
GOVERNMENT NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

No. R. 293

1 April 2011

**THE CONSUMER PROTECTION ACT, 2008 (ACT NO. 68 OF 2008)
REGULATIONS**

I, Dr Rob Davies, Minister of the Department of Trade and Industry, in terms of and under section 120 (1) of the Consumer Protection Act, 2008 (Act 68 of 2008), read together with the respective sections indicated in the regulations below, do hereby make the regulations set out in the schedule hereto and issue the attached notices in terms of the respective sections indicated in such notices.

**DR ROB DAVIES, MP****MINISTER OF TRADE AND INDUSTRY****DATE: 31/...3.... / 2011**

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DEPARTMENT OF TRADE AND INDUSTRY

Consumer Protection Act Regulations

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Short title and definitions

- 1 (1) These regulations are the Consumer Protection Act Regulations.
- (2) In these regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has the same meaning, and -
- "Act" means the Consumer Protection Act, 2008 (Act No. 68 of 2008);
- "Department" means the Department of Trade and Industry;
- "in writing" includes any electronic means recognised by the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); and
- "public officer" means that person defined in Chapter III (General Provisions) of Part V of the Income Tax Act, 1962 (Act 58 of 1962).

Franchise agreements

- 2 (1) This regulation must be read together with sections 7 and 120(1)(e)(ii) of the Act.
- (2) (a) Every franchise agreement must contain the exact text of section 7(2) of the Act at the top of the first page of the franchise agreement, together with a reference of the section and the Act.
- (b) A franchise agreement must contain provisions which prevent -
- (i) unreasonable or overvaluation of fees, prices or other direct or indirect consideration;
 - (ii) conduct which is unnecessary or unreasonable in relation to the risks to be incurred by one party; and
 - (iii) conduct that is not reasonably necessary for the protection of the legitimate business interests of the franchisor, franchisee or franchise system.
- (c) A franchise agreement must contain a clause informing a franchisor that he, she or it is not entitled to any undisclosed direct or indirect benefit or compensation from suppliers to its franchisees or the franchise system, unless

the fact thereof is disclosed in writing with an explanation of how it will be applied.

- (d) Paragraph 2 of item 3 of Schedule 2 of the Act applies to any pre-existing franchise agreement.
 - (e) Any provision in a franchise agreement to which these regulations apply which is in conflict with this regulation is void to the extent of such a conflict.
- (3) A franchise agreement must as a minimum contain the following specific information –
- (a) the name and description of the types of goods or services which the franchisee is entitled to provide, produce, render or sell;
 - (b) the obligations of the franchisor;
 - (c) the obligations of the franchisee;
 - (d) a description of the applicable franchise business system;
 - (e) the direct or indirect consideration payable by the franchisee to the franchisor;
 - (f) the territorial rights, if any, granted to the franchisee in detail;
 - (g) a description of the site or premises and location from which the franchisee is to conduct the franchise;
 - (h) the conditions under which the franchisee or his, her or its estate may transfer or assign the rights and obligations under the franchise;
 - (i) a description of the trade mark or any other intellectual property owned by the franchisor, or otherwise licensed to the franchisor which is, or will be used in the franchise, and the conditions under which they may so be used;
 - (j) if the agreement is related to a master franchise, the master franchisor's identity;
 - (k) particulars of the initial training and assistance provided by the franchisor and, where the franchisor provides ongoing training for the duration of the franchise agreement, a statement that the particulars of such training and assistance will be provided to the franchisee as and when necessary;
 - (l) the duration and the terms of the renewal of the franchise agreement, provided that such terms and conditions are not inconsistent with the purpose and policy of the Act;
 - (m) if the franchise agreement provides that a franchisee must directly or indirectly contribute to an advertising, marketing or other similar fund, the franchise agreement must contain clauses informing the franchisee –
 - (i) of the amount, or if expressed as a percentage, the method of calculation of such contribution;

- (ii) that within six months after the end of the last financial year, the franchisor will provide a franchisee with a copy of a financial statement, prepared in accordance with applicable legislation, which fairly reflects the fund's receipts and expenses for the last financial year, including amounts spent, and the method of spending on advertising and/or marketing of franchisees and the franchise system's goods and services,
- (iii) that, in addition to subparagraph (ii), the franchisor must for every three months period make financial management accounts relating to the funds available to franchisees;
- (iv) that moneys in the fund may not be spent on advertising and marketing of the franchisor's franchises for sale;
- (v) that to the extent that an audit is carried out, a certificate of a registered auditor 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 this subregulation (m) and where no audit is carried out, a certificate by the accountant that management accounts have been prepared and are correct to the best of the directors' knowledge;
- (vi) that a franchisee can request a copy of the statement and certificate issued in terms of subregulation (v), and that the franchisor must within a reasonable period of such request provide such copies;
- (vii) of any contribution to such a fund will be deposited in a separate bank account and used only for purposes of the fund;
- (viii) of the franchisor's contribution to such fund, if any; and
- (ix) of the fact that the franchisor and or franchisor associated franchised businesses do not enjoy any direct or indirect benefit not afforded to independent franchisees;
- (n) the effect of the termination or expiration of the franchise;
- (o) extension or renewal terms, or whether there is no option to renew or extend the agreement;
- (p) a written explanation of any terms or sections not fully understood by the prospective franchisee upon the prospective franchisee's written request;
- (q) the franchisor's legal name, trading name, registered office and franchise business office, street address, postal address, e-mail address, telephone number and fax number;

- (r) the name, identity number, town of residence, job titles and qualifications of the franchisor's directors or equivalent officers;
- (s) except where the franchisor is a company listed on a stock exchange, details of any proprietor, member or shareholder if they are different from the persons referred to in paragraph (r);
- (t) particulars of any restrictions imposed on the franchisee;
- (u) the nature and extent of the franchisor's involvement or approval in the process of site selection;
- (v) the terms and conditions relating to termination, renewal, goodwill and assignment of the franchise;
- (w) the main obligations of the franchisor in respect of initial and ongoing training to be provided;
- (x) confirmation that any deposits paid by the prospective franchisee will be deposited into a separate bank account and a description of how these deposits will be dealt with;
- (y) full particulars of the financial obligations of the franchisee in terms of the franchise agreement or otherwise related to the franchised business including -
 - (i) the initial fee payable to the franchisor on the signing of the franchise agreement, including the purpose for which it is to be applied;
 - (ii) the funds required to establish the franchised business including, purchase or lease of property, site conversion costs, décor and signage, equipment, furniture, hiring and training of staff, opening stock, legal and financial charges, as may be applicable;
 - (iii) the initial working capital, where possible, and the basis on which it is calculated;
 - (iv) the total investment required;
 - (v) a clear statement as to whether or not any expenses, any salary/wages of employees of the franchised business and the costs of servicing loans are included in the purchase price.
 - (vi) the amount of funding that is available from the franchisor, if any, and the applicable conditions;
 - (vii) the total amount that the franchisee must contribute towards the necessary funding before borrowing; and
 - (viii) ongoing amounts payable to the franchisor, with details as to -
 - (aa) whether the amounts are fixed or variable;

- (bb) whether all or part of the amounts are included in the price of goods or services that must be purchased from the franchisor or other preferred suppliers;
 - (cc) the dates, or intervals, at which the amounts fall due; and
 - (dd) if any fee is payable in respect of management services provided by the franchisor, details of such services.
- (4) A franchise agreement which is renewed after the general effective date is a new franchise agreement for the purposes of subregulations (2) and (3).

Disclosure document for prospective franchisee

- 3 (1) Every franchisor must provide a prospective franchisee with a disclosure document, dated and signed by an authorised officer of the franchisor, at least 14 days prior to the signing of a franchise agreement, which as a minimum must contain -
- (a) the number of individual outlets franchised by the franchisor;
 - (b) the growth of the franchisor's turnover, net profit and the number of individual outlets, if any, franchised by the franchisor for the financial year prior to the date on which the prospective franchisee receives a copy of the disclosure document;
 - (c) a statement confirming that there have been no significant or material changes in the company's or franchisor's financial position since the date of the last accounting officer, or auditor's certificate or certificate by a similar reviewer of the company or franchisor, that the company or franchisor has reasonable grounds to believe that it will be able to pay its debts as and when they fall due;
 - (d) written projections in respect of levels of potential sales, income, gross or net profits or other financial projections for the franchised business or franchises of a similar nature with particulars of the assumptions upon which these representations are made.
- (2) Each page of the disclosure document contemplated in subregulation (1) above must be qualified in respect of the assumptions contained therein.
- (3) The disclosure document contemplated in subregulation (1) above 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, as the case may be, certifying that -
- (a) the business of the franchisor is a going concern;

- (b) to the best of his or her knowledge the franchisor is able to meet its current and contingent liabilities;
 - (c) the franchisor is capable of meeting all of its financial commitments in the ordinary course of business as they fall due; and
 - (d) the franchisor's audited annual financial statements for the most recently expired financial year have been drawn up -
 - (i) in accordance with South African generally accepted accounting standards;
 - (ii) except to the extent stated therein, on the basis of accounting policies consistent with prior years;
 - (iii) in accordance with the provisions of the Companies Act (No. 61 of 1973 or any legislation which replaces this Act), and all other applicable laws; and
 - (iv) fairly reflecting the financial position, affairs, operations and results of the franchisor as at that date and for the period to which they relate.
- (4) The disclosure document contemplated in subregulation (1) above must be accompanied by -
- (a) a list of current franchisees, if any, and of outlets owned by the franchisor, stating, in respect of any franchisee -
 - (i) the name under which it carries on business;
 - (ii) the name of its representative;
 - (iii) its physical address; and
 - (iv) its e-mail and office telephone number, together with a clear statement that the prospective franchisee is entitled to contact any of the franchisees listed, or alternatively to visit any outlets operated by a current franchisee to assess the information disclosed by the franchisor and the franchise opportunity offered by it;
 - (b) an organogram depicting the support system in place for franchisees.

Mechanisms to block direct marketing communication

- 4 (1) For purposes of section 11(1) and 11(2) of the Act, if a consumer has -
- (a) informed the direct marketer; or
 - (b) placed any communication or sign on a postal box, post office box or other container for mail,

indicating that he or she does not wish to receive any material related to direct marketing, then the direct marketer –

- (i) may not place or attach any material primarily aimed at direct marketing, in whichever physical format, in or on or near the postal box, post office box, container, or in, on or near the fence, gate or any other part of the premises of the consumer; and
 - (ii) must provide the consumer with written confirmation of the receipt by the direct marketer of the notice referred in paragraph (a) above.
- (2) Display of the phrase “no adverts” or the image or a similar reproduction thereof prescribed in Annexure A is sufficient to meet the requirements of paragraph (b) of subregulation (1).
- (3) For purposes of section 11(6) of the Act, the following principles are required as a minimum for the operation of a registry contemplated in section 11(3):
- (a) the registry must be capable of accommodating all persons in the Republic and cover the whole geographical area of the Republic;
 - (b) the registry must at all times be accessible to all persons in the Republic for purposes of registering a pre-emptive block, without payment of any fee, but the person registering must pay the actual cost of the type of communication available for registration;
 - (c) a consumer may register -
 - (i) his or her name, identification number, passport number, telephone number, cell phone number, facsimile number, e-mail address, postal address, physical address, a website uniform resource locator (“URL”) or any other identifier which the operator of the registry makes provision for;
 - (ii) the consumer’s own global address for any website or web application or site on the world wide web;
 - (iii) if the operator of a registry so allows, a pre-emptive block for any time of the day or any day of the year; or
 - (iv) if the operator of a registry so allows, a comprehensive prohibition for any medium of communication, address or time whatsoever;
 - (d) any pre-emptive block registered in accordance with this regulation becomes effective 30 days from the date on which it is registered;
 - (e) the administrator of the registry may not under any circumstances whatsoever provide, sell, or otherwise dispose of any information contemplated in subregulation (c) to anyone, including any organ of state, except with the

- written and express permission of the consumer concerned, by order of a court of law or the operation of law;
- (f) the administrator of the registry may, on receipt of an application, only confirm whether or not a pre-emptive block has been registered by the consumer, and may not provide any detail to the direct marketer in respect of any identifier provided by the consumer to the registry;
 - (g) except in respect of those existing clients where the direct marketer has proof that the existing client has after the commencement of these regulations expressly consented to receiving direct marketing from the direct marketer, a direct marketer must assume that a comprehensive pre-emptive block has been registered by a consumer unless the administrator of the registry has in writing confirmed that a pre-emptive block has not been registered in respect of a particular name, identity number, fixed line telephone number, cellular telephone number, facsimile number, pager number, physical address, postal address, e-mail address, website uniform resource locator (URL) global positioning system co-ordinates or other identifier which the operator of the registry makes provision for submitted by the direct marketer for purposes of subregulation (f);
 - (h) the administrator of the registry must on request provide a consumer with a copy of an application contemplated in subregulation (f) as well as a copy of the administrator's reply, the identity and registered address of the direct marketer who has submitted that application, and the name and contact details of the responsible person contemplated in subregulation (i);
 - (i) upon payment of a prescribed fee, if any, every direct marketer must register with the administrator of the registry as such, and must supply his, her or its postal and physical business address, telephone number, facsimile number, e-mail address, and the name of a person who is responsible for any applications to be lodged under this regulation, and the telephone number, facsimile number, e-mail address of that responsible person;
 - (j) every direct marketer must annually on the date of registration in writing confirm the details contemplated in subregulation (i);
 - (k) the registry may not accept an application from a direct marketer who has not been registered by the administrator as a direct marketer as provided for in subregulation (i) or confirm the details as contemplated in subregulation (j);

- (l) the administrator of the registry must at any time allow an employee of the Commission in the course and scope of what is required in executing their duties, and allow him or her to make excerpts or copies of such records;
 - (m) the prohibition contained in subregulation (f) does not apply in respect of information requested by a consumer himself or herself.
- (4) The administrator of the registry must -
- (a) pro-actively and to the satisfaction of the Commission put in place sufficient security arrangements to prevent the manipulation, theft or loss of data in the registry;
 - (b) pro-actively put in place screening and validation processes in respect of any person applying to register as a direct marketer;
 - (c) comply with any law providing for the protection of personal information or the protection of privacy; and
 - (d) from time to time in all official languages conduct a public information campaign as required and approved by the Commission.
- (5) In the event that the Commission recognises a registry as authoritative as contemplated in section 11(3) of the Act, the Commission must enter into an agreement with the administrator of that registry *inter alia* to -
- (a) expressly agree and confirm that the Commission, despite anything to the contrary, remains the sole custodian of all information collected and that the administrator has no rights or legitimate expectations whatsoever in respect of the use, disposal, retention or publication of all information whatsoever collected by the administrator of the registry during the period of the agreement, and that the Commission at all times ultimately remains in control of the registry;
 - (b) ensure full compliance with the Act, this regulation and all other relevant law;
 - (c) ensure, with appropriate sanction, that the administrator of the registry or any of its shareholders, members, affiliates or interested parties may not financially or otherwise in any way whatsoever benefit from administering the registry other than receiving payment from the Commission for rendering that service;
 - (d) ensure the implementation of, to the satisfaction of the Commission, screening and validation processes in respect of any person -
 - (i) applying to register as a direct marketer;
 - (ii) employed or engaged by the administrator to work with information collected in the registry;

- (e) ensure that appropriate and effective mechanisms, procedures and processes are continuously maintained by the administrator to ensure the availability, safety, retention and physical and moral integrity of all information collected and administered by the administrator, to the satisfaction of the Commission;
 - (f) provide the Commission and the Department with full and immediate access to the whole of the registry, and the premises and apparatus in or on which it is retained or backed up;
 - (g) provide that the administrator of the registry must immediately upon termination of the agreement, in respect of all information whatsoever collected by the administrator of the registry during the period of the agreement to the Commission, as directed by the Commission, -
 - (i) surrender all information whatsoever that it has collected during the period of the agreement to the Commission in any format directed by the Commission;
 - (ii) fully and in the utmost good faith co-operate with the Commission to ensure the uninterrupted availability of the registry to the general public and to direct marketers;
 - (h) provide for adequate controls and oversight mechanisms;
 - (i) provide for verifiable service levels and standards;
 - (j) provide for appropriate and effective sanctions should applicable law and the agreement in any way not fully be complied with by the administrator of the registry;
 - (k) provide for effective mechanisms for the general public to report problems with the administration of the registry to the Commission;
 - (l) provide for the way in which the administrator may publish and market the recognition of its registry as authoritative; and
 - (m) provide for any other matter the Commission deems necessary or expedient.
- (6) Nothing in this regulation should be interpreted as restricting the Commission's responsibility for or accountability in respect of the registry.

Maximum duration for fixed-term consumer agreements

- 5 (1) 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 –
- (a) unless such longer period is expressly agreed with the consumer and the supplier can show a demonstrable financial benefit to the consumer;

- (b) unless differently provided for by regulation in respect of a specific type of agreement, type of consumer, sector or industry; or
 - (c) as provided for in an industry code contemplated in section 82 of the Act in respect of specific type of agreement, type of consumer, sector or industry.
- (2) For purposes of section 14(3), a reasonable credit or charge as contemplated in section 14(4)(c) may not exceed a reasonable amount, taking into account –
- (a) the amount which the consumer is still liable for to the supplier up to the date of cancellation;
 - (b) the value of the transaction up to cancellation;
 - (c) the value of the goods which will remain in the possession of the consumer after cancellation;
 - (d) the value of the goods that are returned to the supplier;
 - (e) the duration of the consumer agreement as initially agreed;
 - (f) losses suffered or benefits accrued by consumer as a result of the consumer entering into the consumer agreement;
 - (g) the nature of the goods or services that were reserved or booked;
 - (h) the length of notice of cancellation provided by the consumer;
 - (i) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and
 - (j) the general practice of the relevant industry.
- (3) Notwithstanding subregulation (2) above, the supplier may not charge a charge which would have the effect of negating the consumer's right to cancel a fixed term consumer agreement as afforded to the consumer by the Act.

Product labelling and trade descriptions: textiles, clothing, shoes and leather goods

- 6 (1) In order to assist consumers in making informed decisions or choices, for purposes of subsections (4) and (5) of section 24 of the Act and subject to subregulation (2), the importation into or the sale in the Republic of the goods specified in Annexure "D", irrespective of whether such goods were manufactured or adapted in the Republic or elsewhere, is prohibited unless –
- (a) a trade description, meeting the requirements of section 22 of the Act, is applied to such goods in a conspicuous and easily legible manner stating clearly-
 - (i) the country in which they were manufactured, produced or adapted;

- (ii) in the event of a textile manufacturer, importer or seller operating in the Republic using imported greige fabric to produce dyed, printed or finished fabric in the Republic, that such fabric has been dyed, printed or finished in South Africa from imported fabric; and
 - (iii) that a locally manufactured product using imported material must state "Made in South Africa from imported materials";
 - (b) such goods conform to the South African national standards for fibre content and care labelling in accordance with the provisions of Government Notice No. 2410 of 2000, published in the Gazette of 30 June 2000;
 - (c) if after such goods have been reconditioned, adapted, rebuilt or remade, whether in the Republic or elsewhere, a trade description is applied to such goods in a conspicuous and easily legible manner stating clearly that such goods have so been reconditioned, adapted, rebuilt or remade, as the case may be;
 - (d) if the goods were wholly assembled or made in the Republic, a trade description is applied to such goods in a conspicuous and easily legible manner stating "Made in South Africa."; or
 - (e) goods are correctly labelled.
- (2) This regulation does not apply to -
- (a) textiles so small in size that labelling is not reasonably possible;
 - (b) second-hand clothing imported for charity purposes; or
 - (c) goods where the number of goods imported by a natural person does not exceed 1000 single items in any one calendar month;
- but does apply to goods imported for marketing purposes.
- (3) This regulation does not amend or repeal or detract from any other regulation made under or in terms of any legislation.

Product labelling and trade descriptions: genetically modified organisms

- 7 (1) In this regulation, "genetically modified organism" means a genetically modified organism as defined in section 1 of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), and "genetically modified" has a corresponding meaning.
- (2) This regulation applies to goods approved for commercialisation by the Executive Council for Genetically Modified Organisms established by section 3 of the Genetically Modified Organisms Act, 1997.

- (3) For purposes of section 24(6) of the Act, and subject to subregulation (4) and (6), this regulation applies to all goods referred to in subregulation (2) which contain at least 5 percent of genetically modified organisms, irrespective of whether such making or manufacturing occurred in the Republic or elsewhere, and to marketing material in respect of such goods.
- (4) Any good or ingredient or component to which subregulation (3) applies may not be produced, supplied, imported, or packaged unless a notice meeting the requirements of section 22 of the Act is applied to such good or marketing material, as the case may be, in a conspicuous and easily legible manner and size stating, without change, that the good or ingredient or component “contains Genetically Modified Organisms”.
- (5) If goods listed or contemplated in subregulation (2) are intentionally and directly produced using genetic modification processes, the goods or marketing material, as the case may be, must be labelled, meeting the requirements of section 22 of the Act, without change, as “Produced using genetic modification”.
- (6) A notice meeting the requirements of section 22 of the Act must not state that a good or ingredient or component does not contain genetically modified organisms unless such good or ingredient or component contains less than one percent genetically modified organisms.
- (7) Notwithstanding the provisions of regulation 7(6), a notice meeting the requirements of section 22 may state that the level of genetically modified organisms contained in the good or ingredient or component to which subregulation (2) applies is less than 5 percent.
- (8) If it is scientifically impractical or not feasible to test goods contemplated in subregulation (2) for the presence of genetically modified organisms or ingredients, a notice meeting the requirements of section 22 of the Act must be applied to such goods or marketing material, as the case may be, in a conspicuous and easily legible manner and size, stating “May contain genetically modified ingredients”.
- (9) This regulation does not amend or repeal or detract from any other regulation applying to product labelling and trade descriptions of genetically modified organisms made under or in terms of any other legislation, nor do any such regulations detract from or prejudice this regulation.
- (10) This regulation will come into effect six months after the commencement of the Act.

Disclosure of reconditioned or grey market goods

- 8 (1) The notice contemplated in subsections (1) and (2) of section 25 of the Act and meeting the requirements of section 22 of the Act must be applied -
- (a) in a place on the goods and the marketing material of the goods where a consumer is likely to see that notice; and
 - (b) in an easily legible size and manner,
- to the goods and all forms of advertising or promotion, including in-store promotions, packaging, websites and brochures, when these goods are advertised or promoted, stating clearly that they have been reconditioned, rebuilt or remade, as the case may be.
- (2) The supplier must when selling the goods to the consumer -
- (a) expressly draw his or her attention to the notice prescribed in subregulation (1);
 - (b) in plain language explain the meaning of the notice to the consumer; and
 - (c) the notice contemplated in section 25(2) of the Act and meeting the requirements of section 22 of the Act must be applied –
 - (i) in a place on the goods and the marketing material of the goods where a consumer is likely to see that notice; and
 - (ii) in an easily legible size and manner;to the goods and all forms of advertising or promotion, including in-store promotions, packaging, websites and brochures, when these goods are advertised or promoted, stating clearly, if the goods bear a trade mark, that they have been imported without the approval or license of the registered owner of that trade mark and that no guarantee or warranty in respect of such goods will be honoured or fulfilled by any official or licensed importer of such goods.

Information to be disclosed by intermediary

- 9 (1) For purposes of section 27(3)(a) of the Act, an intermediary must disclose to a person contemplated in subparagraphs (i) and (ii) of paragraph (a) of subsection (1) of section 27, the information provided for in subregulation (2) in accordance with the provisions of subregulations (3) and (4), but this regulation does not detract from the provisions of any other applicable law.

- (2) An intermediary must in the manner and form of delivery agreed to with the consumer -
- (a) disclose his, her or its full names, physical business address, postal address, phone numbers, cellular telephone number, facsimile number, email address and any registration number assigned or issued to the intermediary by any regulatory body ;
 - (b) provide his or her identity number, or if the intermediary is a juristic person, its relevant registration number;
 - (c) if the intermediary is a juristic person, the contact details of its public officers;
 - (d) specify the exact service to be rendered by the intermediary;
 - (e) at the request of the consumer, disclose the fee payable to the intermediary for services provided by the intermediary including the basis for calculating the fee;
 - (f) inform the consumer of any other costs the intermediary is entitled to recover from the consumer, and under what circumstances;
 - (g) specify the frequency with which the intermediary will in writing account to the consumer in respect of his, her or its mandate;
 - (h) at the request of the consumer, specify how, when and how often any amount owing to the consumer will be paid to the consumer;
 - (i) disclose any information, at any relevant time, which may be relevant to the consumer when deciding whether to acquire the service rendered by the intermediary, or whether to continue with an existing service;
 - (j) disclose commission, consideration fees, charges or brokerages payable to the intermediary by any other person;
 - (k) provide details of any code of conduct or other standard applicable to the intermediary or the service being rendered or to be rendered, as the case may be;
 - (l) disclose whether he or she or it has ever been -
 - (i) found guilty of any offence involving dishonesty which was punishable by criminal imprisonment without the option of a fine;
 - (ii) placed under sequestration, liquidation or judicial management;
 - (iii) or still is an unrehabilitated insolvent; and
 - (m) disclose any other information which may be relevant and which he or she may reasonably be expected to be aware of .
- (3) Information provided to a consumer by an intermediary –

- (a) must be provided timeously so as to afford the consumer reasonably sufficient time to make an informed decision;
 - (b) which pertains to the financial aspects of the transaction, must be in writing, and if provided electronically, in an electronic format specified by the consumer, which must be a generally available format;
 - (c) must be in a clear and readable print size, spacing and format;
 - (d) must be provided in plain language, avoid uncertainty and confusion and must not be misleading;
 - (e) must be adequate and appropriate in the circumstances, and in compliance with the provisions of section 22(2) of the Act;
 - (f) regarding all amounts, sums, values, charges, fees or remuneration, must be reflected in specified monetary terms, but where that is not reasonably determinable, the basis of calculation must be adequately described;
 - (g) need not be duplicated to the same consumer, unless material or significant changes affecting the consumer occur or become relevant at any given time;
 - (h) must be clearly distinguishable from marketing or promotional material and set out the applicable rights and responsibilities of the consumer clearly with avoidance of unclear technical or legal language and, where the latter must necessarily be used, with proper explanations thereof.
- (4) An intermediary must immediately in writing disclose to a consumer the existence of any circumstance or any personal interest in the relevant service or goods which gives rise or may give rise to an actual or potential conflict of interest, or perception of conflict of interest, in relation to the intermediary, and the intermediary must take all reasonable steps to ensure fair treatment of the consumer.

Records to be kept by intermediary

- 10 (1) For purposes of section 27(3)(b) of the Act, an intermediary must for a period of 3 (three) years retain a copy of -
- (a) any information contemplated in subregulations (2) and (3) of regulation 9;
 - (b) any written instruction given or sent by a consumer to the intermediary;
 - (c) if applicable and only where a transaction results, maintain a record of advice furnished to a consumer which must reflect the basis on which the advice was given.
- (2) An intermediary must take all reasonable steps to keep all records and documentation safe from destruction, and must if records are lost or destroyed,

make a statement under oath or affirmation explaining the reasons for or the circumstances of the loss or the destruction.

- (3) An intermediary may keep records in an appropriate electronic or recorded format, which must be easily accessible and readily reducible to written or printed form.

Promotional competitions

- 11 (1) For purposes of section 36(3)(a) of the Act, the reasonable cost of electronically transmitting an entry shall not exceed R1.50 (one Rand and fifty Cents).
- (2) The reasonable cost stated in subregulation (1) above includes the total cost for all subsequent electronic communication to the consumer in respect of that particular entry.
- (3) Any provision in the rules of a promotional competition requiring the prize winner to -
- (a) permit the use of his or her image in marketing material; or
 - (b) participate in any marketing activity; or
 - (c) be present when the draw is taking place or the winners are announced, without affording him or her the opportunity to decline an invitation to do so or informing him or her of the right to decline such an invitation, is null and void.
- (4) The monetary threshold of prizes for the purpose of excluding competitions with low-value prizes from the definition of "promotional competition" for purposes of section 36(11)(a) of the Act is R 1.00 (one Rand).
- (5) The promoter must ensure that an independent accountant, registered auditor, attorney or advocate oversees and certifies the conducting of the competition and must report this through the promoter's internal audit reporting or other appropriate validation or verification procedures.
- (6) For purposes of section 36(11)(b) of the Act and subject to subregulation (5), the person who conducts a promotional competition must, for a period of at least three years, retain -
- (a) full details of the promoter, including identity or registration numbers, as the case may be, addresses and contact numbers;
 - (b) the rules of the promotional competition;
 - (c) a copy of the offer to participate in a promotional competition contemplated in section 36(5);
 - (d) the names and identity numbers of the persons responsible for conducting the promotional competition;
 - (e) a full list of all the prizes offered in the promotional competition;

-
- (f) a representative selection of materials marketing the promotional competition or an electronic copy thereof, but such copy must be easily accessible in a generally available format;
 - (g) a list of all instances when the promotional competition was marketed, including details on the dates, the medium used and places where the marketing took place;
 - (h) the names and identity numbers of the persons responsible for conducting the selection of prize winners in the promotional competition;
 - (i) an acknowledgment of receipt of the prize signed by the prize winner, or legal guardian where applicable, and his or her identity number, and the date of receipt of the prize, or where this is not possible, proof by the promoter that the prize was sent by post or other electronic means to the winner using his or her provided details;
 - (j) declarations by the persons contemplated in paragraph (d) made under oath or affirmation that the prize winners were to their best knowledge not directors, members, partners, employees, agents or consultants of or any other person who directly or indirectly controls or is controlled by the promoter or marketing service providers in respect of the promotional competition, or the spouses, life partners, business partners or immediate family members.
 - (k) the basis on which the prize winners were determined;
 - (l) the summary describing the proceedings to determine the winners, including the names of the persons participating in determining the prize winners, the date and place where that determination took place and whether those proceedings were open to the general public;
 - (m) whether an independent person oversaw the determination of the prize winners, and his or her name and identity number;
 - (n) the means by which the prize winners were announced and the frequency thereof;
 - (o) a list of the names and identity numbers of the prize winners;
 - (p) a list of the dates when the prizes were handed over or paid to the prize winners;
 - (q) in the event that a prize winner could not be contacted, the steps taken by the promoter to contact the winner or otherwise inform the winner of his or her winning a prize; and

- (r) in the event that a prize winner did not receive or accept his or her prize, the reason for his or her not so receiving or accepting the prize, and the steps taken by the promoter to hand over or pay the prize to that prize winner.
- (7) A promoter must upon request in writing by the Commission forthwith at his, her or its own expense submit a report based on documents or materials contemplated in subregulation (7) to the Commission.

Cautionary statement for alternative work schemes

- 12 For purposes of section 37(2)(a) of the Act, any advertisement promoting any alternative work scheme contemplated in section 37(1) of the Act must -
- (a) without detracting from any other provision applicable to advertising or promotion;
 - (b) in the same font as the rest of the advertisement and in a prominent place where it is likely to be seen by a consumer; and
 - (c) without change,
- contain the following notice: "Results, examples and testimonials promised or contained in this advertisement may be out of the ordinary and should not be taken to provide guarantees with regard to the availability of work, business or activity available, projected income or any other benefit promised or implied. There is no guarantee whatsoever that you will achieve the results or outcomes promised or implied in this advertisement. You are strongly urged to ascertain or obtain, at your own cost, assistance to ascertain the probable results or outcomes based on realistic facts and assumptions and all currently relevant and applicable circumstances."

Interpretation: Fraudulent Schemes and Offers

- 13 Regulations 14 to 16 must be read together with sections 42(8), 51 and 120 of the Act.

Prohibition on intermediary arranging transport contracts

- 14 An arrangement, agreement, practice or scheme is a fraudulent transport contract if it involves a person by false pretence or with the intent to defraud another person, represents that the first person is capable of arranging a transport contract, whether

of cargo or passengers, for execution by the consumer and requires the consumer to pay in advance a fee or remuneration of whatever nature, whether goodwill or any other form of consideration.

Public property syndication schemes

15 (1) In this regulation, unless the context indicates otherwise -

“fraudulent public property syndication scheme” means a public property syndication scheme in which one person, by false pretence or with the intent to defraud another person, represents to that other person that the property he, she or it is investing in is worth more than its true market value;

“promoter” means a company and its directors, close corporation and its members, partnership and its partners, trust and its trustees and all other persons who are actively involved in the forming and establishment of a public property syndication scheme, and a reference to a company and its directors also refers to a close corporation and its members, or to a trust and its trustees, or to a partnership and its partners or to a sole proprietorship, or their representatives;

“prescribed information” means the prescribed information contemplated in subregulation (5)(b);

“public property syndication scheme” means the assembly of a group of investors invited, by word of mouth or through the use of electronic and print media, radio, television, telephone, newspaper and magazine advertising, brochures and direct mail, to participate in such schemes by investing in entities, which could be companies, close corporations, trusts, partnerships or individuals, whose primary asset or assets are commercial, retail, industrial or residential properties, and, where investors share in the profits and losses in these properties and or enjoy the benefits of net rental growth therefrom through proportionate share of income;

and

“valuer” means a professional valuer or professional associated valuer registered in terms of section 20(a) of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), with at least three years' experience in the field of attending to valuations of properties.

(2) No person may directly or indirectly promote or facilitate a fraudulent public property syndication scheme.

(3) A promoter may not -

- (a) withhold the prescribed information, in part or otherwise, from an investor or potential investor in a public property syndication scheme; or
 - (b) include any term, condition or provision in the disclosure document that excludes, limits or purports to exclude or limit the legal liability of the syndication promoter towards the investor in respect of any malicious, intentional, fraudulent, reckless or a grossly negligent act of the syndication promoter, his or her employee, representative, contractor or subcontractor or any other person used by the syndication promoter or recommended by him or her to the investor or prospective investor.
- (4) A promoter must make available the prescribed information to an investor or potential investor who invests in or intends to invest in public property syndication schemes, and the prescribed information must be made available to investors or potential investors in a disclosure document, the details of which are set out in subregulation (5)(b).
- (5) (a) A statement, presentation or description must not convey false or misleading information about public property syndication schemes or omit material information during the public offer of shares.
- (b) An investor and or potential investor must be informed in writing that -
- (i) public property syndication is a long-term investment, usually not less than five years;
 - (ii) there is a substantial risk, in that the investor or potential investor may not be able to sell his or her shares should he wish to do so in the future; and
 - (iii) it is not the function of the promoter to find a buyer should the investor or potential investor wish to sell his shares and that it is the investor's or potential investor's responsibility to find his or her own buyer.
- (6) (a) Investors must be informed in writing that all funds received from them prior to transfer or finalisation must be deposited into the trust account of a registered estate agent, a firm of an attorney or attorneys or a certified chartered accountant, provided that such trust account is protected by legislation. Individual investors are to be given written confirmation thereof, and it must be clearly stated who controls the withdrawal of funds from that account. Such an account must be designated "XYZ Attorneys/auditors/estate agents Trust Account - the XYZ syndication". In the event of investors paying by cheque, promoters must ensure that the name of the payee is printed in bold on the application forms.

- (b) Funds must only be withdrawn from the trust account in the event of registration of transfer of the property into the syndication vehicle; or underwriting by a disclosed underwriter with details of the underwriter; or repayment to an investor in the event of the syndication not proceeding.
 - (c) It must be disclosed whether the property has been bought conditionally or by option, and in either or both cases full details of any condition and or option on which the property was purchased must be disclosed together with the effective date of commencement of the syndication.
 - (d) Any direct or indirect interest, which a promoter and or any of his or her family member or any other person who is actively involved in the promotion of that syndication has in the property to be purchased, must be disclosed.
 - (e) It must be disclosed how any capital shortfall will be dealt with.
 - (f) The method of raising the necessary capital to fund the acquisition of the property and the syndication and how any disbursements will be dealt with prior to transfer, must be disclosed.
 - (g) Provision must be made for interest earned to be paid on investors' funds deposited as provided for in paragraph (a) prior to the effective date of the transfer of the property.
- (7)
- (a) Full details of the promoter of the syndication scheme, such as name, registered company or close corporation numbers, directors, addresses, telephone and fax numbers and e-mail address must be given.
 - (b) Full disclosure must be made as to whether the promoter is acting as a principal in the scheme or as an agent for someone else. If the promoter is acting as an agent, he or she or it must provide full details of the principal.
 - (c) The disclosure document, which is to be dated and signed by the promoter, must contain a statement of proper due diligence (commercially and legally) with regard to the property and its tenants prior to the unconditional purchase thereof and he or she or it must state that this was done and that he or she is satisfied with the results thereof.
- (8)
- (a) Full details of the syndication vehicle must be disclosed, including the names and addresses, telephone and fax numbers and the e-mail addresses of the property manager, the company secretary, the board of directors, the auditor, the attorney and the valuer.
 - (b) In addition full disclosure must be made of the fee structure of the management company or manager(s) and any appointments or contracts relating to the syndication.

- (9) (a) Full disclosure must be made of the type of company structure to be used for the syndication scheme and reference must be made to the legislation governing the company structure chosen. Reference must be made to the company registration number, or advising that the company is still to be formed, the memorandum of incorporation, the articles of association, the shareholder's agreement, and where applicable, the partnership agreement, a deed of trust and the founding statement. The disclosure must state whether a shareholders' agreement exists or not, and if such an agreement exists then it must be attached as an annexure to the disclosure document.
- (b) Full details must be given of the financial year end, the shares to be issued, the shares to be issued in future, control over unissued shares, shareholders' loans and debentures, a pro-forma balance sheet on acquisition (or in the case of new developments, on completion), the income distribution plan, minimum and maximum shareholders or participation quota, any special voting rights, existing and planned gearing, borrowing powers and how they are to be exercised, external borrowing facilities available to investors to finance the acquisition of shares in the investment company and the amount provided in the syndication structure for working capital and reserves.
- (10) (a) Details must be given of -
- (i) the title deed and its number;
 - (ii) material servitudes or encumbrances if further development is considered with regard to the property;
 - (iii) zoning and the relevant town planning regulations insofar as further development is intended with regard to the property;
 - (iv) additional development potential;
 - (v) the buildings erected or dates of original erection with dates of improvements (including lifts, air conditioning and roof structure) thereto, if available;
 - (vi) the physical address, locality and site area, including a map of the area; and
 - (vii) insurance cover, name of insurer, types of risks covered, amounts covered, policy due date and policy number.
- (b) In addition there must be a statement which sets out -
- (i) the cost of the property to the promoter or the syndication company including acquisition price, cost of renovations, conversion or enhancement including details of any new leases or lease

- renegotiations which enhance value, marketing and promotional cost fees and the promoter's entrepreneurial mark up, giving rise to the shareholding offer price in the company as at the offer date; and
- (ii) the valuation of the property as at a date, which must be not more than three calendar months before date of the offer, undertaken by a valuer, in accordance with subregulation (14).
- (c) If the land is to be encumbered by a mortgage bond after the closing date of the offer, the promoter must disclose -
- (i) the outstanding balance owing by the mortgagor in terms of the mortgage bond including the rate of interest, the loan repayment period and whether the bond is first ranking or otherwise;
 - (ii) the maximum amount secured by the mortgage bond;
 - (iii) the terms of the mortgage bond;
 - (iv) the identity of the mortgagee; and
 - (v) a statement to the effect that the taking up of such a loan will not be in contravention of: the memorandum or articles of association of the company, the association agreement of the close corporation, trust deed of the trust, partnership agreement of a partnership or the constitution of the public property syndication vehicle.
- (11) Full details must be given of -
- (a) any head lease agreement and subleases together with the quantum and location of any vacant space covered by such head lease and subleases, where "quantum" refers to the square meterage and the value involved;
 - (b) any gross or net rental guarantees supplied by the vendor of the property; and
 - (c) actual leases concluded with full details of space let, duration of leases, rentals, escalation rates for the leases, tenant names and security for leases, expenses recovered from tenants, lease renewal options, rental review periods and vacant space.
- (12) The income and expenditure statement must provide -
- (a) a detailed pro-forma income statement which must detail all projected expenses, contractual expenses and fees payable, gross rentals, recoveries, and projected net income for the syndicating company;
 - (b) a statement as to the long-term vacancy rate with full motivation thereof, but a nil rate is unacceptable; and
 - (c) a statement as to the extent of provision for future maintenance, with full details where applicable.

- (13) (a) Full details must be provided of -
- (i) the basis used to calculate projections with regard to net income growth, to be based upon rental income derived from leases and or market rental growth, less specified and disclosed, as well as reasonably expected expense projections;
 - (ii) the basis used to calculate projections on capital value, to be stated in Rand currency as estimates, provided they are accompanied by stated, specific assumptions showing how those values are determined, but specific projections as to capital growth are not permissible, taking into account the many variables influencing property values; and
 - (iii) whether the validity of the assumptions used in determining projections is based on fact or opinion; and
- (b) should a specific return be projected, it should be calculated with reference to the syndication value.
- (14) (a) The name of the valuer and his or her qualifications and experience must be disclosed.
- (b) The valuer must take cognisance of the state of repair and condition of buildings and improvements.
- (c) The valuer must take cognisance of a recent municipal valuation of the property concerned, which municipal valuation must not be older than three months.
- (d) For purposes of subregulation (e) -
- (i) **“open market value”** contemplated in subregulation (e)(ii) means the best price at which the property might reasonably be expected to have been sold unconditionally for a cash consideration on the date of valuation assuming -
 - (aa) a willing and informed seller and a willing and informed buyer who are not connected persons as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991); and
 - (bb) that, prior to the date of valuation, there has been a reasonable period, having regard to the nature of the property and the state of the market, for the proper marketing of the interest, for the agreement on price and terms and for the completion of the sale; and
 - (cc) that no account is taken of any additional bid by a purchaser with a special interest.

- (ii) **“syndication value”** contemplated in subregulation (e)(ii) is the aggregate sum of the shareholders' total interest in the syndication vehicle in terms of the disclosure document, recognising that this sum includes an appropriate premium over and above the open market value of the property asset, and the quantum of the premium must be stated.
- (e) A report from a valuer for purposes of subregulation (5) must incorporate -
- (i) an introduction, stating that the valuer has been instructed by the promoter or whoever instructed the valuer;
 - (ii) the valuation undertaken by the valuer, which must be either an open market value or syndication value;
 - (iii) the title deed description;
 - (iv) municipal information such as town planning regulations and the municipal valuation of the land and improvements;
 - (v) the location of the property;
 - (vi) a brief description of the building, such as the method of construction, materials, type, grade and size;
 - (vii) the insurance replacement cost of the building in accordance with the following definition: The estimated cost of replacing the asset, as it exists, as if new, at prices applicable on the valuation date, inclusive of professional fees, but exclusive of any finance charges, demolition costs or emergency services costs;
 - (viii) tenancy details, including names of tenants, rentable areas occupied and or vacant, rental escalations, and lease expiry dates;
 - (ix) expenses such as the level of anticipated initial annual operating expenses and the rate of collection/commission;
 - (x) the net income, the anticipated net rental income in the first year and comments on any unusual growth or anticipated vacancies in the next three years, and what assumptions are made as to the re-letting of space over which leases are expiring or are vacant, including anticipated re-letting commission and tenant installation costs;
 - (xi) the capitalisation rate, meaning the appropriate rate at which the market net income is capitalised, and evidence to this effect;
 - (xii) two valuations, signed by the respective valuers, must be undertaken of the property as at a date, which must be not more than three

- calendar months before the date of the offer, stating whether the open market value or syndication value has been used;
- (xiii) full details about previous transactions regarding the property, including -
- (aa) in the case of a new development, the total cost thereof, including the market value of the land. The contractor or contractors are to confirm in an affidavit the total costs, including the costs of any improvements;
 - (bb) the sales history of the property for the past ten years, including details of -
 - (A) the various legal entities who owned the property according to the title deeds and the selling price of the property with each change of ownership and the relevant dates; and
 - (B) if one or more legal entities owned the property according to the title deeds, any changes in the ownership of the legal entities, the selling price of the property with each change of ownership and the relevant dates.
- (f) The fees for valuations must not be dependent upon the amount of the valuation.

Prohibition on feasibility studies promising funding

- 16 No person may by false pretence and with the intention to defraud offer, conduct, sell or otherwise provide an agreement for a feasibility study or a feasibility study itself which states, promises or otherwise intimates that the purchase or use of the feasibility study guarantees funding, financing, sponsorship or any other backing, whether from within the Republic or elsewhere.

Calculation of interest for multiplication scheme

- 17 For purposes of section 120(1)(e) read with section 43(3) of the Act, the REPO rate is the rate which applied at the date of the investment or commencement of participation. The effective annual interest rate will be:

$$r = \frac{R \times 1200}{C \times T},$$

where -

- r = the effective interest rate,
 R = the interest in Rand, which is the difference between the amount paid out to the investor or participant and the amount invested,
 C = the amount invested by the investor or any amount paid by a person to become a member of a scheme, and
 T = the period of the investment in months.

Definitions, interpretation and application: auctions

18 (1) In regulations 19 to 30, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has the same meaning, and -

“auction house” means a company or other juristic person which from time to time conducts auctions as part of its business;

“auction without reserve” means an auction at which -

- (a) goods are sold to the highest bidder without reserve;
- (b) the auction does not require a minimum bid;
- (c) the auction does not allow competing bids of any type by the seller or an agent of the seller; and
- (d) the seller of the goods cannot withdraw the goods from auction after the auction is opened and there is public solicitation or calling for bids;

“auctioneer” means the person conducting an auction, irrespective of whether he or she is doing so for his or her own account or as employee of or agent for an auction house or other person;

“bidders’ record” means the document contemplated in regulation 26;

“closed auction” means an auction where the auctioneer or the owner, as the case may be, issues an invitation to take part in an auction only to a finite list of consumers;

“game” means game as defined in section 1 of the Game Theft Act, 1991 (Act No. 105 of 1991);

“goods” includes, where appropriate, services;

“livestock” means cattle, sheep, goats, pigs, horses, mules and donkeys;

“**lot**” means any group of goods sold or offered for sale as a unit and identified as such;

“**vendor’s roll**” means the document contemplated in regulation 28(4); and

“**URL**” means an operational uniform resource locator, providing access to information on the internet.

- (2) Regulations 19 to 30 must be read together with section 45(6) of the Act.
- (3) Subject to subregulation (4), these regulations apply to all auctions, irrespective of the nature of the goods offered on auction, the value of the property or the reason for conducting the auction.
- (4) These regulations do not apply to -
 - (a) transactions concluded under the auspices of a registered or licensed stock exchange or similar institution; or
 - (b) an auction where the goods for sale have been donated for sale at an auction and the proceeds of the auction are paid to a bona fide religious, educational, cultural, welfare, social or sports organisation or body which does not as its primary activity undertake commercial or business operations, but an auction conducted as a sale in execution or ordered by a court of law does not constitute an auction contemplated in paragraph (a).
- (5) Any provision in any agreement relating to goods sold or bought at an auction or advertised or offered for sale at an auction, or any agreement providing for conducting the auction itself, in conflict with these regulations, does not from the moment of its conception or conclusion, as the case may be, have any force or effect, but this subregulation must not be interpreted so as to prevent holding a person liable for any relevant contravention.
- (6) These regulations do not detract from any law providing for or related to the advertising, sale, purchase, delivery, rendering or financing of goods.
- (7) An auctioneer selling immovable property by way of auction must comply with any other applicable law in respect thereof, including legislation regulating the activities of estate agents.
- (8) An auctioneer must comply with all general provisions of these regulations as well as those applicable to the category of auction or auctioneer provided for in regulations 32 and 33.

Mandatory advertising of auctions

- 19 (1) Subject to regulations 33, no goods may under any circumstance whatsoever be sold by auction unless the inclusion of such a particular item or lot or service in that auction has been advertised in compliance with these regulations in such a manner that the general public has had a reasonable opportunity to become aware of the auction, the goods on offer and of the rules governing the auction.
- (2) The onus to prove that an auction was advertised as contemplated in subregulation (1) rests on the auctioneer.
- (3) An auctioneer must for purposes of subregulation (1) advertise the auction of a particular item or lot at least 24 hours prior to the commencement of the auction, but -
- (a) any goods may be withdrawn at any time prior to the commencement of the auction;
 - (b) in the event of an auction where goods offered for sale include immovable property, this period must exceed five business days.
- (4) If an auction or part thereof relates to goods sold in execution or by order of court, the advertisement must clearly state that fact.

General rules on advertising of auctions

- 20 (1) Despite the rules and rulings of any advertising standards body, all advertising of auctions must -
- (a) be accurate; and
 - (b) provide sufficient information for a reasonable consumer to -
 - (i) understand that it relates to an auction; and
 - (ii) be able to find the place where the auction is to be held.
- (2) Advertising relating to an auction must subject to subregulation (3) -
- (a) be in a legible format and size;
 - (b) contain a reference to these regulations, together with the URL of an operational internet site where a copy of these regulations can be obtained;
 - (c) state the date, place and time of the auction;
 - (d) state the name of the auctioneer and the auction house, if any, and if registration or licensing of auctioneers or auction houses after the commencement of these regulations becomes mandatory, such registration or licensing number;
 - (e) state where the rules of auction can be obtained;
 - (f) state the particulars of the goods offered on auction;

- (g) if applicable, state that the auction will be held over a number of days;
 - (h) state, if applicable as contemplated in section 45(4) of the Act, that a sale by auction is subject to -
 - (i) a reserved or upset price; or
 - (ii) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction; and
 - (iii) contain a reminder that all prospective bidders must register as such prior to making bids during the auction and that such registration requires proof of identity and of residence as contemplated in regulation 26;
 - (i) disclose as accurately as possible the total costs of advertising and conducting the auction.
- (3) The requirements of subregulation (2) do not apply to roadside advertising or classified advertising in printed newspapers, but such advertising must -
- (a) at the top of the advertising prominently display the word "auction";
 - (b) indicate where a full advertisement as contemplated in subregulation (2)(b) can be obtained; and
 - (c) state the date, place and time of the auction.
- (4) A consumer may at any time during ordinary business hours request an auctioneer to provide him or her with access to an advertisement contemplated in subregulation (2), and the auctioneer must forthwith without charging any fee whatsoever comply with such a request, but -
- (a) a consumer is entitled to only one free copy;
 - (b) the auctioneer may provide a URL of an operational website which will provide a copy of the full advertisement in a format generally used.
- (5) Any material or publication not meeting all of the requirements of this regulation does not constitute advertising for purposes of regulation 19 and this regulation.
- (6) An auction may not be advertised as a "sale in execution" or use similar wording implying court action unless -
- (a) at least 75 percent of the items or lots in the auction are being offered pursuant to a court order;
 - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
 - (c) the advertising contains an explanation of the court order including identification of the court.

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- (7) Unless all items or lots being offered at auction are pursuant to a court order, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.
 - (8) Subregulations (6) and (7) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and were clearly not purchased or attained for the purpose of resale at auction.
 - (9) An auction may not be advertised as an "insolvency auction" or use similar wording implying insolvency unless -
 - (a) at least 75 percent of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;
 - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
 - (c) the advertising contains the order number of the Master of the High Court.
 - (10) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.
 - (11) Subregulations (9) and (10) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and were clearly not purchased or attained for the purpose of resale at auction.
 - (12) An auction may not be advertised as "deceased auction" or use similar wording implying insolvency unless -
 - (a) at least 75 percent of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;
 - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
 - (c) the advertising contains the order number of the Master of the High Court.
 - (13) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.
 - (14) Subregulations (12) and (13) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the

Master of the High Court and were clearly not purchased or attained for the purpose of resale at auction.

- (15) An auction shall not be advertised as "divorce auction" or use similar wording implying court action unless -
- (a) at least 75 percent of the items or lots in the auction are being offered pursuant to a court order;
 - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
 - (c) the advertising contains an explanation of the court order including identification of the court.
- (16) Unless all items or lots being offered at the auction are pursuant to a court order, then the advertising shall clearly indicate that the auction is "with additions", "supplemented" or use similar wording.
- (17) Subregulations (15) and (16) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and were clearly not purchased or attained for the purpose of resale at auction.
- (18) No auction may be advertised as "absolute" or "without reserve", no advertising may contain the words "auction without reserve", "absolute auction" or "without reserve", or the word "absolute" or words with similar meaning and no auctioneer may offer or sell any goods at auction without reserve unless -
- (a) there are no liens or encumbrances on the goods, except property tax obligations, easements, or restrictions on record, in favour of any person other than the seller, or unless each and every holder of each and every lien and encumbrance has in writing agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder, or that a financially responsible person in writing absolutely guarantees the immediate and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
 - (b) there is the bona fide intention at the time of the advertising and at the time of the auction to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the highest bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be

- reached, below which level the goods will not be transferred to the highest bidder; and
- (c) the rules of auction contain a binding requirement that the auction be conducted without reserve.
- (19) Subregulation (18) does not prohibit -
- (a) a secured party or other lien holder who is not the seller from bidding at an auction without reserve, but such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer;
 - (b) any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to that dissolution;
 - (c) any individual party or heir of a deceased person's estate from bidding as an individual entity, apart from the selling entity, on goods being offered at auction pursuant to that estate being settled; or
 - (d) the inclusion of non-misleading advertising of certain goods to be sold at "auction without reserve" and the non-misleading advertising of certain goods to be offered at auction with reserve, within the same advertisement, or for sale at the same date and place, but that advertisement must make clear, through appropriate emphasis, which goods are being offered by each method.

Rules of auction

- 21 (1) An auctioneer must -
- (a) in writing compile the rules of auction; and
 - (b) except in the case of a livestock or game auction or a closed auction, make the document available to the general public at least 24 hours prior to the commencement of the auction.
- (2) The rules of auction must, as a minimum -
- (a) on the first page of the document in large letters display the words "rules of auction", and immediately beneath that the date, place and time of the auction;
 - (b) contain the full names, physical address and contact details of the auctioneer, and where applicable, of the auction house;

- (c) contain all mandatory information required by these regulations, and if applicable, the information contemplated in section 45(4) or (5) of the Act;
 - (d) contain a statement to the effect that the rules of auction comply with section 45 of the Act and with these regulations;
 - (e) contain the text of subsection (2) of section 45 of the Act;
 - (f) provide that an auction will commence at the published time and that it will not be delayed to enable any specific person or more persons in general to take part in the auction;
 - (g) provide that a person who attends at the auction to bid on behalf of another person must produce a letter of authority meeting the requirements of regulation 26(3) in order to so bid on behalf of that person;
 - (h) unless the auctioneer is also the owner or rightful holder (who has the right to sell) of the goods to be auctioned, contain a statement to the effect that the auctioneer has a trust account into which all moneys will be paid for the benefit of the seller, minus the agreed commission;
 - (i) contain a statement to the effect that the auctioneer will during the auction announce the reason for the auction unless that reason is the normal and voluntary disposal of goods by the owner;
 - (j) provide that a person who intends to bid at the auction must register prior to the commencement as contemplated in regulation 26(2) together with a description of the requirements for registration;
 - (k) provide that the bidders' record contemplated in regulation 26 and the vendor roll contemplated in regulation 28(4) are available for inspection during normal hours without the charge of a fee; and
 - (l) contain a breakdown of the total cost of advertising and conducting an auction and a statement indicating whether additional costs may be added and if so, how such additional costs will be computed.
- (3) The rules of auction may not -
- (a) exclude liability in respect of inaccurate information provided in the advertising of the auction;
 - (b) exclude liability in respect of the rules of auction not meeting the requirements of these regulations; or
 - (c) contain any qualification, reservation or diminution of the requirements of these regulations unless expressly provided for.
- (4) In the event that the rules of auction are amended after their initial publication, the auctioneer must expressly indicate that the new version is an amended version.

- (5) The rules of auction must be signed by the auctioneer who is going to conduct the auction and he or she must certify that the rules of auction to the best of his or her knowledge meets the requirements of this regulation 21.
- (6) If on the day of the auction the auctioneer who signed the rules of auction as contemplated in subregulation (5) is unavailable to conduct the auction, the auctioneer who then conducts the auction will be deemed to have so certified the rules of auction.
- (7) An auctioneer is personally accountable and liable for the contents of the rules of auction applicable to a specific auction.
- (8) The rules of auction need not be read out at an auction to be valid, but only if -
 - (a) the rules of auction were, where applicable, available to the general public at least 24 hours prior to the commencement of the auction;
 - (b) in the case of a livestock or game auction contemplated in regulation 33 are the same as for previous auctions and are generally available on the auction house or the auctioneer's website or at the auction house or the auctioneer's business premises during normal business hours;
 - (c) in the case of a closed auction, were made available to all persons to whom an invitation to take part in that auction was issued; or
 - (d) at an auction other than an internet auction, the auctioneer invites any person present to object to the rules of auction not being read upon, and nobody does.
- (9) The rules of auction may not exclude the right of inspection as contemplated in regulation 28(5).

Auctioneer and auction house to hold and account for consumer's property

- 22 (1) An auctioneer and auction house must at all times strictly comply with section 65(2) of the Act.
- (2) Unless the auctioneer is also the owner or rightful holder (who has the right to sell) of the goods to be auctioned, no auctioneer may sell goods on auction until he or she has first entered into a written agreement with the owner or rightful holder (who has the right to sell) of such goods to be sold, whether for a specific auction or auctions on general, which agreement contains the terms and conditions upon which that auctioneer accepts the goods for sale.
- (3) An agreement contemplated in subregulation (2) must as a minimum contain -

- (a) the name and physical address of owner of the goods to be sold or the owner's agent or the rightful holder (who has the right to sell) thereof;
 - (b) if the goods are to be sold at a specific auction, the date of the auction or if the goods are to be sold at a number of auctions, a termination date of the agreement;
 - (c) the address of the premises where the auction is to be held;
 - (d) the rules of auction;
 - (e) a description of all of the fees to be charged by the auctioneer or the auction house, which must include commissions, storage, advertising and labour, or a method by which such fees will be determined;
 - (f) an explanation of the settlement of the auction that includes the disbursement of interest money, if applicable;
 - (g) a statement indicating whether the auction is an auction without reserve or not;
 - (h) a brief description of the goods to be sold;
 - (i) if the sale is of goods at auction without reserve, a statement affirming that the seller of the goods has a bona fide intention to transfer ownership of the property to the highest bidder;
 - (j) an exact copy of section 65(2) of the Act;
 - (k) an exact copy of subsections (1) to (5) of section 45 of the Act.
- (4) An auctioneer must retain a copy of every agreement contemplated in subregulation (2) signed by the owner or rightful holder of the goods to be auctioned for a period of at least three years from the date of the auction.
- (5) In performing the duties of an auctioneer, every auctioneer -
- (a) is the agent of the owner or rightful holder (who has the right to sell) of the goods for all aspects of an auction;
 - (b) must follow all lawful and reasonable requests of the owner or rightful holder of the goods or immovable property sold at auction;
 - (c) must perform his or her duties so that the highest or most favourable offer made by a bidder is accepted; and
 - (d) must otherwise perform his or her duties in accordance with the highest standards applicable to auctions.
- (6) An auctioneer must keep abreast of current market conditions of goods at all times in order to be in a position to advise and perform services for his or her clients to the best of his or her ability.
- (7) An auctioneer -

- (a) owes a duty of care towards his or her client;
 - (b) must protect and secure the goods whilst under his or her control or in his or her possession;
 - (c) must at all times preserve a professional, confidential relationship with his or her client;
 - (d) must timeously reveal estimated costs and services for conducting the auction; and
 - (e) if he or she is aware or ought reasonably to be aware of any risks associated with the auction of particular goods, must forthwith disclose such risks to the client.
- (8) All unsold property must be returned to the owner or rightful holder immediately upon the completion of an auction unless otherwise agreed.
- (9) The owner or rightful holder (who has the right to sell) must be provided with an itemised account of all goods sold immediately upon completion of the auction unless otherwise agreed, which as a minimum must contain -
- (a) the item or lot sold,
 - (b) amount received for the sold item or lot; and
 - (c) the name of the buyers of every item or lot.

Disqualification to conduct auction

- 23 A person who -
- (a) has been found guilty by a court of law, whether in the Republic or elsewhere, of an offence of which fraud or dishonesty is an element, or of any other offence for which such person has been sentenced to imprisonment exceeding five years without the option of a fine;
 - (b) is of unsound mind; or
 - (c) is an unrehabilitated insolvent,
- may not conduct an auction or in any other way act as an auctioneer or hold him or herself out as an auctioneer.

Prohibited behaviour

- 24 An auctioneer may not -
- (a) charge or receive any fee or commission in respect of the sale of movable goods unless such goods have been delivered to the purchaser;

- (b) charge or receive any fee or commission in respect of the sale of immovable property until the purchaser and the seller have signed a written agreement in respect of the sale of such immovable property;
- (c) charge or receive any fee or commission from the purchaser if the seller defaults or where such fee or commission has already been paid by the purchaser to the auctioneer, the auctioneer shall immediately refund the purchaser the amount paid, including deposit;
- (d) charge or receive any fee or commission from the purchaser, if the purchaser defaults, exceeding ten percent of the purchase price or the total cost of advertising and conducting an auction and such additional costs as may have been reasonably incurred in accordance with regulation 21(2)(l), whichever is the lesser;
- (e) charge or receive any fee or commission from the seller, unless agreed otherwise in writing, if the buyer defaults or where such fee or commission has already been paid by the seller to the auctioneer, the auctioneer shall immediately refund the seller the amount paid;
- (f) charge or receive any fee or commission from the seller if the seller defaults, unless agreed otherwise, exceeding ten percent of the purchase price or the total cost of advertising and conducting an auction and such additional costs as may have been reasonably incurred in accordance with regulation 21(2)(l), whichever is the lesser;
- (g) enter into any agreement or arrangement with the seller to sell any goods unless the auctioneer has first provided the seller with an estimate of the total cost of the auction;
- (h) accept a bid from a person unless he or she is registered in the Bidders' Record as contemplated in regulation 26;
- (i) set a minimum or reserve price without the express written permission of the seller;
- (j) remove an item or lot from an auction without the express written permission of the seller;
- (k) allow bidding on an item or a lot if the auction thereof has not been advertised as contemplated in regulations 19 and 20;
- (l) during an auction deviate from the sequence of goods as advertised;
- (m) knowingly misrepresent, or cause or permit to be misrepresented the value, composition, structure, character or quality or manufacture of the goods put up for sale at an auction;