



Legal Sense

Legal Sense (PTY) Ltd. is an Authorised Financial Services Provider
FSP No: 26702

Newsletter

Obiter Dicta

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ISSUE ONE

Underwritten by



RESOLUTION
insurance

We are proud to present to you, as our valued policyholder, the very first issue of the Legal Sense newsletter called Obiter Dicta!

Legal Sense has come a long way since its inception in July 2006. We have rebranded, expanded and have a lot more to offer our clients.

Have a look at our new logo and website when you have a moment to spare. Our website has undergone a major makeover recently, so please visit our website at www.legalsense.co.za and see for yourself. There are a lot of new links, information and downloadable documents on the website, which will benefit you and make it easier for you to get in contact with us. You will also find a link to view our two new TV adverts on YouTube. These two adverts will form the platform for our new advertising campaign and will be expanded on as we go along, so watch this space!

We have expanded our national footprint by establishing a Cape Town and Pretoria branch during the past 18 months and our Johannesburg Head Office moved to Bush Hill Office Park, Ostrich Road, Bromhof in order to accommodate our growing staff numbers. Please feel free to visit any of our Legal Sense offices closest to you at any time. All three offices are listed on Google Map and are very easy to find.

We would like to use this newsletter as a conduit to provide you with updated information regarding Legal Sense, new services, changes to our policy terms and conditions, premium increases, legislation that may affect you and for general communication purposes.

As a result, we would like to hereby formally notify you of certain changes to your existing policy wording. Please visit our website to download or view the latest updated Policy Wording and Product Description by clicking on the link below: <http://art-and-i.net46.net/downloads%20page.html>. As you will see, the policy wording has changed a bit and there are a few extra “need to knows” in there. Our core product offering, however, remains the same and we urge you to contact us if you are not sure how these changes will affect you.

Probably the most important information we would like to share with you at this point is that we will be implementing an annual premium increase of 10% effective as of 1 August 2011. This will be the first time in 5 years that a premium

increase is effectively imposed on our policyholders, but I am sure that you will understand very well that inflation has affected everything, legal costs and expenses as well. After very long deliberation, we have decided that we could not hold off an annual increase any longer and such increase will take place in August of every year going forward. Considering the high cost of litigation and the level of risk that we are carrying on your behalf, you are still getting extremely good value for money.

If you did not get an automatic 10% premium increase, this means that an individual risk assessment is being done on your specific claims history and risk profile, which will determine your premium increase accordingly. Our policy administration department will notify you of your exact premium shortly.

As a valued client of Legal Sense we would love you to send us your logos and we will add them on our website at no cost to you. We will be rotating all logos monthly so your logo will have a chance to be viewed and you will get marketing exposure as a result. We only have a few client logos at the moment, so if you send yours through as soon as possible, you can be on our first website batch for August.

We are also promoting a great special offer to our policyholders at the moment: If you pay your monthly premium 12 (twelve) months in advance, you will only have to pay for 10 (ten) months, so you will effectively be getting 2 (two) months' worth of insurance cover for free. All you need to do is call our policy administration department and they will assist you accordingly. We now also have four debit order dates for your convenience, so if you would like to change your debit order date, you can call us on 0861 573 673 or email admin@legalsense.co.za with your policy number in the subject line.

This issue of the newsletter has a short summary of the **Consumer Protection Act**, which I personally believe is essential information that every business owner must be familiar with. We will provide you with more useful information in our next issue of Obiter Dicta.

Kind regards

Managing Director

Sunette Leonard

Summary of the Consumer Protection Act

1. Introduction

The Consumer Protection Act, 68 of 2008 (the “Act”) came into effect on 1 April 2011, and it is applicable to every transaction occurring within the Republic of South Africa. The Act’s applicability is limited and there are certain definitions of the Act that need to be defined to determine whether or not the transaction concluded between a business, as a supplier of goods or services, and the customer/s, as the consumer/s, will fall within the ambit of the Act.

2. The Supplier

The Supplier is a person who markets any goods or services. To “market” on the other hand includes promoting or supplying certain goods or services.

3. The Consumer

The Consumer is any person to whom goods or services are marketed in the supplier’s **ordinary course of business**, or any person who entered into a transaction with a supplier in the supplier’s **ordinary course of business**, or who is the user of goods or the recipient/beneficiary of services, irrespective of whether the user, recipient/beneficiary was a party to the transaction.

The Consumer is also a Franchisee in terms of a Franchise Agreement. A Franchise Agreement will always fall within the ambit of the Act and there are no limitations placed on the Franchisee or Franchisor for the Act to be applicable, although Franchise Agreements are deliberately excluded in certain sections of the Act.

Transactions in respect of a person acting in the ordinary course of business is an agreement for the supply or potential supply of goods or services in exchange for a consideration, or just the supply of goods in exchange for a consideration, or the performance of services in exchange for a consideration. Furthermore it can also be the interaction, regardless of fair value/charge/consideration demanded or expected, with regard to the supply of any goods or services in the ordinary course of business of any of its members, by a club, trade union, association, society or other collectivity, whether corporate or unincorporated, of persons voluntarily associated and organized for a common purpose or purposes.

A **consideration** on the other hand is anything of value given and accepted in exchange for goods or services.

4. Goods and Services

4.1 The definition of goods in terms of the Act includes the following:

- 4.1.1 anything marketed for human consumption;
- 4.1.2 any tangible object not otherwise contemplated in paragraph 4.1.1, including any medium on which anything is or may be written or encoded;
- 4.1.3 any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a licence to use any such intangible product;
- 4.1.4 a legal interest in land or any other immovable property, other than an interest that falls within the definition of 'service' in this section; and
- 4.1.5 gas, water and electricity.

4.2 The definition of services in terms of the Act includes, but is not limited to, the following:

- 4.2.1 any work or undertaking performed by one person for the direct or indirect benefit of another;
- 4.2.2 the provision of any education, information, advice or consultation, except advice that is subject to regulation in terms of the Financial Advisory and Intermediary Services (FAIS) Act, 2002 (Act No. 37 of 2002);
- 4.2.3 any banking services, or related or similar financial services, or the undertaking, underwriting or assumption of any risk by one person on behalf of another, except to the extent that any such service :
 - (i) constitutes advice or intermediary services that is subject to regulation in terms of the Financial Advisory and Intermediary Services (FAIS) Act, 2002 (Act No. 37 of 2002); or
 - (ii) is regulated in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
- 4.2.4 the transportation of an individual or any goods;
- 4.2.5 the provision of—
 - (i) any accommodation or sustenance;
 - (ii) any entertainment or similar intangible product or access to any such entertainment or intangible product;
 - (iii) access to any electronic communication infrastructure;

- (iv) access, or of a right of access, to an event or to any premises, activity or facility; or
- (v) access to, or use of, any premises or other property in terms of a rental.

4.2.6 a right of occupancy of, or power or privilege over, or in connection with, any land or other immovable property, other than in terms of a rental; and

4.2.7 rights of a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e), irrespective of whether the person promoting, offering or providing the services participates in, supervises or engages directly or indirectly in the service.

5. The Exclusions

The Act excludes the following transactions from the ambit of the Act:

5.1 The State as the Consumer

Where goods are delivered or services are rendered to the State. In Schedule 2 of the Act a Municipality is exempted for a certain period of time, until further notice.

5.2 Juristic Persons

Juristic Persons includes any Body Corporate, a partnership or association, a trust as defined in the Trust Property Control Act, 1988, Close Corporation and a Company. Where the Consumer is a juristic person with an asset value or turnover that is more is R 2 million, the Act will not apply to the transaction concluded.

5.3 Industry-Wide Exemptions

The Minister may grant, on request, that certain Industries will be exempted from the ambit of the Act.

5.4 Credit Agreements

Credit Agreements which fall under the National Credit Act 34 of 2005 are excluded from the ambit of the Act. The regulation of the credit granted will be regulated by the National Credit Act, 34 of 2005 and the goods and services for which credit was granted will be regulated by the Act.

5.5 Employment Contract

A contract concluded between an Employer and an Employee containing terms and conditions which are in accordance with the Basic Conditions of Employment Act, 11 of 2002, and wherein the meaning of Employee falls within the definition of Employee in terms of the Labour Relations Act, 66 of 1995, will not fall within the ambit of the Act.

5.6 Collective Bargaining Agreements

In terms of Section 23 of the Constitution of the Republic of South Africa, 1996 every trade union and every employer's organization has the right to determine its own administration, programmes and activities and to organise and to form and join a federation. Furthermore the Constitution also gives a right to every trade union, employers organisation and employer to engage in collective bargaining. Any agreement which falls within the ambit of Section 23 of the Constitution of the Republic of South Africa, 1996 will be excluded from the ambit of this Act.

5.7 Collective Agreements

Collective Agreements are also excluded from the ambit of the Act and is defined in Section 213 of the Labour Relations Act, 66 of 1995 as agreements concerning the terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand one or more employers, or one or more registered employer's organisations; or one or more employers and one or more registered employer's organisations.

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