005);

“ombud with jurisdiction”, in respect of any particular dispute arising out of an agreement or transaction between a consumer and a supplier who is— 35

- (a) subject to the jurisdiction of an ‘ombud’, or a ‘statutory ombud’, in terms of any national legislation, means that ombud, or statutory ombud; or
- (b) a ‘financial institution’, as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), means ‘the ombud’, as determined in accordance with section 13 or 14 of that Act; 40

“organ of state” means an organ of state as defined in section 239 of the Constitution;

“person” includes a juristic person;

“premises” includes land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container; 45

“prescribed” means determined, stipulated, required, authorised, permitted or otherwise regulated by a regulation made, or notice given, by the Minister in terms of this Act;

“price”, when used in relation to—

(a) a representation required to be displayed by section 23, includes any mark, notice or visual representation that may reasonably be inferred to indicate or express an association between any goods or services and the value of the consideration for which the supplier is willing to sell or supply those goods or services; or 5

(b) the consideration for any transaction, means the total amount paid or payable by the consumer to the supplier in terms of that transaction or agreement, including any amount that the supplier is required to impose, charge or collect in terms of any public regulation; 10

“producer”, with respect to any particular goods, means a person who—

(a) grows, nurtures, harvests, mines, generates, refines, creates, manufactures or otherwise produces the goods within the Republic, or causes any of those things to be done, with the intention of making them available for supply in the ordinary course of business; or 15

(b) by applying a personal or business name, trade mark, trade description or other visual representation on or in relation to the goods, has created or established a reasonable expectation that the person is a person contemplated in paragraph (a); 20

“prohibited conduct” means an act or omission in contravention of this Act;

“promote” means to—

(a) advertise, display or offer to supply any goods or services in the ordinary course of business, to all or part of the public for consideration; 25

(b) make any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration; or

(c) engage in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction; 30

“Promotion of Equality and Prevention of Unfair Discrimination Act” means the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); 35

“provincial consumer protection authority” means a body established within the provincial sphere of government, and designated by the responsible Member of the Executive Council of a province to have general authority to deal with consumer protection matters within that province;

“public regulation” means any national, provincial or local government legislation or subordinate legislation, or any licence, tariff, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority; 40

“Registrar” means the Registrar of Companies appointed in terms of the Companies Act, 1973 (Act No. 61 of 1973), or the official performing similar functions in terms of any subsequent legislation; 45

“regulation” means a regulation made under this Act;

“regulatory authority” means an organ of state or entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry; 50

- “**rental**” means an agreement for consideration in the ordinary course of business, in terms of which temporary possession of any premises or other property is delivered, at the direction of, or to the consumer, or the right to use any premises or other property is granted, at the direction of, or to the consumer, but does not include a lease within the meaning of the National Credit Act; 5
- “**repealed law**” means an Act mentioned in section 121(2), or a public regulation made in terms of such an Act;
- “**respondent**” means a person or firm against whom a complaint or application has been initiated in terms of this Act;
- “**retailer**”, with respect to any particular goods, means a person who, in the ordinary course of business, supplies those goods to a consumer; 10
- “**service**” includes, but is not limited to—
- (a) any work or undertaking performed by one person for the direct or indirect benefit of another;
- (b) the provision of any education, information, advice or consultation, except advice that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); 15
- (c) any banking services, or related or similar financial services, or the undertaking, underwriting or assumption of any risk by one person on behalf of another, except to the extent that any such service— 20
- (i) constitutes advice or intermediary services that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); or
- (ii) is regulated in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998); 25
- (d) the transportation of an individual or any goods;
- (e) the provision of—
- (i) any accommodation or sustenance;
- (ii) any entertainment or similar intangible product or access to any such entertainment or intangible product; 30
- (iii) access to any electronic communication infrastructure;
- (iv) access, or of a right of access, to an event or to any premises, activity or facility; or
- (v) access to or use of any premises or other property in terms of a rental;
- (f) a right of occupancy of, or power or privilege over or in connection with, any land or other immovable property, other than in terms of a rental; and 35
- (g) rights of a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e),
- irrespective of whether the person promoting, offering or providing the services participates in, supervises or engages directly or indirectly in the service; 40
- “**service provider**” means a person who promotes, supplies or offers to supply any service;
- “**sms**” means a short message service provided through a telecommunication system;
- “**special-order goods**” means goods that a supplier expressly or implicitly was required or expected to procure, create or alter specifically to satisfy the consumer’s requirements; 45
- “**supplier**” means a person who markets any goods or services;
- “**supply**”, when used as a verb—

- (a) in relation to goods, includes sell, rent, exchange and hire in the ordinary course of business for consideration; or
- (b) in relation to services, means to sell the services, or to perform or cause them to be performed or provided, or to grant access to any premises, event, activity or facility in the ordinary course of business for consideration; 5
- “supply chain”**, with respect to any particular goods or services, means the collectivity of all suppliers who directly or indirectly contribute in turn to the ultimate supply of those goods or services to a consumer, whether as a producer, importer, distributor or retailer of goods, or as a service provider;
- “this Act”** includes any Schedule to this Act, regulations made or notice issued by the Minister under this Act; 10
- “trade description”** means—
- (a) any description, statement or other direct or indirect indication, other than a trade mark, as to—
- (i) the number, quantity, measure, weight or gauge of any goods; 15
- (ii) the name of the producer or producer of any goods;
- (iii) the ingredients of which any goods consist, or material of which any goods are made;
- (iv) the place or country of origin of any goods;
- (v) the mode of manufacturing or producing any goods; or 20
- (vi) any goods being the subject of any patent, privilege or copyright; or
- (b) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a);
- “trade mark”** means— 25
- (a) a trade mark as defined in section 2(1) of the Trade Marks Act, 1993 (Act No. 194 of 1993); or
- (b) a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993;
- “transaction”** means— 30
- (a) in respect of a person acting in the ordinary course of business—
- (i) an agreement between or among that person and one or more other persons for the supply or potential supply of any goods or services in exchange for consideration; or
- (ii) the supply by that person of any goods to or at the direction of a consumer for consideration; or 35
- (iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration; or
- (b) an interaction contemplated in section 5(6), irrespective of whether it falls within paragraph (a); 40
- “Tribunal”** means the National Consumer Tribunal established by section 26 of the National Credit Act;
- “unconscionable”**, when used with reference to any conduct, means—
- (a) having a character contemplated in section 40; or
- (b) otherwise unethical or improper to a degree that would shock the conscience of a reasonable person; 45
- “unit price”** means a price for any goods or services expressed in relation to a well-known measure such as quantity, weight, volume, duration or other measurable unit by which the goods or services are allocated;

“**used goods**”, when used in respect of any goods being marketed, means goods that have been previously supplied to a consumer, but does not include goods that have been returned to the supplier in terms of any right of return contemplated in this Act; and

“**visual representation**” means any representation or illustration capable of being reproduced upon a surface, whether by printing or otherwise, but does not include a trade mark. 5

Interpretation

2. (1) This Act must be interpreted in a manner that gives effect to the purposes set out in section 3. 10

(2) When interpreting or applying this Act, a person, court or Tribunal or the Commission may consider—

- (a) appropriate foreign and international law;
- (b) appropriate international conventions, declarations or protocols relating to consumer protection; and 15
- (c) any decision of a consumer court, ombud or arbitrator in terms of this Act, to the extent that such a decision has not been set aside, reversed or overruled by the High Court, the Supreme Court of Appeal or the Constitutional Court.

(3) If a provision of this Act requires a document to be signed or initialled by a party to a transaction, that signing or initialling may be effected in any manner recognised by law, including by use of— 20

- (a) an advanced electronic signature, as defined in the Electronic Communications and Transactions Act; or
- (b) an electronic signature, as defined in the Electronic Communications and Transactions Act. 25

(4) The supplier must take reasonable measures to prevent the use of a consumer’s electronic signature for any purpose other than the signing or initialling of the particular document that the consumer intended to sign or initial.

(5) Despite the periods of time set out in section 6, each successive threshold determined by the Minister in terms of that section continues in effect until a subsequent threshold in terms of that section takes effect. 30

(6) When a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by—

- (a) excluding the day on which the first such event occurs;
- (b) including the day on or by which the second event is to occur; and 35
- (c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b), respectively.

(7) Unless the context indicates otherwise, any use of the word “includes” or “including” in relation to a defined or generic word or expression, on the one hand, and one or more enumerated examples or specific items, on the other, is not to be construed as limiting the defined or generic expression to the examples or items so enumerated. 40

(8) If there is an inconsistency between any provision of Chapter 5 of this Act and a provision of the Public Finance Management Act, 1999 (Act No. 1 of 1999), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), the provisions of the Public Finance Management Act, 1999, or of the Public Service Act, 1994, as the case may be, prevail. 45

(9) If there is an inconsistency between any provision of this Act and a provision of any Act not contemplated in subsection (8)—

- (a) the provisions of both Acts apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second; and
- (b) to the extent that paragraph (a) cannot apply, the provision that extends the greater protection to a consumer prevails over the alternative provision.
- provided that in the case of hazardous chemical products only the provisions of this Act relating to consumer redress will apply. 5

(10) No provision of this Act must be interpreted so as to preclude a consumer from exercising any rights afforded in terms of the common law.

Part B

10

Purpose, policy and application of Act

Purpose and policy of Act

3. (1) The purposes of this Act are to promote and advance the social and economic welfare of consumers in South Africa by—

- (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally; 15
- (b) reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers—
- (i) who are low-income persons or persons comprising low-income communities; 20
- (ii) who live in remote, isolated or low-density population areas or communities;
- (iii) who are minors, seniors or other similarly vulnerable consumers; or
- (iv) whose ability to read and comprehend any advertisement, agreement, mark, instruction, label, warning, notice or other visual representation is limited by reason of low literacy, vision impairment or limited fluency in the language in which the representation is produced, published or presented; 25
- (c) promoting fair business practices; 30
- (d) protecting consumers from—
- (i) unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and
- (ii) deceptive, misleading, unfair or fraudulent conduct;
- (e) improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour; 35
- (f) promoting consumer confidence, empowerment, and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism;
- (g) providing for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions; and 40
- (h) providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.

(2) To better ensure the realisation of the purposes of this Act, and the enjoyment of the consumer rights recognised or conferred by this Act, the Commission, in addition to its responsibilities set out elsewhere in this Act, is responsible to— 45

- (a) take reasonable and practical measures to promote the purposes of this Act and to protect and advance the interests of all consumers, and in particular those consumers contemplated in subsection (1)(b);
- (b) monitor and report each year to the Minister on the following matters: 50
- (i) The availability of goods and services to persons contemplated in

- subsection (1)(b), including price and market conditions, conduct and trends affecting their consumer rights:
- (ii) access to the supply of goods and services by small businesses and persons contemplated in subsection (1)(b); and
 - (iii) any other matter relating to the supply of goods and services; and 5
- (c) conduct research and propose policies to the Minister in relation to any matter affecting the supply of goods and services, including proposals for legislative, regulatory or policy initiatives that would improve the realisation and full enjoyment of their consumer rights by persons contemplated in subsection (1)(b). 10

Realisation of consumer rights

4. (1) Any of the following persons may, in the manner provided for in this Act, approach a court, the Tribunal or the Commission alleging that a consumer's rights in terms of this Act have been infringed, impaired or threatened, or that prohibited conduct has occurred or is occurring: 15

- (a) A person acting on his or her own behalf;
- (b) an authorised person acting on behalf of another person who cannot act in his or her own name;
- (c) a person acting as a member of, or in the interest of, a group or class of affected persons; 20
- (d) a person acting in the public interest, with leave of the Tribunal or court, as the case may be; and
- (e) an association acting in the interest of its members.

(2) In any matter brought before the Tribunal or a court in terms of this Act—

- (a) the court must develop the common law as necessary to improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3(1)(b); and 25
- (b) the Tribunal or court, as the case may be, must—
 - (i) promote the spirit and purposes of this Act; and
 - (ii) make appropriate orders to give practical effect to the consumer's right of access to redress, including, but not limited to— 30
 - (aa) any order provided for in this Act; and
 - (bb) any innovative order that better advances, protects, promotes and assures the realisation by consumers of their rights in terms of this Act. 35

(3) If any provision of this Act, read in its context, can reasonably be construed to have more than one meaning, the Tribunal or court must prefer the meaning that best promotes the spirit and purposes of this Act, and will best improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3(1)(b). 40

(4) To the extent consistent with advancing the purposes and policies of this Act, the Tribunal or court must interpret any standard form, contract or other document prepared or published by or on behalf of a supplier, or required by this Act to be produced by a supplier, to the benefit of the consumer—

- (a) so that any ambiguity that allows for more than one reasonable interpretation of a part of such a document is resolved to the benefit of the consumer; and 45
- (b) so that any restriction, limitation, exclusion or deprivation of a consumer's legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to— 50
 - (i) the content of the document;

- (ii) the manner and form in which the document was prepared and presented; and
 - (iii) the circumstances of the transaction or agreement.
- (5) In any dealings with a consumer in the ordinary course of business, a person must not— 5
- (a) engage in any conduct contrary to, or calculated to frustrate or defeat the purposes and policy of, this Act;
 - (b) engage in any conduct that is unconscionable, misleading or deceptive, or that is reasonably likely to mislead or deceive; or
 - (c) make any representation about a supplier or any goods or services, or a related matter, unless the person has reasonable grounds for believing that the representation is true. 10

Application of Act

5. (1) This Act applies to—
- (a) every transaction occurring within the Republic, unless it is exempted by subsection (2), or in terms of subsections (3) and (4); 15
 - (b) the promotion of any goods or services, or of the supplier of any goods or services, within the Republic, unless—
 - (i) those goods or services could not reasonably be the subject of a transaction to which this Act applies in terms of paragraph (a); or 20
 - (ii) the promotion of those goods or services has been exempted in terms of subsections (3) and (4);
 - (c) goods or services that are supplied or performed in terms of a transaction to which this Act applies, irrespective of whether any of those goods or services are offered or supplied in conjunction with any other goods or services, or separate from any other goods or services; and 25
 - (d) goods that are supplied in terms of a transaction that is exempt from the application of this Act, but only to the extent provided for in subsection (5).
- (2) This Act does not apply to any transaction—
- (a) in terms of which goods or services are promoted or supplied to the State; 30
 - (b) 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 in terms of section 6;
 - (c) if the transaction falls within an exemption granted by the Minister in terms of subsections (3) and (4); 35
 - (d) that constitutes a credit agreement under the National Credit Act, but the goods or services that are the subject of the credit agreement are not excluded from the ambit of this Act;
 - (e) pertaining to services to be supplied under an employment contract;
 - (f) giving effect to a collective bargaining agreement within the meaning of section 23 of the Constitution and the Labour Relations Act, 1995 (Act No. 66 of 1995); or 40
 - (g) giving effect to a collective agreement as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (3) A regulatory authority may apply to the Minister for an industry-wide exemption 45 from one or more provisions of this Act on the grounds that those provisions overlap or duplicate a regulatory scheme administered by that regulatory authority in terms of—
- (a) any other national legislation; or

- (b) any treaty, international law, convention or protocol.
- (4) The Minister, by notice in the *Gazette* after receiving the advice of the Commission, may grant an exemption contemplated in subsection (3)—
- (a) only to the extent that the relevant regulatory scheme ensures the achievement of the purposes of this Act at least as well as the provisions of this Act; and 5
 - (b) subject to any limits or conditions necessary to ensure the achievement of the purposes of this Act.
- (5) If any goods are supplied within the Republic to any person in terms of a transaction that is exempt from the application of this Act, those goods, and the importer or producer, distributor and retailer of those goods, respectively, are nevertheless subject to sections 60 and 61. 10
- (6) For greater certainty, the following arrangements must be regarded as a transaction between a supplier and consumer, within the meaning of this Act:
- (a) The supply of any goods or services in the ordinary course of business to any of its members by a club, trade union, association, society or other collectivity, whether corporate or unincorporated, of persons voluntarily associated and organised for a common purpose or purposes, whether for fair value consideration or otherwise, irrespective of whether there is a charge or economic contribution demanded or expected in order to become or remain a member of that entity; 15 20
 - (b) a solicitation of offers to enter into a franchise agreement;
 - (c) an offer by a potential franchisor to enter into a franchise agreement with a potential franchisee;
 - (d) a franchise agreement or an agreement supplementary to a franchise agreement; and 25
 - (e) the supply of any goods or services to a franchisee in terms of a franchise agreement.
- (7) Despite subsection (2)(b), this Act applies to a transaction contemplated in subsection (6)(b) to (e) irrespective of whether the size of the juristic person falls above or below the threshold determined in terms of section 6. 30
- (8) The application of this Act in terms of subsections (1) to (7) extends to a matter irrespective of whether the supplier—
- (a) resides or has its principal office within or outside the Republic;
 - (b) operates on a for-profit basis or otherwise; or
 - (c) is an individual, juristic person, partnership, trust, organ of state, an entity owned or directed by an organ of state, a person contracted or licensed by an organ of state to offer or supply any goods or services, or is a public-private partnership; or 35
 - (d) is required or licensed in terms of any public regulation to make the supply of the particular goods or services available to all or part of the public. 40

Threshold determination

6. (1) On the early effective date as determined in accordance with item 2 of Schedule 2, and subsequently at intervals of not more than five years, the Minister, by notice in the *Gazette*, must determine a monetary threshold applicable to the size of the juristic person for the purposes of section 5(2)(b). 45
- (2) The initial threshold determined by the Minister in terms of this section takes effect on the general effective date as determined in accordance with item 2 of Schedule

2, and each subsequent threshold takes effect six months after the date on which it is published in the *Gazette*.

Requirements of franchise agreements

7. (1) A franchise agreement must—
- (a) be in writing and signed by or on behalf of the franchisee; 5
 - (b) include any prescribed information, or address any prescribed categories of information; and
 - (c) comply with the requirements of section 22.
- (2) 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. 10
- (3) The Minister may prescribe information to be set out in franchise agreements, generally, or within specific categories or industries.

CHAPTER 2

FUNDAMENTAL CONSUMER RIGHTS

Part A

15

Right of equality in consumer market

Protection against discriminatory marketing

8. (1) Subject to section 9, a supplier of goods or services must not unfairly—
- (a) exclude any person or category of persons from accessing any goods or services offered by the supplier; 20
 - (b) grant any person or category of persons exclusive access to any goods or services offered by the supplier;
 - (c) assign priority of supply of any goods or services offered by the supplier to any person or category of persons;
 - (d) supply a different quality of goods or services to any person or category of persons; 25
 - (e) charge different prices for any goods or services to any persons or category of persons;
 - (f) target particular communities, districts, populations or market segments for exclusive, priority or preferential supply of any goods or services; or 30
 - (g) exclude a particular community, district, population or market segment from the supply of any goods or services offered by the supplier,
- on the basis of one or more grounds of unfair discrimination contemplated in section 9 of the Constitution or Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act. 35
- (2) Subject to section 9, a supplier must not directly or indirectly treat any person differently than any other, in a manner that constitutes unfair discrimination on one or more grounds set out in section 9 of the Constitution, or one or more grounds set out in Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, when— 40

- (a) assessing the ability of the person to pay the cost, or otherwise meet the obligations, of a proposed transaction or agreement;
- (b) deciding whether to enter into a transaction or agreement, or to offer to enter into a transaction or agreement;
- (c) determining any aspect of the cost of a transaction or agreement to the consumer; 5
- (d) interacting with the consumer—
- (i) in the supplier's place of business, or
- (ii) in the course of displaying or demonstrating any goods, testing or fitting any goods, or negotiating the terms of a transaction or agreement; or 10
- (e) selecting, preparing, packaging or delivering any goods for or to the consumer, or providing any services to the consumer;
- (f) proposing or agreeing the terms and conditions of a transaction or agreement;
- (g) assessing or requiring compliance by the person with the terms of a transaction or agreement; 15
- (h) exercising any right of the supplier under a transaction or agreement in terms of this Act or applicable provincial consumer legislation;
- (i) determining whether to continue, enforce, seek judgment in respect of, or terminate a transaction or agreement; or
- (j) determining whether to report, or reporting, any personal information of such person. 20
- (3) Subsections (1) and (2) also apply in respect of a consumer that is an association or juristic person, to prohibit unfair discrimination against that association or juristic person based on the characteristics of any natural person who is a member, associate, owner, manager, employee, client or customer of that association or juristic person. 25
- (4) Nothing in this section is intended to limit the authority of a court to—
- (a) consider any conduct between a supplier and a consumer that is not contemplated in this section; or
- (b) find that any such conduct constitutes unfair discrimination within the meaning of the Constitution or the Promotion of Equality and Prevention of Unfair Discrimination Act. 30

Reasonable grounds for differential treatment in specific circumstances

9. (1) It is not a contravention of section 8 for a supplier to—
- (a) refuse to supply or provide access to any particular goods or services to a minor, or to require the consent of a parent, guardian or other responsible adult before supplying or providing access to any particular goods or services to an unemancipated minor— 35
- (i) in accordance with any public regulation; or
- (ii) as a reasonable precaution to protect the health, welfare or safety of a minor; 40
- (b) refuse on reasonable grounds to—
- (i) enter into an agreement with a minor for the supply of any goods or services; or
- (ii) continue, or renew, an agreement contemplated in subparagraph (i), unless the supplier has reason to believe that the minor is emancipated; 45
- (c) reasonably designate any facility or service, permanently, or from time to time, for the exclusive use of—
- (i) minors generally;
- (ii) minors who are above or below a specified age, or between specified ages; or 50
- (iii) adults who have attained a specified age of at least 60 years; or

- (d) advertise, offer or agree to supply, or supply, any goods or services at a discounted price solely on the basis that the consumer—
- (i) is a minor who has not yet attained a specified age; or
 - (ii) is an adult who has attained a specified age of at least 60 years.
- (2) It is not a contravention of section 8 for a supplier to reasonably— 5
- (a) provide and designate separate but substantially equivalent facilities for the exclusive use of persons of each gender; or
 - (b) offer to supply or provide access to a facility exclusively to persons of one gender.
- (3) It is not a contravention of section 8 for a supplier to market any goods or services 10
in a manner that implies or expresses a preference for a particular group of consumers who are distinguishable from the general population on the basis of a ground of discrimination set out in section 9(3) of the Constitution, if the particular goods or services are reasonably intended or designed to satisfy any specific needs or interests that are common to, or uniquely characteristic of, that particular group of consumers. 15
- (4) Nothing in this section is intended to limit the authority of a court to—
- (a) assess the reasonableness of any conduct, to the extent contemplated in subsections (1)(b) or (c), (2) or (3), and determine whether any conduct not reasonably justified, as contemplated in those subsections, constitutes unfair discrimination within the meaning of the Constitution or the Promotion of Equality and Prevention of Unfair Discrimination Act; or 20
 - (b) determine whether any conduct contemplated in section 8 was fair in the circumstances of a particular transaction or the marketing of any particular goods or services, as the case may be.

Equality court jurisdiction over this Part 25

- 10.** (1) In respect of an alleged contravention of this Part, an accredited consumer protection group, or any person contemplated in section 20(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act, may either—
- (a) institute proceedings before an equality court in terms of Chapter 4 of that Act; or 30
 - (b) file a complaint with the Commission, which must refer the complaint to the equality court, if the complaint appears to be valid.
- (2) In any proceedings contemplated in this Part—
- (a) there is a presumption that any differential treatment contemplated in section 8 is unfair discrimination, unless it is established that the discrimination is fair; and 35
 - (b) a court may draw an inference that a supplier has discriminated unfairly if—
 - (i) the supplier has done anything contemplated in section 8 with respect to a consumer in a manner that constituted differential treatment compared to that accorded to another consumer; 40
 - (ii) in the circumstances, the differential treatment appears to be based on a prohibited ground of discrimination; and
 - (iii) the supplier, when called upon to do so, has refused or failed to offer an alternative reasonable and justifiable explanation for the difference in treatment. 45

Part B**Consumer's right to privacy****Right to restrict unwanted direct marketing**

11. (1) The right of every person to privacy includes the right to—
- (a) refuse to accept; 5
 - (b) require another person to discontinue; or
 - (c) in the case of an approach other than in person, to pre-emptively block, any approach or communication to that person, if the approach or communication is primarily for the purpose of direct marketing.
- (2) To facilitate the realisation of each consumer's right to privacy, and to enable consumers to efficiently protect themselves against the activities contemplated in subsection (1), a person who has been approached for the purpose of direct marketing may demand during or within a reasonable time after that communication that the person responsible for initiating the communication desist from initiating any further communication. 10 15
- (3) The Commission may establish, or recognise as authoritative, a registry in which any person may register a pre-emptive block, either generally or for specific purposes, against any communication that is primarily for the purpose of direct marketing.
- (4) A person authorising, directing or conducting any direct marketing—
- (a) must implement appropriate procedures to facilitate the receipt of demands contemplated in subsection (2); and 20
 - (b) must not direct or permit any person associated with that activity to direct or deliver any communication for the purpose of direct marketing to a person who has—
 - (i) made a demand contemplated in subsection (2); or 25
 - (ii) registered a relevant pre-emptive block as contemplated in subsection (3).
- (5) No person may charge a consumer a fee for making a demand in terms of subsection (2) or registering a pre-emptive block as contemplated in subsection (3).
- (6) The Minister may prescribe regulations for the operation of a registry 30 contemplated in subsection (3).

Regulation of time for contacting consumers

12. (1) A supplier must not engage in any direct marketing directed to a consumer at home for any promotional purpose during a prohibited period prescribed in terms of this section, except to the extent that the consumer has expressly or implicitly requested or agreed otherwise. 35
- (2) In order to protect the privacy of consumers, the Minister, by notice in the *Gazette*, may prescribe specific days, dates, public holidays or times of days for the purpose of subsection (1).

Part C

40

Consumer's right to choose**Consumer's right to select suppliers**

13. (1) A supplier must not require, as a condition of offering to supply or supplying any goods or services, or as a condition of entering into an agreement or transaction, that the consumer must— 45
- (a) purchase any other particular goods or services from that supplier;

- (b) enter into an additional agreement or transaction with the same supplier or a designated third party; or
 - (c) agree to purchase any particular goods or services from a designated third party,
- unless the supplier— 5
- (i) can show that the convenience to the consumer in having those goods or services bundled outweighs the limitation of the consumer's right to choice;
 - (ii) can show that the bundling of those goods or services results in economic benefit for consumers; or
 - (iii) offers bundled goods or services separately and at individual prices. 10
- (2) Except to the extent that any other law provides otherwise, in any transaction between a franchisee and franchisor in terms of their franchise agreement, it is a defence to an allegation that the franchisor, as supplier to the franchisee, has contravened this section if any goods or services that the franchisee was required to purchase from or at the direction of the franchisor are reasonably related to the branded products or services 15 that are the subject of the franchise agreement.

Expiry and renewal of fixed-term agreements

- 14.** (1) This section does not apply to transactions between juristic persons regardless of their annual turnover or asset value.
- (2) If a consumer agreement is for a fixed term— 20
- (a) that term must not exceed the maximum period, if any, prescribed in terms of subsection (4) with respect to that category of consumer agreement;
 - (b) despite any provision of the consumer agreement to the contrary—
 - (i) the consumer may cancel that agreement—
 - (aa) upon the expiry of its fixed term, without penalty or charge, but 25 subject to subsection (3)(a); or
 - (bb) at any other time, by giving the supplier 20 business days' notice in writing or other recorded manner and form, subject to subsection (3)(a) and (b); or
 - (ii) the supplier may cancel the agreement 20 business days after giving 30 written notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time;
 - (c) of not more than 80, nor less than 40, business days before the expiry date of the fixed term of the consumer agreement, the supplier must notify the 35 consumer in writing or any other recordable form, of the impending expiry date, including a notice of—
 - (i) any material changes that would apply if the agreement is to be renewed or may otherwise continue beyond the expiry date; and
 - (ii) the options available to the consumer in terms of paragraph (d); and 40
 - (d) on the expiry of the fixed term of the consumer agreement, it will be automatically continued on a month-to-month basis, subject to any material changes of which the supplier has given notice, as contemplated in paragraph (c), unless the consumer expressly—
 - (i) directs the supplier to terminate the agreement on the expiry date; or 45
 - (ii) agrees to a renewal of the agreement for a further fixed term.

- (3) Upon cancellation of a consumer agreement as contemplated in subsection (1)(b)—
- (a) the consumer remains liable to the supplier for any amounts owed to the supplier in terms of that agreement up to the date of cancellation; and
 - (b) the supplier—
 - (i) may impose a reasonable cancellation penalty with respect to any goods supplied, services provided, or discounts granted, to the consumer in contemplation of the agreement enduring for its intended fixed term, if any; and
 - (ii) must credit the consumer with any amount that remains the property of the consumer as of the date of cancellation, as prescribed in terms of subsection (4).
- (4) The Minister may, by notice in the *Gazette*, prescribe—
- (a) the maximum duration for fixed-term consumer agreements, generally, or for specified categories of such agreements;
 - (b) the manner and form of providing notices to the consumer in terms of subsection (2)(c);
 - (c) the manner, form and basis for determining the reasonableness of credits and charges contemplated in subsection (3); and
 - (d) other incidental matters as required to provide for the proper administration of this section.

Pre-authorisation of repair or maintenance services

15. (1) This section applies only to a transaction or consumer agreement—
- (a) with a price value above the threshold prescribed in terms of subsection (5); and
 - (b) if, in terms of that transaction or agreement, a service provider supplies a repair or maintenance service to, or supplies or installs any replacement parts or components in, any property belonging to or in the control of the consumer, and—
 - (i) the service provider has, or takes, possession of that property for the purpose contemplated in this paragraph; or
 - (ii) in any other case, the consumer requests an estimate before any services or goods are supplied.
- (2) A service provider to whom this section applies, must not charge a consumer for the supply of any goods or services contemplated in subsection (1), unless—
- (a) the supplier or service provider has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorised the work; or
 - (b) the consumer, in writing, or by another recorded manner or form, has—
 - (i) declined the offer of an estimate, and authorised the work; or
 - (ii) pre-authorised any charges up to a specified maximum, and the amount charged does not exceed that maximum.
- (3) A service provider to whom this section applies must not charge a consumer for preparing an estimate required in terms of subsection (2)(a), including—
- (a) any cost of performing any diagnostic work, disassembly or re-assembly required in order to prepare an estimate; or
 - (b) any damage to or loss of material or parts in the course of preparing an estimate.

unless, before preparing the estimate the service provider has disclosed the price for preparing that estimate, and the consumer has approved it.

(4) If a supplier has provided an estimate for any service, or goods and services, the supplier may not charge the consumer a price for that service, or those goods and services, that exceeds the estimate, unless after providing the estimate— 5

(a) the service provider has informed the consumer of the additional estimated charges; and

(b) the consumer has authorised the work to continue.

(5) The Minister may, by notice in the *Gazette*, prescribe a monetary threshold for the purpose of subsection (1)(a). 10

Consumer's right to cooling-off period after direct marketing

16. (1) This section does not apply to a transaction if section 44 of the Electronic Communications and Transactions Act applies to that transaction.

(2) To the extent that this section applies to a transaction or agreement, it is in addition to and not in substitution for any right to rescind a transaction or agreement that may otherwise exist in law between a supplier and a consumer. 15

(3) A consumer may rescind a transaction resulting from any direct marketing without reason or penalty, by notice to the supplier in writing, or another recorded manner and form, within five business days after the later of the date on which—

(a) the transaction or agreement was concluded; or 20

(b) the goods that were the subject of the transaction were delivered to the consumer.

(4) A supplier must—

(a) return any payment received from the consumer in terms of the transaction within 15 business days after— 25

(i) receiving notice of the rescission, if no goods had been delivered to the consumer in terms of the transaction; or

(ii) receiving from the consumer any goods supplied in terms of the transaction; and

(b) not attempt to collect any payment in terms of a rescinded transaction, except as permitted in terms of section 20(6). 30

Consumer's right to cancel advance reservation, booking or order

17. (1) This section does not apply to a franchise agreement, or in respect of any special-order goods.

(2) Subject to subsections (3) and (4), a consumer has the right to cancel any advance booking, reservation or order for any goods or services to be supplied. 35

(3) A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date may—

(a) require payment of a reasonable deposit in advance; and

(b) impose a reasonable charge for cancellation of the order or reservation, subject to subsection (5). 40

(4) For the purposes of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to—

(a) the nature of the goods or services that were reserved or booked;

(b) the length of notice of cancellation provided by the consumer; 45

- (c) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and
- (d) the general practice of the relevant industry.
- (5) A supplier may not impose any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of the death or hospitalisation of the person for whom, or for whose benefit the booking, reservation or order was made. 5

Consumer's right to choose or examine goods

18. (1) Despite any statement or notice to the contrary, a consumer is not responsible for any loss or damage to any goods displayed by a supplier, unless the loss or damage results from action by the consumer amounting to gross negligence or recklessness, malicious behaviour or criminal conduct. 10

(2) If any goods are displayed in or sold from open stock, the consumer has the right to select or reject any particular item from that stock before completing the transaction. 15

(3) If the consumer has agreed to purchase goods solely on the basis of a description or sample, or both, provided by the supplier, the goods delivered to the consumer must in all material respects and characteristics correspond to that which an ordinary alert consumer would have been entitled to expect based on the description or on a reasonable examination of the sample, as the case may be. 20

(4) If a supply of goods is by sample, as well as by description, it is not sufficient that any of the goods correspond with the sample if the goods do not also correspond with the description.

Consumer's rights with respect to delivery of goods or supply of service

19. (1) This section does not apply to— 25

(a) the supply of goods or services to a franchisee in terms of a franchise agreement; or

(b) a transaction if the performance of that transaction is governed by section 46 of the Electronic Communications and Transactions Act.

(2) Unless otherwise expressly provided or anticipated in an agreement, it is an implied condition of every transaction for the supply of goods or services that— 30

(a) the supplier is responsible to deliver the goods or perform the services—

(i) on the agreed date and at the agreed time, if any, or otherwise within a reasonable time after concluding the transaction or agreement;

(ii) at the agreed place of delivery or performance; and 35

(iii) at the cost of the supplier, in the case of delivery of goods; or

(b) the agreed place of delivery of goods or performance of services is the supplier's place of business, if the supplier has one, and if not, the supplier's residence; and

(c) goods to be delivered remain at the supplier's risk until the consumer has accepted delivery of them, in accordance with this section. 40

(3) If an agreement does not provide a specific date or time for delivery of any goods or performance of any services, the supplier must not require that the consumer accept delivery or performance of the services at an unreasonable time.

(4) The consumer is regarded to have accepted delivery of any goods on the earliest of the following circumstances: 45

- (a) When the consumer expressly or implicitly communicates to the supplier that the consumer has accepted delivery of such goods; or
- (b) when the goods have been delivered to the consumer, and—
- (i) the consumer does anything in relation to the goods that would be inconsistent with the supplier's ownership of them; or
 - (ii) after the lapse of a reasonable time, the consumer retains the goods without intimating to the supplier that the consumer has rejected delivery of them, subject to subsection (5).
- (5) When a supplier tenders delivery to a consumer of any goods, the supplier must, on request, allow the consumer a reasonable opportunity to examine those goods for the purpose of ascertaining whether the consumer is satisfied that the goods—
- (a) are of a type and quality reasonably contemplated in the agreement, and meet the tests set out in section 18(3) and (4); and
 - (b) in the case of a special-order agreement, reasonably conform to the material specifications of the special order.
- (6) If the supplier tenders the delivery of goods or the performance of any services at a location, on a date or at a time other than as agreed with the consumer, the consumer may either—
- (a) accept the delivery or performance at that location, date and time;
 - (b) require the delivery or performance at the agreed location, date and time, if that date and time have not yet passed; or
 - (c) cancel the agreement without penalty, treating any delivered goods or performed services as unsolicited goods or services in accordance with section 21.
- (7) If the supplier delivers to the consumer a larger quantity of goods than the consumer agreed to buy, the consumer may either—
- (a) reject all of the delivered goods; or
 - (b) accept delivery of the goods, and—
 - (i) pay for the agreed quantity at the agreed rate; and
 - (ii) treat the excess quantity as unsolicited goods in accordance with section 21.
- (8) If the supplier delivers to the consumer some of the goods the supplier agreed to supply mixed with goods of a different description not contemplated in the agreement, the consumer may—
- (a) accept delivery of the goods that are in accordance with the agreement and reject the rest; or
 - (b) reject all of the delivered goods.

Consumer's right to return goods

20. (1) This section is in addition to and not in substitution for—
- (a) the right to return unsafe or defective goods, contemplated in section 56; or
 - (b) any other right in law between a supplier and consumer to return goods and receive a refund.
- (2) Subject to subsections (3) to (6), the consumer may return goods to the supplier, and receive a full refund of any consideration paid for those goods, if the supplier has delivered—
- (a) goods to the consumer in terms of an agreement arising out of direct marketing, and the consumer has rescinded that agreement during the cooling-off period, in accordance with section 16;
 - (b) goods that the consumer did not have an opportunity to examine before delivery, and the consumer has rejected delivery of those goods for any of the reasons contemplated in section 19(5);
 - (c) a mixture of goods, and the consumer has refused delivery of any of those goods, as contemplated in section 19(8); or
 - (d) goods intended to satisfy a particular purpose communicated to the supplier as contemplated in section 55(3), and within 10 business days after delivery to

- the consumer, the goods have been found to be unsuitable for that particular purpose.
- (3) Subsection (2) does not apply with respect to any goods if—
- (a) for reasons of public health or otherwise, a public regulation prohibits the return of those goods to a supplier once they have been supplied to, or at the direction of, a consumer; or 5
 - (b) after having been supplied to, or at the direction of, the consumer, the goods have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property. 10
- (4) Goods returnable in terms of—
- (a) subsection (2)(a) must be returned to the supplier at the consumer's risk and expense; or
 - (b) subsection (2)(b) to (d) must be returned to the supplier at the supplier's risk and expense, 15
- within 10 business days after delivery to the consumer.
- (5) Upon return of any goods in terms of this section, the supplier must refund to the consumer the price paid for the goods, less any amount that may be charged in terms of subsection (6).
- (6) In determining the right of a supplier to impose a charge contemplated in subsection (5), if any goods returned to the supplier in terms of this section are— 20
- (a) in the original unopened packaging, the supplier may not charge the consumer any amount in respect of the goods;
 - (b) in their original condition and repackaged in their original packaging, the supplier may charge the consumer a reasonable amount for— 25
 - (i) use of the goods during the time they were in the consumer's possession, unless they are goods that are ordinarily consumed or depleted by use, and no such consumption or depletion has occurred; or
 - (ii) any consumption or depletion of the goods, unless that consumption or depletion is limited to a reasonable amount necessary to determine whether the goods were acceptable to the consumer; or 30
 - (c) in any other case, the supplier may charge the consumer a reasonable amount—
 - (i) as contemplated in paragraph (b); and
 - (ii) for necessary restoration costs to render the goods fit for re-stocking, unless, having regard to the nature of the goods, and the manner in which they were packaged, it was necessary for the consumer to destroy the packaging in order to determine whether the goods— 35
 - (aa) conformed to the description or sample provided, in the case of goods that had not been examined by the consumer before delivery, as contemplated in subsection (2)(b); or 40
 - (bb) were fit for the intended purpose, in a case contemplated in subsection (2)(d).

Unsolicited goods or services

21. (1) For the purpose of this Act, goods or services are unsolicited in any of the following circumstances, subject to subsection (2): 45
- (a) If, during any direct marketing of goods or services, a supplier or person acting on behalf of a supplier has left any goods with, or performed any service for, a consumer without requiring or arranging payment for them, those goods or services, as the case may be, are unsolicited; 50
 - (b) if a consumer is a party to an agreement contemplating the periodic delivery of goods during the life of the agreement, and—

- (i) during the course of that agreement, the supplier introduces goods or services that are materially different from the goods or services previously supplied to an extent not reasonably contemplated in the agreement, the new goods or services are unsolicited, unless the consumer expressly consented to the material change; or 5
- (ii) after the termination of that agreement, the supplier delivers any further goods to the consumer, other than in terms of a different agreement or transaction, those further goods are unsolicited goods;
- (c) if a supplier delivers goods or performs services at a location, date or time other than as agreed, and the consumer has rejected that delivery or performance of services, as contemplated in section 19(6), those goods or services are unsolicited; 10
- (d) if a supplier delivers a larger quantity of goods than the consumer agreed to buy, the excess goods are unsolicited unless the consumer has rejected the entire delivery, as contemplated in section 19(7)(a); or 15
- (e) if any goods have been delivered to, or any services performed for, a consumer by or on behalf of a supplier without the consumer having expressly or implicitly requested that delivery or performance, the goods or services, as the case may be, are unsolicited goods.
- (2) Despite subsection (1), if— 20
- (a) within 10 business days after delivery of any goods to a consumer, the supplier informs the consumer that the goods were delivered in error, those goods become unsolicited only if the supplier fails to recover them within 20 business days after so informing the consumer; or
- (b) any goods are delivered to a consumer and— 25
- (i) those goods are clearly addressed to another person, and have obviously been misdelivered; or
- (ii) having regard to the circumstances of the delivery, it would be apparent to the ordinary alert consumer that the goods were intended to be delivered to another person. 30
- the goods become unsolicited goods only if the recipient informs the apparent supplier or the deliverer that the goods were misdelivered, and the goods are not recovered within the following 20 business days.
- (3) If a person is in possession of goods contemplated in this section, the person— 35
- (a) must not frustrate or impede any reasonable action by the supplier or deliverer to recover the goods within the time allowed in subsection (2);
- (b) is not responsible for any cost pertaining to the recovery of the goods or further delivery of them to another person; and
- (c) is not liable for any loss or damage to the goods during the time they are in the person's possession or control, other than loss caused by the person's intentional interference with the goods, if any. 40
- (4) A person who fails to comply with subsection (3)(a) is liable to the supplier or deliverer, as the case may be, for any additional costs for recovery of, or damage to, the goods arising as a result of anything done to frustrate or impede the lawful recovery of those goods. 45
- (5) If a person is in possession of any unsolicited goods, the person may—
- (a) retain the goods; or
- (b) return the goods to the apparent supplier or deliverer at the risk and expense of the supplier or deliverer, as the case may be.
- (6) If a person lawfully retains any unsolicited goods— 50
- (a) the property in those goods passes unconditionally to the person, subject only to any right or valid claim that an uninvolved third party may have with respect to those goods; and
- (b) the person who supplied or delivered those goods is liable to any other person in respect of any right or valid claim relating to such goods. 55

(7) A person has no obligation to pay a supplier for unsolicited goods or services, or a deliverer for the cost of delivery of any unsolicited goods.

(8) A supplier must not demand or assert any right to, or attempt to collect, any payment from a consumer in respect of any charge relating to unsolicited goods left in the possession of a consumer, or the delivery of any such goods, or unsolicited services supplied to or for the benefit of, a consumer, except as contemplated in subsection (4). 5

(9) If a consumer has made any payment to a supplier or deliverer in respect of any charge relating to unsolicited goods or services, or the delivery of any such goods, the consumer is entitled to recover that amount, with interest from the date on which it was paid to the supplier, in accordance with the Prescribed Rate of Interest Act, 1975 (Act 10 No. 55 of 1975).

Part D

Right to disclosure and information

Right to information in plain and understandable language

22. (1) The producer of a notice, document or visual representation that is required, in terms of this Act or any other law, to be produced, provided or displayed to a consumer must produce, provide or display that notice, document or visual representation— 15

- (a) in the form prescribed in terms of this Act or any other legislation, if any, for that notice, document or visual representation; or
- (b) in plain language, if no form has been prescribed for that notice, document or visual representation. 20

(2) For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to— 25

- (a) the context, comprehensiveness and consistency of the notice, document or visual representation;
- (b) the organisation, form and style of the notice, document or visual representation; 30
- (c) the vocabulary, usage and sentence structure of the notice, document or visual representation; and
- (d) the use of any illustrations, examples, headings or other aids to reading and understanding. 35

(3) The Commission may publish guidelines for methods of assessing whether a notice, document or visual representation satisfies the requirements of subsection (1)(b).

(4) Guidelines published in terms of subsection (3) may be published for public comment.

Disclosure of price of goods or services 40

23. (1) This section does not apply to a transaction if—

- (a) a supplier has provided an estimate pertaining to that transaction, or the consumer has waived such an estimate, as contemplated in section 15; or
- (b) section 43 of the Electronic Communications and Transactions Act applies to that transaction. 45

(2) In this section, "price" includes a unit price.

(3) Subject to subsection (4), a retailer must not display any goods for sale without displaying to the consumer a price in relation to those goods.

(4) A retailer is not required to display a price for any goods that are displayed predominantly as a form of advertisement of the supplier, or of goods or services, in an area within the supplier's premises to which the public does not ordinarily have access.

(5) A price is adequately displayed to a consumer if, in relation to any particular goods, a written indication of the price, expressed in the currency of the Republic, is— 5

- (a) annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
- (b) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services in question; or
- (c) published in relation to the goods in a catalogue, brochure, circular or similar form of publication available to that consumer, or to the public generally, if—
 - (i) a time is specified in the catalogue, brochure, circular or similar form of publication as the time after which the goods may not be sold at that price, and that time has not yet passed; or
 - (ii) in any other case, the catalogue, brochure, circular or similar form of publication is dated, and in the circumstances may reasonably be regarded as not out of date.

(6) Subject to subsections (7) to (10), a supplier must not require a consumer to pay a price for any goods or services—

- (a) higher than the displayed price for those goods or services; or
- (b) if more than one price is concurrently displayed, higher than the lower or lowest of the prices so displayed.

(7) Subsection (6) does not apply in respect of the price of any goods or services if the price of those goods or services is determined by or in terms of any public regulation.

(8) If a price that was once displayed has been fully covered and obscured by a second displayed price, that second price must be regarded as the displayed price.

(9) If a price as displayed contains an inadvertent and obvious error, the supplier is not bound by it after— 30

- (a) correcting the error in the displayed price; and
- (b) taking reasonable steps in the circumstances to inform consumers to whom the erroneous price may have been displayed of the error and the correct price.

(10) A supplier is not bound by a price displayed in relationship to any goods or services if an unauthorised person has altered, defaced, covered, removed or obscured the price displayed or authorised by the supplier. 35

(11) If, in addition to displaying a price in relation to any goods or services, a supplier has advertised or displayed a placard or similar device announcing that prices are, will be or have been reduced by— 40

- (a) a monetary value, generally or in relationship to any particular goods or services, the displayed price for the purpose of subsection (6) must be regarded as being the price immediately displayed in relationship to the goods or services, minus the announced monetary reduction; or
- (b) a percentage value, generally or in relationship to any particular goods or services, the displayed price for the purpose of subsection (6) must be regarded as being the price immediately displayed in relationship to the goods or services, minus an amount determined by multiplying that price by the percentage shown,

unless the supplier has applied two or more prices immediately to the goods or services concerned, and the difference between the highest and lower or lowest of those applied prices is equivalent to the advertised or placarded reduction in price. 50

Product labelling and trade descriptions

24. (1) For the purposes of this section, a trade description is applied to goods if it is—
- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
 - (b) displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or
 - (c) is contained in any sign, advertisement, catalogue, brochure, circular, wine list, invoice, business letter, business paper or other commercial communication on the basis of which a consumer may request or order the goods.
- (2) A person must not—
- (a) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers.
- (3) A retailer of goods must—
- (a) not offer to supply, display or supply any particular goods if the retailer knows, reasonably could determine or has reason to suspect that—
 - (i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (ii) a trade description or trade mark applied to those goods has been altered as contemplated in subsection (2)(b); and
 - (b) with respect to any goods within the retailer's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or subsection (2)(b).
- (4) The Minister may prescribe—
- (a) categories of goods that are required to have a trade description applied to them, as contemplated in subsection (5);
 - (b) the rules to be used in accordance with any international agreement for the purpose of determining the country of origin of any goods or components of any goods; and
 - (c) the information that is required to be included in any trade description, from among the categories of information contemplated in the definition of "trade description" in section 1.
- (5) The producer or importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing—
- (a) the country of origin of the goods; and
 - (b) any other prescribed information.
- (6) Any person who produces, supplies, imports or packages any prescribed goods must display on, or in association with the packaging of those goods, a notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of those goods in accordance with applicable regulations.

Disclosure of reconditioned or gray market goods

25. (1) A person who offers or agrees to supply, or supplies, any goods that—
- (a) have been reconditioned, rebuilt or remade; and
 - (b) that bear the trade mark of the original producer or supplier,
- must apply a conspicuous notice to those goods stating clearly that they have been reconditioned, rebuilt or remade, as the case may be.

(2) A person who markets any goods that bear a trade mark, but have been imported without the approval or licence of the registered owner of that trade mark, must apply a conspicuous notice to those goods in the prescribed manner and form.

Sales records

26. (1) This section does not apply to a transaction if— 5
- (a) section 43 of the Electronic Communications and Transactions Act applies to that transaction; or
 - (b) the transaction has been exempted in terms of subsection (3).
- (2) A supplier of goods or services must provide a written record of each transaction to the consumer to whom any goods or services are supplied. 10
- (3) The record contemplated in subsection (2) must include at least the following information:
- (a) The supplier's full name, or registered business name, and VAT registration number, if any;
 - (b) the address of the premises at which, or from which, the goods or services were supplied; 15
 - (c) the date on which the transaction occurred;
 - (d) a name or description of any goods or services supplied or to be supplied;
 - (e) the unit price of any particular goods or services supplied or to be supplied;
 - (f) the quantity of any particular goods or services supplied or to be supplied; 20
 - (g) the total price of the transaction, before any applicable taxes;
 - (h) the amount of any applicable taxes; and
 - (i) the total price of the transaction, including any applicable taxes.
- (4) The Minister may, by notice in the *Gazette*, exempt categories of goods or services, or circumstances of trade, from the application of subsections (2) and (3). 25

Disclosure by intermediaries

27. (1) An intermediary must—
- (a) disclose prescribed information to—
 - (i) any person whom the intermediary solicits or agrees to represent with respect to the sale of any property or services, or from whom the intermediary accepts any property for the purpose of offering it for sale; and 30
 - (ii) any person from whom the intermediary solicits an offer, or to whom the intermediary offers to supply or supplies—
 - (aa) any service to be performed by a third person; or 35
 - (bb) any goods or property belonging to a third person; and
 - (b) keep the prescribed records of all relationships and transactions contemplated in this section.
- (2) Subsection (1) does not apply to an intermediary who is—
- (a) the executor or other administrator of a deceased's estate, in respect of any property of that estate; 40
 - (b) the liquidator of an insolvent estate, in respect of any property of that estate; or
 - (c) a trustee in respect of any trust property. 45
- (3) The Minister may prescribe—
- (a) the information, including the manner and form of delivery of any such information, that an intermediary, or different categories of intermediary, must provide in terms of this section; and

- (b) any records, including the form and content of any such records, that an intermediary, or different categories of intermediary, must keep in terms of this section.

Identification of deliverers, installers and others

28. Whenever a person is engaged in direct marketing in person at the premises of a consumer, or performing any services for a consumer at any such premises, or delivering any goods to, or installing any goods for, a consumer, at any such premises, that person must— 5

- (a) visibly wear or display a badge or similar identification device that satisfies any prescribed standards; or 10
 (b) provide suitable identification on request by the consumer.

Part E

Right to fair and responsible marketing

General standards for marketing of goods or services

29. A producer, importer, distributor, retailer or service provider must not market any goods or services— 15

- (a) in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services, as contemplated in section 41; or
 (b) in a manner that is misleading, fraudulent or deceptive in any way, including in respect of— 20
 (i) the nature, properties, advantages or uses of the goods or services;
 (ii) the manner in or conditions on which those goods or services may be supplied;
 (iii) the price at which the goods may be supplied, or the existence of, or relationship of the price to, any previous price or competitor's price for comparable or similar goods or services; 25
 (iv) the sponsoring of any event; or
 (v) any other material aspect of the goods or services.

Bait marketing 30

30. (1) A supplier must not advertise any particular goods or services as being available at a specified price in a manner that may result in consumers being misled or deceived in any respect relating to the actual availability of those goods or services from that supplier, at that advertised price.

(2) If a supplier advertises particular goods or services as being available at a specified price, and the advertisement expressly states a limitation in respect of the availability of those goods or services from that supplier at that price, the supplier must make those goods or services available at that price, to the extent of the expressed limits. 35

(3) It is a defence to an alleged failure to comply with subsection (1) or (2) if—

- (a) the supplier offered to supply or procure another person to supply a consumer with the same or equivalent goods or services of the kind advertised within a reasonable time, in a reasonable quantity, and at the advertised price; and 40
 (b) the consumer—
 (i) unreasonably refused that offer; or

- (ii) accepted the offer, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted.

Negative option marketing

- 31.** (1) A supplier must not—
- (a) promote any goods or services; 5
 - (b) offer to enter into or modify an agreement for the supply of any goods or services; or
 - (c) induce a person to accept any goods or services or to enter into or modify such an agreement,
- on the basis that the goods or services are to be supplied, or the agreement or modification will automatically come into existence, unless the consumer declines such offer or inducement. 10
- (2) An agreement purportedly entered into as a result of an offer or inducement contemplated in subsection (1) is void.
- (3) A modification of an agreement purportedly agreed to as a result of an offer or inducement contemplated in subsection (1) is void. 15

Direct marketing to consumers

- 32.** (1) A person who is directly marketing any goods or services, and who concludes a transaction or agreement with a consumer, must inform the consumer, in the prescribed manner and form, of the right to rescind that agreement, as set out in section 16. 20
- (2) If a person who has marketed any goods as contemplated in subsection (1) left any goods with the consumer without requiring or arranging payment for them, those goods are unsolicited goods, to which section 21 applies.

Catalogue marketing

- 33.** (1) This section does not apply to— 25
- (a) a franchise agreement; or
 - (b) a transaction if Chapter 7 of the Electronic Communications and Transactions Act applies to it.
- (2) This section applies to an agreement for the supply of goods or services that is not entered into in person, including an agreement concluded— 30
- (a) telephonically, if the contact is initiated by the consumer; or
 - (b) by postal order or fax,
- or in any similar manner in which, with respect to goods, the consumer does not have the opportunity to inspect the goods that are the subject of the transaction before concluding the agreement. 35
- (3) Before concluding an agreement or transaction, a supplier must disclose the following information to a consumer, in an appropriate manner, having regard to the manner in which the supplier and consumer communicate in concluding the transaction:
- (a) The supplier's name and licence or registration number, if any;
 - (b) the address of the supplier's physical business premises and related contact details; 40
 - (c) the sales record information required by section 26;
 - (d) the currency in which amounts under the agreement are payable;
 - (e) the supplier's delivery arrangements, including— 45
 - (i) the identity of the shipper;
 - (ii) the mode of transportation; and
 - (iii) the place of delivery to the consumer;
 - (f) the supplier's cancellation, return, exchange and refund policies, if any;
 - (g) the manner and form in which a complaint may be lodged; and
 - (h) any other prescribed information. 50

Trade coupons and similar promotions

- 34.** (1) This section does not apply to—
- (a) a franchise agreement;
 - (b) a loyalty programme, loyalty credit or award regulated in terms of section 35; or
 - (c) a promotional competition, as defined and regulated in terms of section 36.
- (2) In this section, “promotional offer” means an offer or promise, expressed in any manner, of any prize, reward, gift, free good or service, price reduction or concession, enhancement of quantity or quality of goods or services, irrespective of whether or not acceptance of the offer is conditional on the offeree entering into any other transaction.
- (3) A person must not make a promotional offer with the intention of—
- (a) not fulfilling it; or
 - (b) fulfilling it other than as offered.
- (4) Any document setting out a promotional offer must clearly state—
- (a) the nature of the prize, reward, gift, free good or service, price reduction or concession, enhancement of quantity or quality of goods or services, or other discounted or free thing being offered;
 - (b) the goods or services to which the offer relates;
 - (c) the steps required by a consumer to accept the offer or to receive the benefit of the offer; and
 - (d) the particulars of any person from whom, any place where, and any date and time on or at which, the consumer may receive the prize, reward, gift, free good or service, price reduction or concession, enhancement of quantity or quality of goods or services or other discounted or free thing.
- (5) Subject to subsection (6), a person who makes or sponsors a promotional offer must—
- (a) ensure that the supply of the particular prize, reward, gift, free or reduced price good, or the capacity to provide enhanced quality or services, is sufficient to accommodate all reasonably anticipated demands resulting from the offer;
 - (b) not limit or restrict capacity to supply any such goods or services in response to the acceptance of the offer, on any basis other than that it applies to such a supply in exchange for any other form of consideration;
 - (c) not require the consumer to accept an inferior quality of any such goods or services than those generally available to any other consumer on the same date who tenders a different form of consideration; and
 - (d) not impose any monetary charge for the administration, processing or handling of a transaction in respect of which the consumer tenders a trade coupon.
- (6) It is a defence to an alleged failure to comply with subsection (5)(a) if the supplier offered to supply or procure another person to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer’s acceptance of the promotional offer, and the consumer—
- (a) accepted the supplier’s offer, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted; or
 - (b) unreasonably refused the supplier’s offer.

Customer loyalty programmes

- 35.** (1) Despite any provision in any law, agreement or notice to the contrary, for all purposes of this Act, loyalty credits or awards are a legal medium of exchange when offered or tendered as consideration for any goods or services offered, or transaction contemplated, in terms of that loyalty programme.

(2) A person must not offer participation in a loyalty programme, or offer any loyalty credit or award with the intention of—

- (a) not providing it; or
- (b) providing it in a manner other than as offered.

(3) Any document setting out an offer contemplated in subsection (2) must clearly state—

- (a) the nature of the programme, credit or award being offered;
- (b) the goods or services to which the offer relates;
- (c) the steps required by a consumer to participate in the programme or to receive any benefit in terms of the programme; and
- (d) any person from whom, any place where, and any date and time on or at which, the consumer may gain access to the programme, or to any loyalty credit or awards in terms of the programme.

(4) Subject to subsections (5) and (6), the sponsor of a loyalty programme, or a supplier who offers or holds out a willingness, to accept any loyalty credits or awards as consideration or in exchange for any particular goods or services, must—

- (a) ensure that the supply of those particular goods or services available at any time is sufficient to accommodate all reasonably anticipated demands for those goods or services in exchange for loyalty credits or awards;
- (b) not limit or restrict capacity to supply those particular goods or services in exchange for such credits or awards on any basis other than that it applies to such a supply in exchange for any other form of consideration;
- (c) accept any tender of sufficient loyalty credits or awards as adequate consideration for the price of those particular goods or services if, at that time, it has capacity available for supply in exchange for any other form of consideration;
- (d) not require the consumer to accept an inferior quality of those particular goods or services than those generally available to any other consumer on the same date who tenders a different form of consideration;
- (e) not impose any monetary charge in respect of the administration, processing or handling of such a transaction if the consumer is required to pay a periodic fee to remain a member of the programme; and
- (f) not demand that the consumer purchase any other goods or services in connection with that transaction.

(5) A sponsor of a loyalty programme, or a supplier of goods or services who accepts loyalty credits or awards as consideration for any particular goods or services, may impose a partial or complete restriction on the availability of any such goods or services in exchange for loyalty credits or awards during any specific period, if the programme sponsor has directly or indirectly given notice in writing to the members of that programme at least 20 business days before the beginning of that period, but the total of all such periods within a calendar year must not exceed 90 days.

(6) It is a defence to an alleged failure to comply with subsection (4)(a) if the supplier offered to supply or procure another person to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer's request, for no consideration beyond the advertised price expressed in loyalty awards, and the consumer—

- (a) accepted the offer, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted; or
- (b) unreasonably refused that offer.

Promotional competitions

36. (1) In this section—
- (a) **“participant”** means a person who enters, competes in or is otherwise eligible to win a promotional competition; 5
 - (b) **“prize”** includes a reward, gift, free good or service, price reduction or concession, enhancement of quantity or quality of goods or services, or other discounted or free thing; 5
 - (c) **“promoter”** means a person who directly or indirectly promotes, sponsors, organises or conducts a promotional competition, or for whose benefit such a competition is promoted, sponsored, organised or conducted; and 10
 - (d) **“promotional competition”** means any competition, game, scheme, arrangement, system, plan or device for distributing prizes by lot or chance if—
 - (i) it is conducted in the ordinary course of business for the purpose of promoting a producer, distributor, supplier, or association of any such persons, or the sale of any goods or services; and 15
 - (ii) any prize offered exceeds the threshold prescribed in terms of subsection (1),
 irrespective of whether a participant is required to demonstrate any skill or ability before being awarded a prize.
- (2) A person must not directly or indirectly inform another person that a participant has— 20
- (a) won a competition, if—
 - (i) no competition has in fact been conducted;
 - (ii) the person has not in fact won the competition;
 - (iii) the prize for that competition is subject to a previously undisclosed condition; or 25
 - (iv) the person is required to offer further consideration for the prize, after the results of the competition have been announced; or
 - (b) a right to a prize—
 - (i) to which the person does not in fact have a right; 30
 - (ii) if the prize was generally available or offered to all similarly situated persons or class of persons; or
 - (iii) if, before becoming eligible to receive the prize, the person is required to offer further consideration for the prize or to purchase any particular goods or services. 35
- (3) The promoter of a promotional competition—
- (a) must not require any consideration to be paid by or on behalf of any participant in the promotional competition, other than the reasonable costs of posting or otherwise transmitting an entry form or device;
 - (b) must not award a prize in a competition to— 40
 - (i) a winner of the competition if it is unlawful to supply those goods or services to that prize winner, but this subparagraph does not preclude awarding a prize to a person merely because that person’s right to possess or use the prize is or may be restricted or regulated by, or is otherwise subject to, any public regulation; or 45
 - (ii) any person who is—
 - (aa) a director, member, partner, employee or agent of, or consultant to the promoter or any other person who directly or indirectly controls or is controlled by, the promoter; or
 - (bb) a supplier of goods or services in connection with that competition; 50
 and

- (c) must—
- (i) prepare competition rules before the beginning of the competition;
 - (ii) make the competition rules available to the Commission and to any participant, on request and without cost; and
 - (iii) retain a copy of the competition rules for the prescribed period after the end of the competition. 5
- (4) For greater certainty in applying subsection (3)(a), but without limiting the generality of that paragraph, a promoter must be regarded as having required or received consideration in respect of a promotional competition if—
- (a) a participant is required to pay any consideration, directly or indirectly, for the opportunity to participate in the promotional competition, for access to the competition or for any device by which a person may participate in the competition; or 10
 - (b) participation in the promotional competition requires the purchase of any goods or services, and the price charged for those goods or services is more than the price, excluding discounts, ordinarily charged for those or similar goods or services without the opportunity of taking part in a promotional competition. 15
- (5) An offer to participate in a promotional competition must clearly state—
- (a) the benefit or competition to which the offer relates; 20
 - (b) the steps required by a person to accept the offer or to participate in the competition;
 - (c) the basis on which the results of the competition will be determined;
 - (d) the closing date for the competition;
 - (e) the medium through or by which the results of the competition will be made known; and 25
 - (f) any person from whom, any place where, and any date and time on or at which—
 - (i) a person may obtain a copy of the competition rules; and
 - (ii) a successful participant may receive any prize. 30
- (6) The requirements of subsection (5) may be satisfied either—
- (a) directly on any medium through which a person participates in a promotional competition;
 - (b) on a document accompanying any medium contemplated in paragraph (a); or
 - (c) in any advertisement that— 35
 - (i) is published during the time and throughout the area in which the promotional competition is conducted; and
 - (ii) draws attention to and is clearly associated with the promotional competition.
- (7) The right to participate in a promotional competition is fully vested in a person immediately upon— 40
- (a) complying with any conditions that are required to earn that right; and
 - (b) acquiring possession or control of the medium, if any, through which a person may participate in that promotional competition.
- (8) The right to any benefit or right conferred on a person as a result of that person's participation in a promotional competition is fully vested immediately upon the determination of the results of the competition. 45
- (9) A right contemplated in subsection (7) or (8) must not be—
- (a) made subject to any further condition; or
 - (b) contingent upon a person— 50
 - (i) paying any consideration to the promoter for the prize; or

(ii) satisfying any further requirements other than those stipulated in terms of subsection (5).

(10) Section 35(5), read with the changes required by the context, applies equally in respect of any prize or right to a prize conferred on a person as a result of that person's participation in a promotional competition. 5

(11) The Minister may prescribe—

(a) a monetary threshold for the purpose of excluding competitions with low-value prizes from the definition of "promotional competition";

(b) minimum standards and forms for keeping records associated with promotional competitions; and 10

(c) audit and reporting requirements in respect of promotional competitions.

Alternative work schemes

37. (1) A person must not make a false representation with respect to the availability, or extent of availability, actual or potential profitability, risk or other material aspect of the work, business or activity involved in any arrangement of an activity for gain in terms of which one person— 15

(a) invites, solicits or requires other persons to conduct the work, business or activity from their homes;

(b) represents to others as being practicable, to a considerable extent, to conduct the work, business or activity from their homes; or 20

(c) invites, solicits or requires other persons to perform any work, business or activity, invest money, or perform any work, business or activity in association with the investment of money.

(2) An advertisement promoting any matter contemplated in subsection (1) must—

(a) be accompanied by a cautionary statement in the prescribed wording and form, disclosing the uncertainty of the extent of— 25

(i) work, business or activity available; and

(ii) income or other benefit to be derived;

(b) disclose at least the following information:

(i) The full name, or registered business name, of the person promoting the matter, and the address and contact numbers of that person's primary place of conducting the business; and 30

(ii) the nature of the work, business, activity or investment.

(3) A person must not place an advertisement contemplated in subsection (2) otherwise than in accordance with the requirements of this section. 35

(4) A person who does anything contemplated in subsection (1)(a) to (c) must not charge any person a fee in respect of the promotion or conduct of any such work, business, activity or investment, except to the extent that the person charged has been assigned and performed the contemplated work, business, activity, or made or received the contemplated investment. 40

Referral selling

38. (1) A person must not promote, offer, supply, agree to supply, or induce a consumer to accept any goods or services on the representation that the consumer will receive a rebate, commission or other benefit if—

(a) the consumer subsequently— 45

(i) gives the supplier the names of consumers; or

(ii) otherwise assists the supplier to supply goods or services to other consumers; and

(b) that rebate, commission or other benefit is contingent upon an event occurring after the consumer agrees to the transaction. 50

(2) A statement by a consumer, whether in an agreement or otherwise, to the effect that the consumer was motivated to enter into a transaction contemplated in subsection (1)

predominately for the value of the goods or services, rather than for the rebate, commission or benefit, is not a defence to an allegation that a person has contravened subsection (1).

(3) This section does not apply to a franchise agreement.

Agreements with persons lacking legal capacity

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39. (1) An agreement to enter into a transaction, or for the supply of any goods or services, to or at the direction of a consumer—

- (a) is void if the consumer is subject to an order of a competent court holding that person to be mentally unfit and the supplier knew, or could reasonably have determined, that the consumer was the subject of such an order; or 10
- (b) is voidable at the option of the consumer, if—
 - (i) at the time the agreement was made the consumer was an unemancipated minor;
 - (ii) the agreement was made without the consent of an adult responsible for that minor; and 15
 - (iii) the agreement has not been ratified by either—
 - (aa) an adult responsible for that minor; or
 - (bb) the consumer after being emancipated or becoming an adult.

(2) Subsection (1) does not apply to an agreement if the consumer, or any person acting on behalf of the consumer, directly or indirectly, by act or omission— 20

- (a) induced the supplier to believe that the consumer had an unfettered legal capacity to contract; or
- (b) attempted to obscure or suppress the fact that the consumer did not have an unfettered legal capacity to contract.

Part F

25

Right to fair and honest dealing

Unconscionable conduct

40. (1) A supplier or an agent of the supplier must not use physical force against a consumer, coercion, undue influence, pressure, duress or harassment, unfair tactics or any other similar conduct, in connection with any— 30

- (a) marketing of any goods or services;
- (b) supply of goods or services to a consumer;
- (c) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;
- (d) demand for, or collection of, payment for goods or services by a consumer; or 35
- (e) recovery of goods from a consumer.

(2) In addition to any conduct contemplated in subsection (1), it is unconscionable for a supplier knowingly to take advantage of the fact that a consumer was substantially unable to protect the consumer's own interests because of physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor. 40

(3) Section 51 applies to any court proceedings concerning this section.

False, misleading or deceptive representations

41. (1) In relation to the marketing of any goods or services, the supplier must not, by words or conduct— 45

- (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;

- (b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or
- (c) fail to correct an apparent misapprehension on the part of a consumer, amounting to a false, misleading or deceptive representation, or permit or require any other person to do so on behalf of the supplier. 5
- (2) A person acting on behalf of a supplier of any goods or services must not—
- (a) falsely represent that the person has any sponsorship, approval or affiliation; or
- (b) engage in any conduct that the supplier is prohibited from engaging in under subsection (1). 10
- (3) Without limiting the generality of subsections (1) and (2), it is a false, misleading or deceptive representation to falsely state or imply, or fail to correct an apparent misapprehension on the part of a consumer to the effect, that—
- (a) the supplier of any goods or services has any particular status, affiliation, connection, sponsorship or approval that they do not have; 15
- (b) any goods or services—
- (i) have ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval that they do not have;
- (ii) are of a particular standard, quality, grade, style or model;
- (iii) are new or unused, if they are not or if they are reconditioned or reclaimed, subject to subsection (4); 20
- (iv) have been used for a period to an extent or in a manner that is materially different from the facts;
- (v) have been supplied in accordance with a previous representation; or
- (vi) are available or can be delivered or performed within a specified time; 25
- (c) any land or other immovable property—
- (i) has characteristics that it does not have;
- (ii) may lawfully be used, or is capable of being used, for a purpose that is in fact unlawful or impracticable; or
- (iii) has or is proximate to any facilities, amenities or natural features that it does not have, or that are not available or proximate to it; 30
- (d) the necessary service, maintenance or repair facilities or parts are readily available for or within a reasonable period;
- (e) any service, part, replacement, maintenance or repair is needed or advisable;
- (f) a specific price advantage exists; 35
- (g) a charge or proposed charge is for a specific purpose;
- (h) an employee, salesperson, representative or agent has the necessary authority to negotiate the terms of, or conclude, an agreement;
- (i) the transaction affects, or does not affect, any rights, remedies or obligations of a consumer; 40
- (j) a particular solicitation of, or communication with, the consumer is for a particular purpose; or
- (k) the consumer will derive a particular benefit if they assist the supplier in obtaining a new or potential customer.
- (4) A representation contemplated in subsection (3)(b)(iii) to the effect that any goods are new is not false, misleading or deceptive if those goods have been used only— 45
- (a) by or on behalf of the producer, importer, distributor or retailer; and
- (b) for the purposes of reasonable testing, service, preparation or delivery.

(5) Section 51 applies to any court proceedings concerning this section.

Fraudulent schemes and offers

- 42.** (1) A person must not initiate, sponsor, promote or knowingly participate in the distribution of any communication that—
- (a) offers to supply, or enter into an agreement to supply, any goods or services, or offers to enter into a transaction, or invites offers to enter into a transaction; and 5
 - (b) falsely states, implies or represents that—
 - (i) the communication is authorised by another person; or
 - (ii) the author of the communication represents another person. 10
- (2) A person must not directly or indirectly promote, or knowingly join, enter or participate in—
- (a) a fraudulent currency scheme, as described in subsection (3);
 - (b) a fraudulent financial transaction, as described in subsection (4);
 - (c) a fraudulent transfer of property or legal rights, as described in subsection (5); or 15
 - (d) any other scheme declared by the Minister in terms of subsection (8), or cause another person to do so.
- (3) An arrangement, agreement, practice or scheme is a fraudulent currency scheme if it involves a person— 20
- (a) with the intent to defraud another person, representing that the first person is capable of—
 - (i) producing currency by washing, dipping or otherwise treating any substance that is not currency with a chemical substance, or exposing it to an electrical charge, or to radiation of any kind; or 25
 - (ii) producing currency, or increasing a sum of money, through scientific means, invocation of any juju or use of other invisible medium; or
 - (b) making or issuing any currency, or making representations as being capable of doing so, unless the person is an authorised producer of that currency.
- (4) An arrangement, agreement, practice or scheme is a fraudulent financial transaction if it involves any proceeds of a specified unlawful activity— 30
- (a) with intent to promote the carrying on of a specified unlawful activity; and
 - (b) is designed in whole or in part to—
 - (i) conceal or disguise the nature, location, source of ownership or control of the proceeds of a specified unlawful activity; or 35
 - (ii) avoid a lawful transaction.
- (5) An arrangement, agreement, practice or scheme is a fraudulent transfer of property or legal rights if it involves a person, by false pretence and with the intent to defraud another person—
- (a) obtaining any property from that person or any third person, as the case may be; or 40
 - (b) inducing that person or any third person to—
 - (i) deliver property at the direction of the first person; or
 - (ii) confer a benefit of any kind on any person at the direction of the first person on the understanding that the benefit has or will be paid for. 45
- (6) A person must not directly or indirectly represent, by false pretence or with the intent to defraud, another person to the effect that the first person is in possession of—

- (a) any property;
- (b) information relating to the whereabouts of any property or relating to any legal rights or potential legal claims; or
- (c) has the ability to effect the transfer of any property or to locate or determine the whereabouts of an individual. 5
- (7) A person must not—
- (a) invite another person to participate for a fee in assisting to effect a transfer of any property that the first person is not authorised to transfer; or
- (b) seek, demand or accept any consideration from another person in connection with any unlawful activity contemplated in this section. 10
- (8) The Minister, by regulation made in accordance with section 120, may declare any arrangement, agreement, practice or scheme to be a scheme contemplated in subsection (2)(d), if it is similar in purpose or effect to a scheme contemplated in that subsection.

Pyramid and related schemes

43. (1) In this section— 15
- (a) “**consideration**” has the meaning set out in section 1, except that it does not include—
- (i) the purchase of any goods at cost to be used in making sales, or not for resale;
- (ii) the purchase of any goods in exchange for which the seller of those goods offers to repurchase the participant’s products under reasonable commercial terms; or 20
- (iii) the participant’s time and effort in pursuit of sales or recruiting activities; and
- (b) “**participant**” means a person who is admitted to a scheme for consideration. 25
- (2) A person must not directly or indirectly promote, or knowingly join, enter or participate in—
- (a) a multiplication scheme, as described in subsection (3);
- (b) a pyramid scheme, as described in subsection (4);
- (c) a chain letter scheme, as described in subsection (5); or 30
- (d) any other scheme declared by the Minister in terms of subsection (6), or cause any other person to do so.
- (3) A multiplication scheme exists when a person offers, promises or guarantees to any consumer, investor or participant an effective annual interest rate, as calculated in the prescribed manner, that is at least 20 per cent above the REPO Rate determined by the South African Reserve Bank as at the date of investment or commencement of participation, irrespective of whether the consumer, investor or participant becomes a member of the lending party. 35
- (4) An arrangement, agreement, practice or scheme is a pyramid scheme if—
- (a) participants in the scheme receive compensation derived primarily from their respective recruitment of other persons as participants, rather than from the sale of any goods or services; or 40
- (b) the emphasis in the promotion of the scheme indicates an arrangement or practice contemplated in paragraph (a).
- (5) An arrangement, agreement, practice or scheme is a chain letter scheme if— 45
- (a) it has various levels of participation:

- (b) existing participants canvass and recruit new participants; or
- (c) each successive newly recruited participant—
- (i) upon joining—
 - (aa) is required to pay certain consideration, which is distributed to one, some or all of the previously existing participants, irrespective of whether the new participant receives any goods or services in exchange for that consideration; and 5
 - (bb) is assigned to the lowest level of participation in the scheme; and
 - (ii) upon recruiting further new participants, or upon those new participants recruiting further new participants, and so on in continual succession— 10
 - (aa) may participate in the distribution of the consideration paid by any such new recruit; and
 - (bb) moves to a higher level within the scheme, until being removed from the scheme after reaching the highest level.
- (6) The Minister, by regulation made in accordance with section 120, may declare any arrangement, agreement, practice or scheme to be a scheme contemplated in subsection (2)(d), if it is similar in purpose or effect to a scheme contemplated in that subsection. 15

Consumer's right to assume supplier is entitled to sell goods

44. (1) Subject to subsection (2), every consumer has a right to assume, and it is an implied provision of every transaction or agreement, that— 20
- (a) in the case of a supply of goods, the supplier has the legal right, or the authority of the legal owner, to supply those goods;
 - (b) in the case of an agreement to supply goods, the supplier will have a legal right, or the authority of the legal owner, to—
 - (i) sell the goods at the time the title to those goods is to pass to the consumer; or 25
 - (ii) lease the goods at the time the lessee is to take possession of the leased goods;
 - (c) as between the supplier and the consumer, the supplier is fully liable for any charge or encumbrance pertaining to the goods in favour of any third party unless— 30
 - (i) such a charge or encumbrance is disclosed in writing to the consumer before the transaction or agreement is concluded; or
 - (ii) the supplier and consumer have colluded to defraud the third party; and
 - (d) the supplier guarantees that the consumer is to have and enjoy quiet possession of the goods, subject to any charge or encumbrance disclosed as contemplated in paragraph (c)(i). 35
- (2) If, as a result of any transaction or agreement in which goods are supplied to a consumer, a right or claim of a third party pertaining to those goods is infringed or compromised the supplier is liable to the third party to the extent of the infringement or compromise of that person's rights pertaining to those goods, except to the extent of a charge or encumbrance disclosed as contemplated in subsection (1)(c)(i). 40

Auctions

45. (1) In this section, "auction" includes a sale in execution of or pursuant to a court order, to the extent that the order contemplates that the sale is to be conducted by an auction. 45
- (2) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.