

CHAPTER 8:03 CONSUMER CONTRACTS ACT

Act 6/1994.

AN ACT to provide relief to parties to consumer contracts where the contracts are unfair or contain unfair provisions or where the exercise or non-exercise of a power, right or discretion under such a contract is or would be unfair; and to provide for matters connected therewith or incidental thereto.

[Date of commencement: 24th June, 1994.]

1 Short title

This Act may be cited as the Consumer Contracts Act [*Chapter 8:03*].

2 Interpretation

In this Act—

“consumer contract” means a contract for the sale or supply of goods or services or both, in which the seller or supplier is dealing in the course of business and the purchaser or user is not, but does not include—

- (a) a contract for the sale, letting or hire of immovable property; or
- (b) a contract of employment;

“Minister” means the Minister of Industry and Commerce or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“scheduled provision” means a contractual provision specified in the Schedule.

3 Application of Act

Subject to paragraph (b) of subsection (3) of section *four*, this Act shall apply in relation to consumer contracts whether concluded before, on or after the 24th June, 1994:

Provided that this Act shall not apply in relation to a consumer contract concluded before the 24th June, 1994, where performance under the contract has been completed in accordance with the contract by all the parties thereto.

4 Relief against unfair consumer contracts

(1) Subject to subsection (3), if a court is satisfied—

- (a) in accordance with section *five*, that any consumer contract is unfair; or
- (b) in accordance with section *six*, that any actual or reasonably anticipated exercise or non-exercise of a power, right or discretion under a consumer contract is or would be unfair; or
- (c) that any consumer contract contains a scheduled provision;

the court may make an order granting any one or more of the following forms of relief—

- (i) cancelling the whole or any part of the consumer contract; or
- (ii) varying the consumer contract; or
- (iii) enforcing part only of the consumer contract; or
- (iv) declaring the consumer contract to be enforceable for a particular purpose only; or
- (v) ordering restitution or awarding compensation to a party or reducing any amount payable under the consumer contract; or
- (vi) annulling the exercise of any power, right or discretion under the consumer contract or directing that any such power, right or discretion should be exercised in a particular way;

and any such order may be made subject to such conditions as the court may fix.

(2) A court may grant relief under this section—

- (a) either on an application made to it for such relief or in the course of proceedings where any other relief is sought; and
- (b) subject to subsection (3), either on its own initiative or at the instance of a party to the proceedings concerned.

(3) A court shall not grant relief under this section—

- (a) on its own initiative if the party in whose favour the relief might be granted has waived his rights under this Act at any stage in the proceedings;
- (b) solely on the ground that a consumer contract contains a scheduled provision—
 - (i) if the contract was concluded before the provision concerned became a scheduled provision; or
 - (ii) if the court having regard to the factors set out in section *five*, is satisfied that in all the circumstances the consumer contract is fair despite containing the scheduled provision; or

- (c) if the claim for relief has become prescribed and the party against whom the relief might be granted invokes prescription.

5 When consumer contract is unfair

(1) A court may find a consumer contract to be unfair for the purposes of this Act—

- (a) if the consumer contract as a whole results in an unreasonably unequal exchange of values or benefits; or
- (b) if the consumer contract is unreasonably oppressive in all the circumstances; or
- (c) if the consumer contract imposes obligations or liabilities on a party which are not reasonably necessary to protect the interests of any other party; or
- (d) if the consumer contract excludes or limits the obligations or liabilities of a party to an extent that is not reasonably necessary to protect his interests; or
- (e) if the consumer contract is contrary to commonly accepted standards of fair dealing; or
- (f) in the case of a written consumer contract if the contract is expressed in language not readily understood by a party.

(2) A court shall not find a consumer contract to be unfair for the purposes of this Act solely because—

- (a) it imposes onerous obligations on a party; or
- (b) it does not result in substantial or real benefit to a party; or
- (c) a party may have been able to conclude a similar contract with another person on more favourable terms or conditions.

(3) In determining whether or not a consumer contract is unfair for the purposes of this Act a court shall have regard to the interests of both parties and, in particular, shall take into account, where appropriate, any prices, charges, costs or other expenses that might reasonably be expected to have been incurred if the contract had been concluded on terms and conditions other than those on which it was concluded.

6 When exercise or non-exercise of power, etc. is unfair

(1) A court may find the actual or anticipated exercise or non-exercise of a power, right or discretion under a consumer contract to be unfair for the purposes of this Act if—

- (a) in all the circumstances the result of such exercise or non-exercise is or would be unreasonably oppressive to the party affected by it; or
- (b) such exercise or non-exercise is not or would not be reasonably necessary to protect the interests of any party; or
- (c) such exercise or non-exercise is or would be contrary to commonly accepted standards of fair dealing.

(2) A court shall not find the actual or anticipated exercise or non-exercise of a power, right or discretion under a consumer contract to be unfair for the purposes of this Act solely because a party affected thereby suffers or may suffer a penalty or forfeiture or a loss or diminution of any right or benefit under the contract.

(3) In determining whether or not the actual or anticipated exercise or non-exercise of a power, right or discretion under a consumer contract is unfair for the purposes of this Act, a court shall have regard to the interests of both parties and in particular, shall take into account, where appropriate any precautions that might reasonably be expected to have been taken to protect the interests of the parties if the contract had been concluded on terms and conditions other than those on which it was concluded.

7 Amendment of Schedule

(1) Subject to subsection (2), the Minister may, by statutory instrument, after consultation with—

- (a) the Consumer Council of Zimbabwe; and
- (b) the Confederation of Zimbabwe Industries; and
- (c) the Zimbabwe National Chamber of Commerce; and
- (d) such other organizations representing consumers manufacturers, dealers or suppliers of goods or services as the Minister considers appropriate;

amend the Schedule by deleting or amending any provision contained therein or adding any provision thereto.

(2) Before amending the Schedule in terms of subsection (1), the Minister shall give not less than thirty days' notice in the *Gazette* of his intention to do so, inviting interested persons to make representations to him in writing concerning the proposal, and shall give due consideration to any representations so made.

8 No waiver of protection of Act

Subject to paragraph (a) of subsection (3) of section *four*, no agreement to waive any right conferred by this Act shall be of any effect.

9 Act not to derogate from other laws

Nothing in this Act shall derogate from rights which any person may have to relief under any other law in respect of any contract.

SCHEDULE (Sections 2 and 7)

SCHEDULED PROVISIONS

1. Any provision (commonly known as a “*voetstoots* provision”) whereby the seller or supplier of goods other than used goods, excludes or limits his liability for latent defects in the goods.
2. Any provision whereby the seller or supplier of goods or services excludes or limits the liability which he would otherwise incur under any law for loss or damage caused by his negligence.
3. Any provision whereby the seller or supplier of goods or services excludes or limits his liability unless a claim is brought against him within a period which is shorter than would otherwise be permitted under any law regulating such claims.
4. Any provision whereby the seller or supplier of goods excludes or limits his liability in the event that the goods do not conform with any description or sample given in respect of the goods.
5. Any provision which denies or limits the right of the purchaser of any goods to require the seller or supplier—
 - (a) to reimburse the purchaser for the whole of the price or amount paid in respect of the goods; or
 - (b) to replace the goods; or
 - (c) to repair the goods at the expense of the seller or supplier; or
 - (d) to reduce the price or amount payable in respect of the goods;in the event that the goods are not supplied in conformity with the consumer contract or are not fit for the purpose for which they are sold or supplied.
6. Any provision imposing a burden of proof of any matter on the purchaser or user of any goods or services where the burden would otherwise lie on another party to the contract.