

Consumer Protection (Amendment) Act (2012)

Implications for Businesses

September 2013

Amendments to the CPA (2012)

Passed in 2005, the Consumer Protection Act (CPA) is applicable to all persons involved in trade and business through the purchasing or vending of goods and/or services. It provides a balance between consumers and businesses in the Jamaican marketplace by acknowledging internationally recognised basic rights and responsibilities of consumers. It also outlines the legal obligations of both businesses and consumers in commerce. Having identified aspects of the legislation that needed to be amended, recommendations were made by the Consumer Affairs Commission (the Commission) towards achieving a more adequate balance between the interests of consumers and those of providers. This resulted in the passage of the Consumer Protection (Amendment) Act (2012). The 2012 amendments afford the Commission more options to pursue marketplace breaches, and simultaneously give regard and credence to the rights of providers of goods and services within Jamaica. Outlined below are the major implications of the amendments to businesses:

Widened Investigative and Representative Authority

The CAC can, on its own initiative, investigate any breach of the Act, by a provider of goods or services.

Prior to the CPA's amendment, the legislation empowered the Commission to investigate contraventions upon complaints being made to the agency by consumers. Section 6(3) of the Act has been amended to continue this function but it has also been expanded to allow the Agency, on its own initiative, to investigate any breach of the Act, by a provider of goods or services.

Furthermore, by virtue of Section 7(4) the Commission now has the discretion to institute legal proceedings in its own name on behalf of any aggrieved complainant, or can provide legal support and assistance to any such complainants. Prior to this, the Agency could only make legal representations on behalf of certain categories of complainants.

The cumulative effects of these changes are that the Commission can now be proactive in launching investigations where it sees the need. Also, the Commission can now file criminal and civil proceedings in its own name, on behalf of consumers who are adversely affected by any breach of the Act.

Strengthened Warranty Provisions

The provisions relating to warranties have been strengthened, to provide for the following—

Consumers can now recover damages from providers for any loss suffered resulting from providers being in breach of contracts with consumers, as it relates to warranty provisions.

- ✎ Section 21(2) places a duty on providers operating in Jamaica, to extend a manufacturer's warranty given for a good or service, to consumers. So as to remove any ambiguity concerning the obligations of providers, the provision has been amended to delete reference to the words "whether local or foreign" and to replace them with "whether the manufacturer operates from within Jamaica or outside of Jamaica."
- ✎ Section 21(7) has been included as a new provision to allow consumers to recover damages from providers for any loss suffered resulting from providers being in breach of contracts with consumers, as it relates to the warranty provisions. However, consumers can only claim such a relief if the breach was reasonably foreseeable at the time they entered into the contract.
- ✎ Section 21(8) has been included as a new provision, allowing a Resident Magistrate to impose a maximum fine of \$2,000,000 or 2 years' imprisonment, or both such fine and imprisonment, on providers who fail to issue explicit warranties, and/or extend a manufacturer's warranty given to it, to consumers of goods sold, or services provided in Jamaica.

Providers will therefore need to be familiar with the terms and conditions of each manufacturer's warranty on products they sell. This includes warranty duration as well as any conditions that may void coverage.

More Balanced Provisions on Complaint-Verification Procedures

In instances where the state of goods sold to consumers is being disputed, providers should be allowed time to verify such claims before monetary compensations are offered.

Section 24(2) has been amended to make it clear that in instances where the state of goods sold to consumers is being disputed, providers should be allowed time to verify such claims before monetary compensations are offered. This provision applies in instances where consumers are encouraged to buy the goods under dispute, based on the providers' own declarations and descriptions, following which they (i.e. consumers) discover them to be defective or materially different from the representations made of the goods, by such providers. Prior to this amendment, the Act mandated providers to grant the refund if the goods were returned in the condition purchased or with minimal damage resulting from reasonable exposure.

Strengthened Provisions on Advertising

Sections 32 and 33 have been amended to place greater emphasis on the standard by which providers display and disclose information to consumers.

- ↳ Section 32 has been amended to include a new provision - the new Section 32(3)- which requires that the computation of taxes (including GCT) duties or charges must be disclosed to consumers, in the prices advertised for all goods and services.
- ↳ Additionally, a new provision has been introduced which addresses advertising standards. By virtue of Section 32A, providers must ensure that every contract of sale and every advertisement for goods or services offered—
 - a. is conspicuous, legible and in simple language that is easy to understand; and
 - b. sets out the terms and conditions of the contract and/or advertisement.

The onus is also placed on providers to take reasonable steps to bring to the attention of consumers the terms and conditions of the contract and/or advertisement. Further, if the language used is not easily understandable, the meaning most favourable to the consumer will prevail.

- ↳ Section 33(2) now requires that in instances where providers fail without reasonable cause to meet the advertised delivery dates, and consumers decide not to accept the goods, monies held for administrative, restocking or any other fees should be refunded with interest, beginning at the date of the deposit of the amount, and ending on the date of its refund. A 15% interest rate has been prescribed by the Act, a rate that can be varied by the Minister responsible for consumer protection. Prior to this amendment, the provision was silent on the imposition of unfair charges, and the interest rate was pegged to the Treasury Bill rate.

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The changes are aimed at preventing vulnerability to abuse, and false or misleading practices. They recognise that consumers ought not to be penalised for the breach of a contract through no fault of theirs, and that they cannot make well-informed decisions when presented with information that is misleading, incomplete or overly complex. Best practices highlight that providers of products should give descriptive information and disclosure statements in simple language, so as to inform consumers of matters such as potential risks, information on components of price, complaints and redress mechanisms, and contractual terms and obligations.

Establishment of a Consumer Protection Tribunal

Arguably, the most far-reaching amendment to the CPA is that of the establishment of a Consumer Protection Tribunal (the new Sections 44A-44F).

This Tribunal is a quasi-judicial body, which means that it has the power to make decisions concerning the rights of the parties brought before it. It has been intrinsically established to hear and determine matters in breach of the CPA, but not settled through mediation. Either the provider or the consumer may refer such unresolved matters to this Tribunal.

Legal rules of administrative justice require that hearings should be placed before an independent and impartial arbiter. Further, the authority of the arbiter should be separate from the administrative agency created to investigate, supervise and regulate that particular area of governmental concern. In keeping with this fundamental principle, the adjudicative functions of the Consumer Protection Tribunal are separate and distinct from the investigative and administrative arms of the Commission.

Towards determining whether certain practices are in breach of the provisions of the CPA, the Tribunal has been empowered to—

- ▶ call and examine witnesses
- ▶ call for and examine documents
- ▶ require that documents submitted to the Commission be verified by affidavit.

Tribunal Offences

The following offences are punishable upon summary conviction before a Resident Magistrate —

- ▶ Failure to comply with a summons to appear as a witness before the Tribunal
- ▶ Failure, without reasonable cause, to answer a question required to be answered by a presiding member at the Tribunal proceedings
- ▶ Giving false and misleading evidence as a witness
- ▶ Actions amounting to a contempt of Tribunal
- ▶ Failure to comply with an order of the Tribunal

The fines for these breaches range from a minimum of \$500,000 or 6 months imprisonment, to a maximum of \$2,000,000 or 2 years imprisonment, or to both such fine and imprisonment.

Orders

The Consumer Protection Tribunal may make orders, including—

1. *Declaring certain transactions to be in breach of the provisions of the Act or any other related enactment;*
2. *Prohibiting the withholding of supplies or the threat thereof;*
3. *Suspending, modifying or terminating an agreement;*
4. *Prohibiting the making or carrying out of provisions of an agreement;*
5. *Prohibiting the attachment of any extraneous conditions to any transaction;*
6. *Requiring the publication of a price list;*
7. *Requiring the payment of refund and interest where appropriate;*
8. *Requiring the delivery of goods and services;*
9. *Protecting the confidentiality of a party's trade secrets or other confidential information.*

Costs and Benefits

The Government of Jamaica and by extension the Commission are pro-business. The implementation of consumer protection legislation is hinged on the traditionally vulnerable position of consumers in commercial activities. Thus consumer protection laws are passed and regulators established to protect consumers from fraudulent and misleading commercial practices and unsafe products, and to promote transparent markets that enable consumers to make informed choices.

We acknowledge, on the other hand, that businesses also need some degree of protection. By outlining the obligations of both parties, businesses can minimise their risk to unscrupulous consumers who may seek to take advantage of the generous protection afforded them, and abuse their privilege. The CPA, by setting out the same standards for all businesses and all consumers in all transactions, creates a level playing field, in that it:

- ✓ protects your consumer rights when as a commercial entity, you purchase consumer goods;
- ✓ sets basic standards for providing goods and services, thus reducing consumer dissatisfaction, complaint and loss of business; and
- ✓ provides legal context in the event a customer seeks to file a suit against a business.

The Commission also recognises that while this legislation has its benefits, it also does have the potential to add to business costs such as time and money spent in reading, understanding and complying with the laws; employing specialists to manage compliance issues; changing business practices (e.g. re-training sales staff or re-designing labelling and packaging); handling complaints, especially if they end up before the Tribunal or the courts; the imposition of sanctions; and the costs of a damaged reputation and image with customers. These costs are especially difficult for small businesses which lack the time, money and expertise to navigate through the legal implications.

On the other hand, the CPA also assists small businesses to develop and maintain appropriate complaint-handling mechanisms aimed at fostering efficiency and improving customer relations. This in turn promotes consumer confidence and loyalty as businesses are seen as being consumer-friendly and customer-focused.

The Commission stands committed to provide the necessary support required by unique industries and businesses to help them transition towards compliance which is expected to enhance consumer confidence and increase business profits.

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