

ADVISORY NOTE 3-2018

Date: 17th April 2018

ADVISORY NOTE TO ALL SUPPLIERS OF SERVICES

The information contained in this Advisory Note is a summary of some of the key aspects and obligations of suppliers under the Consumer Protection Act, 2010 (CPA, 2010) and is issued as a general overview thereof. Due to limitations in length of this note, many parts of the Act have not been covered. Suppliers are advised to consult the Act itself and this Note should not be treated as a substitute for legal advice.

Subject: Compliance with the Consumer Protection Act 2010 (CPA, 2010)

1. Ensuring contract is plainly written and not unfair

A supplier shall ensure that a written contract term provided to consumer is plain and expressed in plain, intelligible language. It is a consumer's right to be given a contract that is in a clear language, well-structured, easily legible and transparent. In accordance with Section 14 (1) of the CPA, 2010, a contract term is unfair if it causes a significant imbalance in the rights of the supplier and the consumer and is to the detriment of the consumer. In accordance with Section 16 of the CPA, 2010, such a contract is not enforceable against a consumer.

2. Information represented to consumers

Information (notice, document or other visual representation) represented to consumers should be in plain language. The content, significance and import of the notice, document or visual representation should be understood without undue effort. It should therefore be in at least one of the official languages of Seychelles, clear, understandable and user-friendly. Providing information which the consumers cannot understand is a contravention of Section 19 of the CPA, 2010.

3. Not to require a consumer to pay higher than the displayed price

Suppliers are bound to honour any displayed price and shall not require a consumer to pay a price higher than the displayed price. Requiring the consumer to pay a higher price than the displayed price or in respect of services with more than one price displayed, the highest price is a contravention of Section 21(1) (a) & (b) of the CPA, 2010.

4. Provision of a Sales Record

In accordance with Section 25(1) of the CPA, 2010, a supplier of services shall provide a record (receipt) of each transaction to the consumer to whom any services are supplied. Note that an invoice is not a receipt.

The sales record shall include the following details:

- (a) Supplier's full name (or registered business name)
- (b) The address of your premises at which the service was supplied
- (c) The date on which the transaction occurred
- (d) The name or description of any service supplied

*"consumer contract" means a contract between a supplier and a consumer where the contract is one
(a) governed by the written laws of Seychelles and
(b) in which the subject-matter is consumer goods or services;*

"contract term" means a term in a consumer contract, being a term that has not been individually negotiated/ if it has been drafted in

- (e) The unit price of any particular service supplied
- (f) The quantity of any particular service supplied
- (g) The total price of the transaction before VAT (applicable to VAT registered businesses)
- (h) The amount of any applicable VAT (applicable to VAT registered businesses)
- (i) The total price of the transaction (inclusive of Vat – applicable to VAT registered businesses)

5. Bait Advertising

In accordance with Section 27(1) of the CPA, 2010, a supplier of services shall not advertise for supply at a special price services that it does not intend to supply or supply at the price advertised, for a period and quantities that are reasonable. A supplier is exempted if the advertisement states that the capacity to supply the service is limited.

6. Referral Selling

A supplier shall not induce a consumer to acquire services under a contract after which the consumer will receive a rebate, commission or other benefit in return for giving names of prospective consumers or be required to assist in the supply of services to other consumers after the contract is made. Such an act is a breach of Section 29(1) of the CPA, 2010.

7. Engaging in a misleading or deceptive conduct

A supplier shall not, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply or use of services, engage in a conduct that is, or is likely to be, misleading or deceptive to consumers as this is in an infringement of Section 30 (1) of the CPA, 2010.

8. Engaging in a misleading or deceptive conduct in relation to services

In accordance with Section 31 of the CPA, 2010, a supplier shall not, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply or use of services, engage in a conduct that is, or is likely to be, misleading or deceptive to consumers as to the nature, characteristics, suitability for a purpose, or quantity of services.

9. False representations

A supplier shall not, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply or use of services -

- (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or a particular previous use;
- (b) falsely represent that services are of a particular standard, quality, value or grade;
- (c) falsely represent that goods are new;
- (d) falsely represent that a particular person has agreed to acquire services;
- (e) represent that services have sponsorship, approval, affiliation, performance, characteristics, accessories, uses or benefits that they do not have;
- (f) make a false or misleading representation concerning the price of any services;

- (g) make a false or misleading representation concerning the need for any services, replacements or repairs, or concerning the availability of facilities for the repair of goods or the availability of spare parts for goods;
- (h) make a false or misleading representation concerning the place of origin of goods; or
- (i) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy relating to goods or services.

A supplier who makes a false or misleading representation is in contravention of Section 30 (1) of the CPA, 2010.

10. Offering gifts and prizes without the intention of providing

A supplier shall not, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply or use of services, offer a gift, prize or other free item with the intention of not providing. Such an act is a contravention of Section 35 of the CPA, 2010.

11. Dishonestly accepting payment for services not intended or intended to supply differently

If a supplier does not intend to supply services or intends to supply services materially different from the services in respect of which the payment or other consideration is accepted, the supplier shall not accept payment or other consideration as this is a contravention under Section 36 of the CPA, 2010.

12. Unsolicited services

In accordance with Section 38 (10) a supplier shall not demand or assert any right to, or attempt to collect, any payment from another person in respect of unsolicited services supplied to or for the benefit of the consumer.

Suppliers are encouraged to carefully review activities and procedures to ensure compliance with the provisions of the CPA, 2010.

Where the Commission determines after a formal hearing that a person has contravened the requirements of the CPA, 2010, the Commission may order the person -

- a) in the case of an individual to pay a penalty of a sum not exceeding SCR100,000 or
- b) in the case of a person other than an individual to pay a penalty of a sum not exceeding SCR400,000.



Mr. Francis Lebon
Chief Executive Office



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