

February 2011

In focus: the Consumer Protection Law

On the 12th of October 2010, the new Consumer Protection Law was rendered (Official Gazette of the Republic of Serbia, vol. 73/2010, hereinafter referred to as the “Law”). The Law is in force as of the 20th of October 2010, and actively enforced as of the 1st of January 2011.

The general and very noticeable tendency of the Law is the generally far greater elaboration with much more depth as compared to the preceding Consumer Protection Law (hereinafter referred to as the “preceding Law”), which provides for a stronger and more complete protection of consumers. With this goal, a rather large number of novelties are introduced, ideas elaborated in great detail, whereas some areas of the Law are completely new. Some areas, on the other hand, have been kept generally in the form previously in force, but with far more detail and more broadly in the provisions which regulate them.

Bearing in mind the significance and the detailed elaboration of all concepts and their explanations in the Law, hereinafter we shall only point out the most important and/or most interesting solutions of the Law:

I The compulsory nature of the Law

The Law expressly foresees the compulsory nature of its own provisions, which it ensures in two ways by foreseeing (i) the nullity of individual provisions of contracts between consumers and merchants which are contrary to the provisions of the Law, and which are at the expense of the consumer, and (ii) the application of the Law even to the contracts the goal or consequence of which is to avoid the application of its provisions.

II Displaying prices and the duty of informing

The Law regulates in detail matters of displaying prices of goods and services, and it determines the obligation to display the price of goods or services (price in sales, unit price of goods or services, price per hour and so on) not only on the packaging and at the place of sale, but also in price catalogues and in display windows. For example, a hotelkeeper, restaurant-keeper, innkeeper or similar service provider, who provides services of food and beverages is not only obliged to display the price catalogue on tables and give it to the consumer, but is also obliged to display it at the entrance of his establishment.

The Law provides the duty of the merchant to supply the consumer with a series of information (the basic characteristics of the goods or the service, data relevant to

determine the identity of the merchant, the selling price or the way to calculate it, as well as all additional expenses, manner of payment, manner and deadline of delivery, manner of execution of other contractual obligations, as well as the procedure with consumer complaints, etc.), relevant to a specific contract.

If when concluding a consumer contract the merchant does not abide by the obligation to inform the consumer on all relevant data, the consumer may seek an annulment of the contract, regardless of whether or not the merchant intended, in not informing him/her, to induce him to conclude the contract. The right to seek an annulment of the contract ceases after the expiration of a year from the date when the contract was concluded.

III Unethical conduct of business

A special novelty of the Law is a whole section dedicated to the unethical conduct of business, which, most generally speaking, the Law defines as the behavior which is contrary to the requirements of professional attention, as well as the behavior which significantly infringes or threatens to significantly infringe the economic behavior, concerning a product, of the average consumer to whom such business conduct pertains, or who is exposed to such business conduct, i.e. the behavior of an average member of a group, when the business conduct pertains to a group.

The Law regulates, in great detail and with specifically listed situations and cases:

- unethical conduct of business in itself, which specifically includes: deceitful conduct, aggressive conduct, failure to provide information in accordance with the Law, failure to provide information about consumers' rights in accordance with the Law, regarding (i) distance contracts; (ii) tourist travel and time-share contracts; (iii) display of prices; (iv) contracts concluded by means of electronic media;
- deceitful conduct of business,
- deception by omission,
- business models considered deceptive,
- aggressive conduct of business,
- business models considered aggressive.

As one way of protecting consumers, the Law transfers the burden of proof concerning the accuracy of data to the merchant, foreseeing that the merchant bears the burden of proof in relation to the data about a product which he/she gave prior, during, and after conclusion of a contract with a consumer.

IV Distance contracts and contracts concluded outside the place of business and unilateral termination

The Law devotes far more attention to distance contracts and contracts concluded outside the place of business than the preceding Law. Contracts in electronic trading are particularly expounded, and special obligations pertaining to consumer information are stipulated for these types of contracts, as well as numerous aspects of unilateral termination by the consumer: information regarding the existence of the right of unilateral termination and the appropriate procedure, the legal

consequences thereof, exceptions to the rule, etc.

A specificity of these types of contracts, for instance, is that the merchant is prohibited from demanding payment in advance. Additionally, the merchant is obliged to act in accordance with the purchase order within 30 days of the day of conclusion of a distance contract or contract concluded outside the place of business, unless if something else is stipulated. On the other hand, the consumer is entitled to, within 14 days of conclusion of a distance contract or contract concluded outside the place of business, unilaterally terminate the contract, without stating a reason.

V Protection of consumers in realizing rights from contracts which contain unfair provisions

The Law prescribes that the interpretation of disputed provisions of a consumer contract is to be performed with solely the interest of the consumer in mind and in the benefit of the consumer, while all unfair stipulations are null and void. Instances of unfair provisions are defined, as well as what is considered an unfair provision, and which provisions are assumed to be unfair until proven otherwise. Most generally speaking, unfair provisions would be those which limit the rights of the consumer, which determine non-proportional obligations for the consumer, or in general which are at the expense of the consumer, while also contrary to the principle of conscientiousness and fairness. For example, any provision whose contents were determined by the merchant in a

manner that implies that the consumer agrees to said provision except in the case that the consumer should expressly disagree, is not binding for the consumer.

VI Contracts of sale, contracts of services and the liability of the manufacturer of deficient goods

Regarding contracts of sale, the Law provides regulation for, among other matters, the rules for transference of risk of accidental destruction or damage - the risk is transferred to the side of the consumer from the moment the consumer or the consumer's agent receives the goods, and also for compliance of goods to contractual provisions, and the liability and legal consequences of non-compliance.

Concerning the non-compliance of goods, it is prescribed that the merchant will be liable for non-compliance of goods to contractual provisions which appears within two years from the day of transference of risk to the consumer, whereas if the non-compliance comes to be within six months from the day of transference of risk to the consumer, it is assumed to have existed in the moment of transference of risk (receipt by consumer), unless if that is contrary to the nature of the goods and the nature of a certain non-compliance.

Regarding the contracts of services, rules are also provided regarding governing compliance to contractual stipulations, and the liability and legal consequences of non-compliance, as well as other matters, such as: quality of materials used, the time when service is considered complete,

subcontracting, supervision of the actions of the service provider that the provider is obliged to allow, various aspects regarding the price of services, and termination of these contracts.

Liability of the manufacturer of deficient goods is stipulated with more precision and more clearly than in the preceding Law. Attention should be given to such questions as the facts that the manufacturer is liable for damages resulting from deficient goods regardless of whether he knew about the deficiency, if the damaged party proves that such damage exists, and that the manufacturer is fully and solely liable even if a third party had partially contributed to the emergence of damages.

VII Tourist travel contracts and time-share contracts

This is the single area of the Law which is regulated by the greatest number of very detailed provisions, which makes a very significant difference in comparison to the preceding Law. Some of the issues regulated therein are: the obligation of pre-contractual consumer information in both instances, availability of data, advertising, changes made to the contract before departure, cancellation on part of the consumer, the right to a price deduction, termination due to non-compliance of the service to contractual provision, liability for damages, unilateral termination of time-share contracts.

Regarding tourist travel contracts, the Law expressly stipulates that a consumer may, prior to the commencement of the tourist travel, cancel the contract (give up on travel, in layman's terms), entirely or

partially. If the consumer cancels the contract prior to the commencement of tourist travel within a reasonable deadline, determined according to the type of tourist travel, the merchant is entitled to reimbursement of administrative expenses, which cannot be higher than 5% of the value of the tourist travel contract. In case of untimely cancellation of contract by consumer, the merchant may request reimbursement from the consumer in a certain percentage of the contract price, which must be economically justified. If the consumer cancels the contract due to circumstances which he/she could not avoid or eliminate and which, had they existed at the time of conclusion of the contract, would have represented a valid reason not to conclude the contract, as well as in case if the consumer provides adequate replacement or a replacement is found by the merchant, the merchant is entitled only to reimbursement of administrative expenses.

VIII Out-of-court settlement of disputes and procedure regarding prohibition of unfair contractual provisions and unethical conduct of business

The Law allows for alternative dispute resolution modes: arbitration, which was included in the preceding Law, though in a much shorter version, and mediation, as a novelty. These possibilities do not exclude the availability of protection before a court of law. Concerning the procedure regarding the prohibition of unfair contractual provisions and unfair business conduct, we would like to point out that a consumer, whose right or interest has been infringed, may file for a procedure to:

- 1) prohibit unfair contractual provisions in consumer contracts;
 - 2) prohibit unethical business conduct;
 - 3) confiscate illegally acquired profits;
- but he/she is obliged, though, before filing any of the above, to invite the opposite party to resolve the dispute out of court.

IX Supervision over the application of provisions and penalties

The provisions on supervision stipulate a wide array of options for inspectors in ascertaining such behavior of merchants as may be non-compliant with the Law, and that, should such behavior be ascertained, the inspector will issue a decision wherein a time limit is set for the merchant or service provider to comply.

Should the merchant or service provider fail to eliminate the ascertained discrepancies within the time limit set forth by the decision of the inspector, the inspector will issue a decision temporarily precluding the offender from selling goods or providing services until the ascertained discrepancies are eliminated.

Finally, the penalties section stipulates a single fine for a wide array of offenses committed by legal entities ranging from RSD 300,000.00 to 2,000,000.00, while the same offenses committed by a natural person or the responsible person in a legal entity are punishable by a fine ranging from RSD 50,000.00 to 150,000.00. Entrepreneurs are subject to a fine of RSD 50,000.00 to 500,000.00 for the same offenses.

Also, certain additional orders may be issued:

- to a legal entity: a temporary prohibition from conducting a certain form business for the duration of six months to a year, and an order to publicly advertise court decisions,
- to the responsible person in a legal entity: a temporary prohibition from performing certain duties for the duration of three months to a year,
- to an entrepreneur: a temporary prohibition from conducting a certain form business for the duration of six months to a year.

*Disclaimer: The text above is provided for general guidance and does not represent legal advice.
Copyright Cvetkovic, Skoko & Jovicic 2011*