

### Consumer Protection Act Draft Regulations Comments

	<b>Regulation</b>	<b>Issue</b>	<b>Proposal</b>
1.	<p><b>Regulation 2(3)(m)(v)</b>            “If the franchise agreement provides that a franchise must directly or indirectly contribute to an advertising, marketing or other similar fund, the franchise agreement must-            (v) be accompanied by the certificate of a registered accountant or accounting officer as the case may be, confirming that the fund’s account has been audited and that the statements to the best of his or her knowledge provide a true reflection of the matters stated in sub regulation (m)”.</p>	<p>The indication in this regulation is that the franchisor will be always subject to audit. If this was the intention then it is observed that the provisions are not necessarily aligned with the Companies Act, 2008. This may cause companies to be audited under the Regulations, whilst the same company would not have to be audited in terms of the Companies Act, 2008,            The required certificate cannot be signed off by an accounting officer or registered accountant as audit and the audit requirements are regulated by the Auditing Professions Act, 2005. The audit report needs to be signed off by a Registered Auditor.</p>	<p>It is proposed that the regulation 22(3)(m)(v) be amended as follows:            “v) be accompanied by the certificate of a registered <u>auditor</u> <del>accountant</del> <del>or accounting officer as the case may be</del>, confirming that the fund’s account has been audited and that the statements to the best of his or her knowledge provide a true reflection of the matters stated in sub regulation (m)”.</p>
2.	<p><b>Regulation 3(c)</b>            “The disclosure document ....must be accompanied by a certificate on an official letterhead from a person eligible in law to be registered as the accounting officer of a close corporation, or the auditor of a company “</p>	<p>This disclosure document requires a certificate to be completed by the auditor or accounting officer of the company stating certain requirements. The audit report cannot be signed off by the accounting officer as audit and the audit requirements are regulated by the Auditing Professions Act, 2005. The current position with regards to “accounting officers” will be changing with the implementation of the Companies Act.</p>	<p>It is proposed that regulation 3(c) is amended as follows:            “The disclosure document contemplated in subregulation (a) above must be accompanied by a certificate on an official letterhead from a person eligible in law to be registered as <del>the accounting officer of a close corporation, or</del> the auditor of a company, <del>as the case may be</del>, certifying that –“</p>
3.	<p><b>Regulation 4 (1)</b>            “For purpose of section 11(1) of the Act, if a consumer has-            (a) in writing informed any other person; or</p>	<p>In Regulation 4(1)(a) it is not clear who “any other person” is and this widens the scope of the regulation to such an extent that the practical implementation of the regulation becomes impossible. The definition of “container” in regulation 4(1)(b) has also not been</p>	<p>It is proposed that regulation 4(1)(a) is deleted as “any other person” is too wide and it cannot be clarified who this person would be. We also propose that regulation 4(1)(b) is redrafted to clarify where this</p>

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	(b) placed any communication or sign on a postal box or other container for mail, indicating that he or she does not wish to receive any material related to direct marketing , no person may place or attach any such material , in whichever physical format, in or on near the postal box, container or premises of the consumer.”	provided.	notification should be placed.
4.	<b>Regulation 4(2)</b> “The phrase “no junk mail” or any translation in an official language of the Republic is sufficient to meet the requirements of subregulation(1).”	The practical application of this regulation needs to be clarified. Who will be taking the responsibility for not placing junk mail in the post box? The persons distributing junk mail would have to be able to recognize the phrase in any of the languages, which would be highly impractical and improbable.	We propose that Regulation 4(2) be deleted.
5.	<b>Regulation 4(3)(c)(iv)</b> “A consumer may register- (iv) a pre-emptive block for any time of the day or any day of the year”	This would be time consuming and expensive for people utilizing the list as this regulation provides for a consumer to update his records on regular (daily/hourly) basis. The companies dealing with direct marketing would have to revisit this list every time a direct marketing campaign is embarked upon. This will have a technical and cost implication for reputable direct marketers.	It is proposed that the regulation is revisited and the practicality of this regulation be considered.
6.	<b>Regulation 6(1)</b> “For purposes of section 14(4)(a) of the Act, the maximum period of a fixed-term consumer agreement is 24 months from the date of signature by the consumer	There is no subregulation 3 in regulation 6.	The reference to subregulation 3 should be deleted.

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	subject to sub-regulation (3) ...”		
7.	<b>Regulation 8(2)(c)</b> “This regulation does not apply to- (c) goods where the number of goods imported by a natural person does not exceed 1000 but does apply to goods imported for marketing purposes.”	This sub-regulation would be open to abuse in that importers can in terms of the current wording import different consignments of smaller volumes goods, whilst still falling within the thresholds without having to comply with certain requirements.	It is proposed that Regulation 8(2)(c) be deleted.
8.	<b>Regulation 11(1)</b> “In this section, hawker means a person lawfully engaged in the selling of goods on the street or in public places or spaces in respect of which all members of the public enjoy unrestricted and unconditional access subject only to law.”	The regulation is too wide in that the description includes normal shopping centres and sole proprietors in smaller street shops. The provision can be abused due to interpretation and will allow non-compliance with certain requirements aimed at protecting the consumer.	It is proposed that Regulation 11 be deleted.
9.	<b>Regulation 13(1)(c)</b> “if applicable, maintain a record of advice”	There is no definition of “record of advice” and it is not clear the content of such a record should reflect.	It is proposed that the regulation be redrafted to define “record of advice”
10.	<b>Regulation 14 (4)</b> “The promoter must ensure that a chartered accountant, registered auditor, admitted attorney or commissioner of oaths conducts the competition and must be reported on through the promoter’s internal audit reporting procedures.”	The Regulation refers to “conduct” and it could hardly be the intention that a commissioner of oaths or other persons conduct the competition.	It is proposed that the word “conduct” be changed to “oversee”.

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11.	<b>Regulation 17(1)</b> “speculative software’ means software which claims to assist consumer to understand securities and exchanges and to trade profitably in securities on exchanges and/or software which claims to predict the outcome of horse races, and this software is available on 3 ½ - inch floppy discs, compact disk or via the internet.”	It is unclear why reference is only made to “horse racing” as there is a varied number of other activities which is also used for speculative purposes. The references to the software are not accurate as these forms of software have been replaced, e.g. floppy discs are no longer in circulation or use.	We propose that the definition of speculative software is amended as follows: “speculative software’ means software which claims to assist consumer to understand securities and exchanges and to trade profitably in securities on exchanges and/or software which claims to predict <u>gaming activities</u> . <del>the outcome of horse races, and this software is available on 3 ½ - inch floppy discs, compact disk or via the internet.</del> ”
12.	<b>Regulation 17(2)(b)(ii)</b> “I prefer to make monthly repayments on my debit card ...”	The reference to making payment using your debit card does not take into account all the other methods of payment currently allowed in South Africa.	It is proposed that “on my debit card” be replaced by “ <u>subject to bank agreement</u> ” to ensure that other methods of payments are also accepted.
13.	<b>Regulation 18</b> “No person may enter into or act upon any agreement for the use of the truck, minibus or any other vehicle, whereby a person, the client gives or pays to or on behalf of another person the intermediary, a remuneration of whatever nature, whether goodwill or any other form of consideration, and the intermediary undertakes to arrange transport contracts, whether of cargo or passengers , for execution by the client, unless that agreement expressly – (a) Prohibits any advance payment by the client to the intermediary;	This section is unclear as it states that a person may not pay another person to in turn arrange a vehicle. This would impact travel agencies as they regularly arrange and pay for vehicles on behalf of a third party. Regulation 18(b) also refers to the fact that the payments for the service must be made out of profits generated from the transport contract. This is not possible as the client would have to pay the intermediary after the service is provided. It would not necessarily be out of the profits generated or no profits might have been generated. This provision is too restrictive.	It is proposed that Regulation 18 is redrafted to reflect the intention of the legislature. It is proposed that Regulation 18(b) is deleted.

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	and (b) Provides that payment by the client to the intermediary in respect of the agreement may be made only from profits generated by the execution of transport contract concerned.”		