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Law 22/2009 of 28 September

Consumer Rights Law

Summary of key points

The law applies to individuals and public and private companies engaged in production, manufacture, import, construction, distribution or sale of goods or services. The law also applies to public service and parastatal companies (Art 3)

The state must include in public service contracts such as for the supply of water, electricity and gas clauses for the protection of consumers (Art 4)

Consumers rights include the rights to: quality of goods and services; protection of life, health and physical safety; consumer information; protection of their economic interests; prevention or repair of damage; legal protection and the right to participate in cases which are in their interest; protection from misleading or abusive advertising (Art 5)

Goods and services must be appropriate to satisfy the purpose for which they are designed and produce the effects attributed to them in accordance with established legal norms or the legitimate expectations of the consumer. Without prejudice to the establishment of more favourable terms, suppliers of moveable non-consumable goods must guarantee their product for a minimum of one year, except in the case of inappropriate use by the consumer. In the case of non-moveable goods these must be guaranteed for five years. The guarantee period is suspended when the consumer is deprived of the use of the item while it is under repair as a result of a defect (Art 6)

The supply of any goods or services which, in normal or foreseeable method of use, could cause harm to the public is forbidden. The state is responsible for ensuring adequate inspection to prevent such goods entering the market, including seizure of such goods (Art 7)

The supplier must, in negotiations and at the contract stage clearly and objectively inform the consumer about the characteristics, composition and price, as well as about the contract and guarantee periods, delivery times and after-sales service. The obligation to inform the next stage in the production – consumption chain also falls on the producer, manufacturer, importer, distributor, packager and warehousing/storage. Each package must include a clear indication of its contents and any likely risk from its use (Art 10)

Information about the product must be clearly provided. If this is not the case the consumer has the right to cancel the contract within 7 days after receipt of the product or finalisation of the contract. The supplier who does not provide clear information is held responsible for any damages which result, and others in the supply chain who have also not provided adequate information are held similarly responsible. The right to information cannot be withheld or made conditional based on trade secrets unless specifically permitted by law (Art 10)

Consumers have the right to protection of their economic interests throughout the stages prior to their decision to buy, and including in the form of the contract eventually agreed. Contracts or agreements with consumers must be clear and legible and not include clauses which are detrimental to the consumer. Consumers are not required to pay for goods or services which they have not

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previously explicitly agreed to receive or which do not correspond to the contractual agreement, nor are they held responsible for such additional goods or services which they did not request (Art 11 paras 1-4)

Consumers have the right to after-sales service and the supply of parts and accessories for the average normal lifetime of the product supplied (Art 11 para 5)

Suppliers are forbidden from conditioning the purchase of a product or service on the purchase of other additional products or services (Art 11 para 6)

Goods or services provided outside of normal commercial establishments, such as by correspondence, can be returned by the consumer within 7 days of delivery. The government is to ensure the control of types of selling which do not allow the consumer to take a considered decision about the purchase contract they are entering into (Art 11 paras 8-9)

The right to take legal action to prevent, correct or stop practices damaging to consumer rights is ensured and such actions can be taken free of charge (Arts 12-13)

Consumers who have been supplied damaged or defective goods, unless informed of this fact at the time, have the right to demand the repair or replacement of the item, or reduction of the price or cancellation of the contract. The consumer must raise the issue within 30 days in the case of moveable goods and one year in the case of immoveable ones. The consumer has the right to compensation for damage caused as a result of the supply of defective goods or services. Producers are responsible for defective products placed on the market, and for any damage these cause. Wherever the constructor, producer, supplier or importer cannot be identified, the seller is held equally liable (Art 14)

Suppliers of durable and non-durable goods are held fully liable for any discrepancy in quality or quantity, as well as any disparity in information given to the recipient, including on the packaging, labeling or advertising. If the discrepancy is not resolved within 30 days the consumer has the right to exchange, refund or reduction of the price (Art 15)

The following goods are considered inappropriate for consumption, those which: are out of date; have deteriorated have been altered are not working, are fake; are corrupted; are fraudulent; are noxious; are dangerous (Art 15 para 4)

Suppliers of services are similarly held responsible for provision of services which are not of the quality expected or which do not correspond to that which has been advertised (Art 16 para 1)

Public bodies themselves or companies to which they have awarded concessions, or any form of business operated by them are required to provide adequate, efficient, safe and continuous service (Art 16 para 3)

Misleading or abusive advertising is prohibited. Misleading is considered to be any advertising which can by any means, including by omission, mislead consumers as to the type, characteristics, quality, quantity, properties, origin, or price of a product or service, or to impute to a product or service characteristics which it does not have. Advertising must be presented in a form that it can clearly and easily be identified as such (Art 20)

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Contracts regulating relationships between the consumer and supplier are not considered valid if the consumer has not had the opportunity to understand that he is entering into a contract and what this contains. Contractual clauses shall be interpreted in the light most favourable to the consumer. The consumer is entitled to a seven day reflection period if the goods or services are supplied outside a commercial establishment (Art 21)

Any advertising including the price of the product or service must indicate clearly and visibly the price in meticals including all taxes and fees. Written or printed advertising or catalogues must include the unit price (Art 24)

If the supply of goods or services includes the provision of credit or financing, the consumer must be advised prior to purchase of the current price in meticals, the amount of interest and interest rate, any legally permitted increases, the number and regularity of payments, the total which will be paid with or without the financing option. Fines for delayed payment may not exceed 2% of the value of the installment. The consumer has the right to pay off the full amount ahead of term with proportional reduction of the interest owed (Art 25)

In the case of purchase and sale contracts for moveable goods, where payment is made in installments clauses which allow for the seizure of the deposit paid if full and final payment is not made are considered invalid if the goods are returned (Art 26)

The presentation of goods and services must be done using clear, correct, precise information in Portuguese, about the characteristics, quality, quantity, composition, price, guarantee, expiry or validity dates, and origin as well as any risks that use of the product or service might present to the consumer (Art 28)

The following, among others, are considered abuses of consumer rights: conditioning the supply of one product or service on the purchase of another; supply of goods or services which have not been requested; taking advantage of the lack of knowledge or any other weakness of the consumer; undertaking services without first giving a quote and without the express authorization of the consumer; placing on the market any goods or services which do not comply with the standards established by the relevant organisation or where such standard do not exist, by INNOQ; increasing without justification, the prices of goods or services (Art 29)

Suppliers of services must provide a quote which differentiates the activities to be undertaken, labour costs, and costs of materials and equipment, and indicates payment terms and start and conclusion dates. Unless otherwise stated such quotes are valid for 10 days. Once accepted the quote is binding on the supplier and can only be altered as a result of free negotiation between the contracting parties. Consumers are not liable for any increase resulting from the contractor hiring in third parties under the contract (Art 30)

Infractions under this law may be subject to civil or criminal proceedings in addition to which a fine of 10% of the sale may be applied, goods seized, manufacture of items prohibited, supply of goods or services suspended, activity temporarily suspended, operating licenses revoked or a complete interdict on operations put in place. Penalties are to be graduated in accordance with the gravity of the offence and the economic situation of the supplier. Sanctions may be applied cumulatively or individually (Art 33)

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Consumers have the right to organise themselves into associations. Such associations must be duly registered as consumer protection associations. In this role, among other things they may request the removal from the market of goods or services which are damaging to the public, and participate in the regulation of the provision and pricing of public services such as water, electricity, gas, transport and telecommunications, as well as requesting information about pricing policy and the quality of services provided. Associations designated as being for consumer protection have the right to undertake class action. Such associations can agree codes of conduct with suppliers, which must then be publicised by the association and the signatories (Arts 35-36)