SAICA
THE SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS
develop.influence.lead.

29 October 2010

Mr Ntutuzelo Vananda
The Department of Trade and Industry

By E-mail: cparegs@thedti.gov.za

Dear Mr Vananda

REQUEST FOR COMMENT ON CONSUMER PROTECTION ACT REGULATIONS

In response to the publication of Notice 898, Consumer Protection Act (68/2008): Determination of threshold in terms of the Act pursuant to the Consumer Protection Act, 2008, in Government Gazette No 33621 of 11 October 2010, attached is the submission of the South African Institute of Chartered Accountants ("SAICA").

Please contact me should you require any further information or clarification on any of the matters raised in this submission.

Yours sincerely

Ewald Müller
Senior Executive: Standards

#330500

NPO 020-050
Integritas, 7 Zulberg Close, Bruma Lake, 2198 POSTAL ADDRESS PO Box 59875, Kengray, 2100, Johannesburg
TEL +27 11 621 6600 FAX +27 11 621 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za WEB saica.co.za | accountancysa.org.za

Comments on the Consumer Protection Act Threshold Determination

No.	Section reference	Problem statement	Proposed solution
1	Determination	Domestically and internationally, when determining thresholds related to both assets and turnover, there tends to be a ratio of 1:2 between assets: turnover due to the practical relationship between the two in terms of size in average businesses. The proposed threshold of R 3m does not correspond with the R 1m threshold reflected in the provisions of the National Credit Act, 2005 (NCA). The Consumer Protection Act (CPA) and NCA thresholds should be aligned to provide legal certainty to consumers. The aim of both pieces of legislation is to protect the interest of consumers and it is thus not clear why the CPA should afford more protection than the NCA, as the receivers of credit are probably all predominantly consumers.	Adjust the asset threshold to half that of the turnover threshold. Please note, however, our proposal regarding a matrix approach to the thresholds at the end of this table. Align the thresholds with those of the NCA. Please note, however, our proposal regarding a matrix approach to the thresholds at the end of this table.
2	Section 1	Section 1 states that the assets and turnover should be calculated in accordance with IFRS. This is not practical as most companies and close corporations that will be requesting protection under this Act will not fall within the audit threshold as prescribed by the Companies Act, No 71 of 2008, and accordingly they will not be applying IFRS. Performing calculations based on IFRS exclusively for purposes of the CPA will be onerous and add additional costs to the consumer. These juristic persons will be using the alternative accounting frameworks to prepare their financial statements.	Section 1 should be deleted, as the calculation of the assets and turnover is effectively addressed in sections 2(1) and 3(1).

3	Section 2(1)	We agree with this section. We would, however, recommend that the reference to “balance sheet” is deleted as the names used in the financial reporting standards have changed and “balance sheet” is no longer commonly used.	The section should refer to the value of the juristic person’s assets as reflected in the financial statements.
4	Section 2(3)	This section is burdensome and costly as additional calculations need to be done to provide this amount and this will entail that the assets figure should be calculated on an ongoing basis.	Delete this section. The juristic person should be using the applicable accounting framework to calculate the assets as per the immediate preceding financial year.
5	Section 3(1)	The reference to “annual turnover” in the threshold calculations is not appropriate as “annual turnover” is not generally defined or used in Financial Reporting Standards. The accounting frameworks refer to “Revenue”. This will lead to confusion to what should be included in the calculation.	Turnover should be defined as the gross revenue derived from **trading** activities in the Republic as recorded in the juristic person’s financial statements for the immediate preceding financial year. This will solve the issue of juristic persons using various applicable accounting frameworks.
6	Section 3(2)	This section is superfluous as the concepts are addressed in Financial Reporting Standards.	Delete this section as the juristic person will be using the applicable accounting framework to calculate the revenue for the immediate preceding financial year.
7	Section 3(3)	This section is burdensome and costly as additional calculations need to be done to provide this amount and this will entail that the turnover figure should be calculated on an ongoing basis.	Delete this section. The use of the annual financial statements for the immediate preceding financial year, as stated in 2(1), is sufficient.
8	Section 3(4)	No comment.	Agree with section

9	Section 4	Section 4 states that the financial statements used in the calculation should be the audited financial statements or otherwise should be prepared in accordance with IFRS. This is not practical as most companies and close corporations that will be requesting protection under this Act will not fall within the audit threshold as prescribed by the Companies Act, No 71 of 2008 and they will not be applying IFRS. This will be onerous and add additional costs to the consumer. These juristic persons will be using alternative accounting frameworks to prepare their financial statements.	Delete this section.

We believe that a single level threshold is far too simple. This would unintentionally jeopardise many small businesses. A classic example would be a used car dealer or even a small new car dealership. The likelihood of such a small dealership exceeding the R3 million turnover threshold is very high. They would only need to sell about 30 vehicles a year to exceed this. The business itself, however, will most likely typically reflect a small business having few staff and low profit. Furthermore, this small business would interact most likely with large business and vehicle manufactures from which they would need protection. The legislation therefore should not look to exclude these smaller businesses from protection simply because of the nature of their product sold. A matrix threshold structure considering the nature of the business is therefore necessary. A matrix such as that included in the National Small Business Act can be used, but the figures as included in the National Small Business Act need to be updated to reflect the inflationary effect since 1996.