

LEGAL ALERT

THE ENHANCEMENT OF COMPETITION AND CONSUMER PROTECTION REGULATION IN ZAMBIA BY THE NEW AMENDMENTS TO THE COMPETITION AND CONSUMER PROTECTION ACT NO. 24 OF 2010 BY ACT NO. 21 OF 2023- PART 2



Consumer Protection Provisions and Powers of the Commission

Introduction

In addition to the amendments in the competition provisions part of the Principal Act, there have also been substantial amendments to the consumer protection provisions of the Principal Act.

What is key to note has been the inclusion of the power by the Commission to impose administrative penalties in provisions that did not have them prior to the amendment. This has increased the risk of financial penalties for consumer protection breaches.

Definition of unfair trading practice

Section 45 of the Principal Act has been repealed and replaced to provide that a trading practice is unfair and thereby distorts, or is likely to distort, the purchasing decisions of consumers if the trading practice;

- (a) *misleads consumers;*
- (b) *compromises the standards of honesty and good faith which an enterprise can reasonably be expected;*
- (c) *is unconscionable; and*
- (d) *places pressure on consumers by use of harassment or coercion.*

Prohibition of unfair trading practice

Section 46(2) of the Principal Act has been repealed and replaced to provide that a person who practices unfair trading will be liable a penalty of not more than ZMW 45,000.00 while an enterprise will be liable to a penalty of not more than 10% of that its annual turnover.

In addition to the penalties meted out against a contravening enterprise or person under Section 46 of the Principal Act, a person or an enterprise shall refund the consumer the price paid for the goods or services or replace the goods or perform the service to a reasonable standard.

False or misleading representations

Section 47 of the Principal Act has been repealed and replaced to provide that where false representations or misleading representations as laid down in the newly amended Section 47 by a person then they will be liable a penalty not exceeding ZMW 45,000.00 while an enterprise will be liable to a penalty of not more than 10%

of that its annual turnover.

In addition to the penalties, a person or an enterprise shall refund the consumer the price paid for the goods or services or replace the goods or perform the service to a reasonable standard.

Display of disclaimer prohibited

Section 48(1) has been amended to provide that an owner or occupier of a shop or other trading premises or platform is prohibited from displaying any signs or notice that purports to disclaim any liability or deny any right that a consumer has under the Principal Act or any other written law.

A person who contravenes the above will be liable a penalty of not exceeding ZMW 45,000.00 while an enterprise will be liable to a penalty of not more than 10% of that its annual turnover.

Prohibition of supply of defective and unsuitable goods and services

Section 49(1) has been amended to provide that a person who supplies a consumer defective and unsuitable goods that are unfit for the purpose they are normally used for will be liable to a penalty of not exceeding ZMW 150,000.00 while in the case of an enterprise they will be liable to a penalty of not more than 10% of that its annual turnover.

Additionally, a person or enterprise that supplies a consumer defective and unsuitable goods that are unfit for the purpose they are normally used for shall within seven days or an agreed reasonable time of the supply of the goods concerned refund the consumer of the price for the goods.

Further to the above, Section 49(7) has been repealed and replaced to provide that in a situation where a person or enterprise does not supply a consumer with reasonable care and skill or within a reasonable time or, if a specific time was agreed, within a reasonable period around the agreed time, they will be not only liable to a penalty not exceeding 10% of their annual turnover, but they must refund the consumer the money paid for the service or must perform the service to a reasonable standard within 14 days of the provision of the service concerned.

Product labelling

Section 50(1) of the Principal Act has been amended to now provide that a product sold in Zambia should have a label in the official language to clearly indicate the product description, the ingredients used in the product, the date of the manufacture and expiry of the product,

the manufacturer's name, the physical location of the manufacturer, the telephone number and any other contact details of the manufacturer.

Further to the above, a person or an enterprise must sell goods to consumers that conform to the mandatory consumer protection standard for the class set by the Zambia Compulsory Standards Agency.

Prohibition for charging more than displayed price

Section 51 of the Principal Act has been repealed and replaced to provide that a person or enterprise is prohibited from charging a consumer more than the price indicated on the product or service. Where a person or enterprise does not comply with this requirement, they should sell the product or charge the service at the lowest price displayed to the consumer.

Further to this, a person shall also be liable to the Commission to a penalty of ZMW 15,000, while an enterprise will be liable to a penalty not exceeding 10% of their annual turnover.

In a situation where a person or enterprise charges more than the price indicated on the product or service, in addition to the penalties above, they should refund the consumer the difference between the price indicated and the actual price. Whereas, in a situation where a person or enterprise displays more than one price for a product or service at the same time and sells the product or charges for the service at the highest price displayed shall refund the consumer the difference between the lowest price and the highest price displayed.

Consumer Product Safety

Section 52(1) has been repealed and replaced to provide that a person or an enterprise shall not-

a. sell any goods to consumers unless the goods conform to the standards approved by the Zambia Bureau of Standards or Zambia Compulsory Standard Agency under the Standards Act, 2017, or the Compulsory Standards Act, 2017, respectively, or any other relevant competent body; or

b. expose for sale, supply, import, or display a product that is expired, has exceeded its "best before" date, "use by" date, or "sell by" date, or has otherwise exceeded its shelf life.

A person or enterprise that fails to comply with the above shall be liable to a penalty of ZMW150,000.00 or imprisonment for a period not exceeding 5 years or both in addition to paying the Commission a penalty of not exceeding 10% of that entity's annual turnover.

Further to this Section 52(4) has been amended to provide that the Zambia Compulsory Standards Agency will be the consulting Authority, that the Commission consults before applying to the Tribunal for an Order that goods that are unsafe or that the sale of unsafe goods to a consumer is prohibited or an Order that unsafe goods already sold to consumers should be recalled from the market by the supplier.

Investigations by the Commission

Section 55(5) has been repealed and replaced to provide that where a person or an enterprise under investigation contravenes the Commission's request to furnish any information or produce documentation or appear before the Commission to produce documents relevant to the investigations as provided under the Principal Act, such a person will be liable to a penalty of not more than ZMW30,000 while an enterprise will be liable to a penalty not exceeding 10% of its annual turnover.

Further section 55(11) has also been amended to provide that the Commission shall not investigate or review a matter that is before the Tribunal unless the Tribunal directs otherwise.

The effect of this amendment is that enterprises must be vigilant because failure to provide information or produce or appear before the Commission has become harsh as the business will now be exposed to a fine in addition to criminal prosecution.

Consent agreement and undertaking

Section 57(2), (3) and (4) have been repealed and replaced to provide that the Commission on entering into a consent agreement with an enterprise under investigation, shall submit the consent agreement to the Tribunal for confirmation. Upon receipt of the consent agreement, the Tribunal may give their confirmation or return the matter to the Commission with an indication of any areas of concern to be addressed before the Tribunal confirms the agreement.

The amendment also provides that in the case where the Commission gives an enterprise under investigation an undertaking, the undertaking made by an enterprise to the Commission shall be communicated to the parties in writing in the form of a decision of the Board have the effect as if it were a directive of the Board.

Directions relating to anti-competitive business practices and unfair trading

Section 58(5) has been repealed and replaced to

provide the Commission may, where anti-competitive conduct or an unfair trading practice falls within the scope of this Act, give an enterprise direction, in writing, that the Commission considers appropriate to ensure that the enterprise ceases to engage in that anti-competitive conduct or unfair trading practice. Such direction may require an enterprise to cease to engage in the anti-competitive conduct or unfair trading practice within a period that may be specified by the Commission.

In addition to the above the Commission may make an order imposing a penalty on the enterprise not exceeding 10% of that enterprise's annual turnover during the period of the breach of the prohibition up to a maximum period of five years.

Enforcement , directions and undertakings

Section 64 has been amended by the insertion of a new subsection which provides that a mandatory order of the Tribunal may be served, executed and enforced as if it were an order of the High Court.

Enforcement at the request of a foreign authority

Section 65 (1) has been amended to provide that subject to subsection (2), a foreign competition or consumer protection authority may, where the foreign competition or consumer protection authority has reasonable grounds to believe that an anti-competitive or unfair trading practice in the Republic is damaging competition or consumer welfare in the country of that foreign competition or consumer protection authority, request the Commission to investigate and make an appropriate determination.

This provision like in the past brings the effects doctrine into reality and enhances international co-operation.

Establishment of the Competition and Consumer Protection Tribunal

Section 67 has been amended to provide that a member of the Tribunal shall, on the expiration of the period for which that member is appointed, continue to hold office until a successor is appointed but in no case shall the further period exceed 3 months.

Appeal to the Court of Appeal

To align the Principal Act in conformity with the Constitution, section 75 is amended to the effect that Appeals from the Competition and Consumer Protection Tribunal now lie to the Court of Appeal and not to the High Court.

We hope you found this alert useful. Please contact our Dispute Resolution and Public Policy Partner and Associate, Sydney Chisenga at SChisenga@corpus.co.zm and Mwinji Nachinga at MNachinga@corpus.co.zm respectively, if you have any questions relating to this legal alert.



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