**Consumer Law Review Newsletter Template**

March 2012

What is the Consumer Law Review?

The Consumer Law Review aims to provide practitioners with an updating service which takes an inclusive look at consumer law. The CLR will eventually include media coverage of consumer related topics, commentary and the latest reported cases on consumer protection legislation and the common law.

This raises the question – what is consumer law?

Consumer law, as a distinct field of law, is a concept which is relatively new to South Africa. Due to the promulgation of the Consumer Protection Act, 68 of 2008 on 1 April 2011, consumer law has suddenly become a new headache for practitioners and businesses alike. But it is certainly not new.

Consumer law is often defined as an area of law which is aimed at regulating the private (law) relationship between consumers and businesses. One way to make sense of this very broad definition is to look at the meaning which we give to ‘consumer’. Often a consumer is limited to a ‘natural person who is acting for purposes which are not related to his trade, business or profession’[[1]](#footnote-1) This means that ordinarily, consumer protection legislation does not apply where companies are the consumer or where the goods are bought for resale or for use in the manufacture of other products.

The Consumer Protection Act, 68 of 2008 (‘the CPA’) did not follow this convention. Section 1[[2]](#footnote-2) of the CPA defines ‘consumer’ as either a natural or juristic person with an annual turnover or gross asset value of less than R2 million to whom goods were promoted or supplied in the ordinary course of the supplier’s business, with whom a ‘transaction’ was concluded, or ‘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’.

This is very important as it means that South African consumer law will not only be applicable to transactions between businesses and consumers, but also to transactions between businesses. This was an interesting choice by the legislature, given that entirely different and complex considerations exist in business-to-business transactions.

The parameters of consumer law are also informed by its sources. The CPA is not the only source of consumer law. Section 2(10) of the CPA provides that it must not be interpreted to exclude any right which the consumer may have had under the common law. The CPA and the common law therefore apply in conjunction with each other and the common law cannot be disregarded when the rights of consumers (and the obligations of suppliers) are investigated. This means that the common law of sale and lease, the general principles of contract (particularly those dealing with pre-contractual representations) and the law relating to product liability (the law of delict, in other words) also form part of this area of law.

Section 2(2)(a) of the CPA provides that foreign and international law must be considered when interpreting the CPA. This means that instruments such as the European Directives on, for example, sales, product liability, unfair contract terms, distance selling, and the UK Sale of Goods Act 1979, and Unfair Contract Terms Act 1977, can be taken into account when we struggle to interpret the provisions of our own Act.

Of course, the CPA is not the only piece of legislation in this country which regulates the interaction between consumers and suppliers. All of the following acts contain measures for consumer protection: the National Credit Act 34 of 2005; the Competition Act 89 of 1998; the Financial Advisory and Intermediary Services Act 37 of 2002; the Short-Term Insurance Act 53 of 1998; the Pension Funds Act 24 of 1956; the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1974, and so on.

There are two ways to deal with the overlap between sector or product specific legislation. The regulator responsible for a particular industry may ask for an exemption from some or all of the provisions of the Act. So far only two exemptions have been granted.[[3]](#footnote-3) However, the short- and long-term insurance industries, the pension funds industry, the collective investment schemes industry and the security services industry have been granted a reprieve from most of the provisions of the CPA until 1 October 2011.[[4]](#footnote-4)

Where exemptions are not granted, the CPA and the overlapping legislation will apply concurrently where possible.[[5]](#footnote-5) If there is a conflict between the two acts, the ‘provision that extends the greater protection to a consumer prevails over the alternative provision.’[[6]](#footnote-6)

This mean that often more than one piece of legislation will apply and that any study or review of consumer law must include other pieces of legislation aimed at consumer protection, in order to be complete.

In light of the above, the CLR will focus on all law which affects transactions between suppliers and consumers in various industries, the contracts between suppliers and consumers, the common law of contract and products liability, plain language, credit law, marketing law, product labelling and safety and the enforcement of consumer law.

1. This is the definition which is employed in the EU. See Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees and Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. This definition is also used in the UK Consumer Protection Act, 1987. [↑](#footnote-ref-1)
2. Read with the definition of ‘market’ and section 5(2) and the threshold determination contained in GN 294 GG 34181 of 1 April 2011. There are other exemptions in section 5(2) which are too specific for current purposes. [↑](#footnote-ref-2)
3. The banking industry has been exempted from section 14 (fixed term agreements) of the CPA.

See GN 532 GG 34399 of 27 June 1998. [↑](#footnote-ref-3)
4. See Schedule 2, item 10 of the CPA and GN 533 GG 34400 of 27 June 2011. [↑](#footnote-ref-4)
5. Section 2(9)(a). [↑](#footnote-ref-5)
6. Section 2(9)(b). [↑](#footnote-ref-6)