

ADVISORY NOTE 2 -2018
Date: 5th March 2018

ADVISORY NOTE TO ALL SUPPLIERS OF GOODS

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)

Warranty

The Consumer Protection Act, 2010 imposes a built-in or automatic warranty that all goods sold comply with the requirements listed in Section 42(1), namely:

- (1) They are fit for the purposes for which they are generally intended;
- (2) They are suitable for the specific purpose that a consumer has informed the supplier (expressly or by implication) that the consumer wants to use them for;
- (3) They are of good quality, in good working order and free of any defects¹;
- (4) They will be useable and durable for a reasonable period of time (having regard to the use);

If the goods fail to comply with these requirements, the consumer is entitled **WITHIN 6 MONTHS** after delivery of the goods to return them, **at the supplier's risk and expense and without penalty**, and:

- (a) Have the good(s) repaired² (within 60 days) ;
- (b) Have the good(s) replaced (within 7 days or any longer period as agreed to by the consumer and supplier); or
- (c) Get a refund of the price paid (within 24 hours).

It is important to note here that the choice is the consumer's! The supplier cannot force a consumer to opt to have the goods repaired if the consumer wants a refund or replacement.

• It is irrelevant whether a product failure or defect was latent (i.e. could not be seen through general inspection) or apparent or whether it could have been detected before the consumer took delivery of the goods;

• A product failure or defect may not be inferred in respect of particular goods solely on the grounds that better goods have subsequently become available from the same supplier or any other producer or supplier.

¹ "defect" in relation to any goods means (i) any material imperfection in the manufacture of the goods or components that renders the goods less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or (ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances.

² unless the goods are not reasonably fit for the purpose as referred to in (1) and (2) above



If the goods are returned for repair, the supplier will have only one opportunity to repair the goods or components of any such goods, and if the failure, defect or unsafe feature has not been remedied or a further failure, defect or unsafe feature is discovered within 3 months of that 1st repair, they must be replaced or the consumer refunded.

The above rules do not apply if:

- (a) The consumer was specifically told that the particular goods were offered in a specific condition (e.g. that they were in some way defective; or
- (b) The goods were altered contrary to the instructions, or after leaving the control, of the supplier (e.g. tampered with by the consumer)

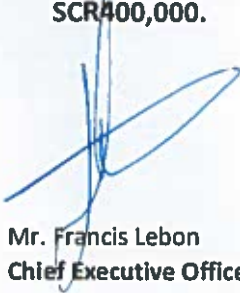
The above rules apply irrespective of the supplier's own refund policy or the terms of the manufacturer's warranty. However, these can go further than or offer more rights to consumers than the Act does.

Note that all new and re-conditioned parts installed during repairs or maintenance, and the labour involved are automatically warranted for 6 months after installation or such longer period as the supplier may specify in writing. This warranty will be void if the consumer subjected the installed part or goods to misuse or abuse and is not applicable to goods that are subject to ordinary wear and tear from usage.

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.



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