



## **EXPLANATORY NOTE 4 of 2023**

**Date: 22 June 2023.**

**Reasonable cancellation penalty charge in terms of section 17 against cancellation without penalty in terms of section 19 read with section 21 of the Consumer Protection Act.**

### **1. PURPOSE.**

The purpose of the explanatory note is to guide consumers and suppliers on circumstances wherein a cancellation penalty may or not be imposed. This will be done by thoroughly interpreting the provisions of sections 17 and 19 read with section 21 of the Consumer Protection Act (CPA).

### **2. FACTUAL BACKGROUND.**

2.1 In most cases consumers are faced with the challenge of not knowing where and when is the supplier entitled to charge a cancellation penalty in terms of the CPA.

2.2 Therefore we will begin by looking at the provisions of section 17 of the CPA. Section 17 provides as follows:

**“Consumer’s right to cancel advance reservation, booking or order**

- 17.(1) *This section does not apply to a franchise agreement, or in respect of any special-order goods.*
- (2) *Subject to subsections (3) and (4), a consumer has the right to cancel any advance booking, reservation or order for any goods or services to be supplied.*
  - (3) *A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date may—*
    - (a) *require payment of a reasonable deposit in advance; and*
    - (b) *impose a reasonable charge for cancellation of the order or reservation, subject to subsection (5).*
  - (4) *For the purposes of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to—*
    - (a) *the nature of the goods or services that were reserved or booked;*
    - (b) *the length of notice of cancellation provided by the consumer;*
    - (c) *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*
    - (d) *the general practice of the relevant industry.*
  - (5) *A supplier may not impose any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of the death or hospitalisation of the person for whom, or for whose”*

2.2 Section 17(2) provides that a consumer has the right to cancel any advance booking, reservation or order for any goods or services to be supplied, however, section 17 (3)(b) provides that a supplier who makes a commitment or accepts a reservation to supply goods or services on a later date may impose a reasonable charge for cancellation of the order or reservation subject to subsection (5).

2.3 The act provides that the supplier must charge a reasonable cancellation penalty, therefore, the question will be how does the supplier determine the reasonable cancellation charge? and the answer lies with section 17 (4) which provides that a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to the nature of the goods or services that were reserved or booked, the length of notice of cancellation provided by the consumer, 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 lastly the general practice of the relevant industry.

2.4 There is an exception to the supplier’s right to charge a cancellation penalty in terms of section 17(5) of the CPA, which provide that a supplier may not impose any cancellation fee in respect of a booking, reservation, or order if the consumer is unable

to honor the booking, reservation or order because of the death or hospitalization of the person for whom, or for whose benefit the booking , reservation was made.

2.5 Another exception is in terms of section 19(6):

***Consumer’s rights with respect to delivery of goods or supply of service***

“19. (6) *If the supplier tenders the delivery of goods or the performance of any services at a location, on a date or at a time other than as agreed with the consumer, the consumer may either—*

- (a) accept the delivery or performance at that location, date and time;*
- (b) require the delivery or performance at the agreed location, date and time, if that date and time have not yet passed; or*
- (c) cancel the agreement without penalty, treating any delivered goods or performed services as unsolicited goods or services in accordance with section 21.*

2.6 **Read with section 21(9) which provide that:**

“21 (9) *If a consumer has made any payment to a supplier or deliverer in respect of any charge relating to unsolicited goods or services, or the delivery of any such goods, the consumer is entitled to recover that amount, with interest from the date on which it was paid to the supplier, in accordance with the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).”*

2.6 Section 19(6) is read with Section 21, and it stipulated that the consumer has a right to cancel the agreement/transaction/booking or order without penalty, treating any delivered goods or performed services as unsolicited goods or services in accordance with section 21.

2.7 The above applies only where the supplier had tendered to deliver goods or perform any services (e.g provide wedding events or accommodation venue) at a location, on a date or at a time other than as agreed with the consumer and therefore upon the election by the consumer to cancel the booking, the consumer is entitled to recover the amount paid for the booking, with interest from the date on which it was paid to the supplier.

### 3. **EXPLANATORY NOTE.**

- 3.1 The preamble of the Consumer Protection Act provides that the Act was enacted to promote and provide consumer education. It is on this basis that this explanatory note is produced, to promote the spirit and purpose of the CPA.
- 3.2 Consumers may cancel any booking, reservation, or service but the Supplier's right to charge a cancellation penalty will be determined by the circumstances surrounding the cancellation.
- 3.3 The supplier is entitled to charge a cancellation penalty where the decision by the consumer to cancel the services rests solely on the consumer and there is nothing on the part of the supplier which contributed to the consumer reaching that decision. However, such cancellation penalty should not be unreasonable as prescribed by section 17(4) of the CPA.
- 3.4 On the other hand the supplier may not charge a cancellation penalty wherein the decision for the cancellation of services is dependent on the fact that the supplier had tendered to supply the services on different terms (time, date, and location). In this situation, the consumer is entitled to receive the full amount paid for the booking/services and interest calculated from the date payment was made.
- 3.5 Therefore, section 17 gives the supplier a right to charge cancellation penalty whereas section 19 read with 21 gives the consumer the right to recover the amount paid when and where the supplier fails to supply the services on terms and conditions as agreed.

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