

# **SUBMISSION ON THE DRAFT UNRESERVED POSTAL SERVICES REGULATIONS**

**CONSUMER ADVISORY PANEL**

**16<sup>th</sup> JANUARY 2020**



# **PRESENTATION BY CAP REPRESENTATIVES**

- 1. CAP BACKGROUND & INTRODUCTION OF MEMBERS – Ms NOXOLO GOGO**
- 2. EXECUTIVE SUMMARY & GENERAL COMMENTS – Ms JOSEPHINE MABOTJA**
- 3. SPECIFIC COMMENTS ON THE DRAFT REGULATIONS – Mr MONGEZI MENYE**

The Consumer Advisory Panel (CAP) would like to thank the Independent Communications Authority of South Africa for the opportunity to participate in the public process on the Draft Unreserved Postal Services Regulations, 2019. CAP trusts that the attached comments will assist with the process going forward.

It is a privilege and honour to stand here and present on behalf of Members of the Consumer Advisory Panel (CAP), the comments in response to the initiative taken by the Independent Communications Authority of South Africa (ICASA) to establish efficient and effective processes and procedures that guide the service providers in the sector.

## **EXECUTIVE SUMMARY**

The Authority has published the Draft Unreserved Postal Services, to ensure that unlicensed or unscrupulous operators do not participate in the delivery of Postal Services products and services to communities. The Regulations also introduce the participation of Agents and Franchisees in the Postal Services Sector in order to enhance employment of Small, Medium and Macro Enterprises.

The Regulations further prescribe the process to be followed when operators apply for a registration certificate, the minimum operating standards, the customer complaints procedures, application for the renewal of a registration certificate, change of information, fees payable, fees increase, duration of a registration certificate, surrender of a registration certificate, contraventions and penalties and transitional provision.

CAP welcomes the opportunity to comment on the draft Unreserved Postal Services Regulations.

CAP has divided its comments into Specific Comments and General Comments on the Draft Unreserved Postal Services Regulations.

# **SPECIFIC COMMENTS ON THE DRAFT UNRESERVED POSTAL SERVICES**

(Please see):

- Table of Contents
- Sub-Regulation 1. Definitions
- Sub-Regulation 9. Fees Payable
- Sub-Regulation 12. Third Party Participation
- Sub-Regulation 14. Contraventions and Penalties
- Form B: Business Presence
- Cap has also inserted a clause on “Exemptions applying to Unreserved Postal Services”.

# GENERAL COMMENTS ON THE DRAFT UNRESERVED POSTAL SERVICES REGULATIONS:

## 3.1 Definitions

According to Nick Williams of Ashtons Franchise Consulting, there is a difference between an Agency and a Franchise. However, he maintains that “some franchises do, however, contain an agency-principal relationship. This frequently occurs in parcels delivery franchises where contracts with customers are generally entered into by the franchisor but delivery and collection is effected through franchisees”<sup>1</sup>.

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<sup>1</sup><https://franchise4u.co.uk/franchise-resources/knowledge-base/agencies/>

He asserts that **“Agents do not purchase products in their own name, and receive a commission on paid for sales which is normally a percentage of the selling price”**.

He further states that **a contractual relationship between a franchisee and a franchisor is where the following attributes apply, the franchisor:**

- “allows a franchisee to use its trade name, marks and brands
- exercises continuing control over a franchisee
- is obliged to provide training and assistance to a franchisee
- requires a franchisee to make an initial and continuing payments to the franchisor”.



Nedbank also depicts the “Franchisor-Franchisee relationship as a winning framework”. The Bank further states that “the franchisor–franchisee relationship is symbiotic. The franchisor trains the franchisee on product information and provides the franchisee with tools to conduct the business. The franchisee takes responsibility for the day-to-day activities of the business and growing the brand”<sup>2</sup>.

However it should be noted that the Consumer Protection Act defines the Franchise as a consumer and prescribes conditions under which the Franchisor-Franchisee relationship will succeed. It is on this ground that CAP proposes that ICASA incorporates the CPA conditions in the Regulations in order to minimize the chance of a failed business relationship.

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<sup>2</sup>. Nedbank Website

## 3.2 Unemployment

South African Unemployment is high coupled with the fact that people living in rural areas, women, youth and persons with disabilities are severely affected by lack of jobs.

All provinces experience the Expanded Unemployment Rate ranging between **41.4%** and **46.5%** as per statistical data for the third Quarter ending September 2019 except for two provinces, Western Cape which registered a rate of **24.5%** and Gauteng at **35.1%**. The two provinces' rate is lower than the Total Expanded Unemployment Rate of **38.5%**.

Women are also affected severely as compared to their male counterparts. The Official rate for both Male and Female is **29.1%** as compared to female Official Unemployment Rate of **30.9%** whereas Male experience a Rate equal to **27.7%**. The Youth is the most disadvantaged members of the community. The Youth whose age falls within the 15 to 24 years experiences an Official Unemployment Rate of **58.2%** and those who fall between the age group 25 to 34 years has a rate that is **36.1%**<sup>3</sup>.

It is for these reasons that CAP suggest that it is important for Regulations to make provision for people living in rural areas, women, the youth and persons with disabilities to be given opportunities to run Small, Medium and Macro Enterprises in the Postal Services Sector.

CAP suggest that the Table of Contents be inserted, to make it easy to read the Regulations

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<sup>3</sup>. Source of Data: Statistics South Africa (StatsSA)

## TABLE OF CONTENTS

Definitions

Purpose of the Regulations

Scope

Application for a Registration Certificate

Minimum Operating Standards

Customer Complaints Procedures

Application for Renewal of a Registration Certificate

Change of Information

Fees Payable

Fees Increase

Duration of a Registration Certificate

Exemptions Applying to Unreserved

Third Party Contracting

Surrender of a Registration Certificate

Contraventions and Penalties

Transitional Provision

Short Title and Commencement

Repeal of Regulations

## 1. DEFINITIONS

In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned.

“ **the Act**” means the Postal Services Act, 1998 (Act No 124 of 1998);

“**Agent**” means a specially appointed business portal through which products and services are sold to the end consumer<sup>1</sup>.

[**COMMENT:** The Postal Services Act and the Regulations and the Consumer Protection Act do not make provision for the definition of an Agent – CAP proposes that the definition be incorporated as business models for an Agency and a Franchise differ.]

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<sup>1</sup><https://franchise4u.co.uk/franchise-resources/knowledge-base/agencies/>

**“applicant”** means a person who has submitted an application for a registration of a registration certificate;

**“application fee”** means a once off non-refundable fee paid to apply for registration to provide unreserved postal services;

**“Authority”** means the Independent Communications Authority of South Africa;

**“Consumer”** in respect of any particular goods or services, means –  
a person... supplier’s business;  
a person....or in terms of section 5(3);  
if the content... particular goods or services; and  
a franchisee in terms of section 5(6)(b) to (e)

**[COMMENT:** The Postal Services Act and the Regulations do not make provision for the definition of a franchisee. The Consumer Protection Act defines a franchisee as a consumer. The aim is to ensure that the franchisee receives support from the Supplier of goods and services.]

“**day**” means working day unless otherwise specified;

“**Franchisee Agreement**” means an agreement between two parties, being the franchisor and the franchisee, respectively –

(a) in which,.....

(b) under which.....

(c) that governs.....of the franchisor;

[**COMMENT:** CAP suggests that the definition of franchisee Agreement be inserted in order to harmonise these Regulations with the Consumer Protection Act and also to give guidance to what encompasses the full business details that the registered operator should provide as per Regulation 12(2)]

“**Person**” includes juristic person<sup>2</sup>;

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<sup>2</sup>. Consumer Protection Act Definition

**“Registered operator / Registrant”** means a person issued with registration certificates to provide unreserved postal services as contemplated by section 20 of the Act; **and (remove: and)**

**“Renewal fee”** means a non-refundable fee paid for the renewal of a registration certificate to provide unreserved postal services; **and**

**“Unreserved Postal Services”** means –

- (a) All letters, postcards, printed matter, small parcels and other postal articles that fall outside the ambit of the reserved services set out in Schedule 1 up to and including thirty kilograms;
- (b) courier services in respect of items mentioned in paragraph (a); and
- (c) any other postal service that falls outside of the reserved services as set out in Schedule 1.

**[COMMENT: CAP proposes that the definition of Unreserved Postal Services be inserted in accordance with Schedule 2. of the Act]**



## 9. FEES PAYABLE

**[COMMENT:** CAP suggests that when stipulating the rate at which interest will be charged for late payments, there should be transparency in order to bring certainty and also to avoid charging exorbitant rates. For instance, Section 40 of the National Credit Act prescribes the method that is used to calculate the interest together with Section 42 which sets the Maximum Prescribed Interest.]

## 12. EXEMPTIONS APPLYING TO UNRESERVED POSTAL SERVICES

The following exemptions apply to unreserved postal services and are not subject to registration in terms of the Act -

Delivery by an employee of the sender exclusively for the private affairs of the sender;

Unaddressed mail;

**[COMMENT:** CAP suggests that the Exemptions be incorporated in the Regulations. The exemptions are extracted from Schedule 2]

### **13. THIRD PARTY CONTRACTING**

(1) An unreserved postal service may be provided by an agent or franchisee of the registered operator, without such agent or franchisee being required to hold a registration certificate in terms of the Act.

(2) The registered operator must notify the Authority of such agent or franchisee in writing by providing full business details of the agent or franchisee.

**[COMMENT:** CAP proposes that the provided business details take into consideration the contents of Franchise Agreement as stipulated by Regulations 2 and 3 of the Consumer Protection Act in order to ensure the smooth running of franchises.

(3) Any non-compliance with these Regulations, by an agent or franchisee, will be attributed to the registered operator.

**[COMMENTS:** According to Section 113 of the Consumer Protection Act: “Vicarious liability means –

(1) if an employee or agent of a person is liable in terms of this Act for anything done or omitted in the course of that person’s employment or activities on behalf of their principal, the employer or principal is jointly and severally liable with that person.

2. This section does not apply in respect of criminal liability”.

The fact that sub Regulation 3 exonerates the Agent or franchisee may pose problems in certain areas of non-compliance – for instance if false information is provided by the Agent or franchisee. Thus, CAP suggests that parties should take dual responsibility in case of non-compliance.

Also, it would be prudent for ICASA to take into consideration the fact that the business models for an Agency and a Franchise are different. Unlike an agent, a franchisee has a complicated relationship with the principal. It is for this reason that CAP proposes that ICASA provides clarity as to why the two business models be treated the same.

CAP suggests that there is a need for inclusion of persons living in rural areas, women, youth and persons with disabilities when registered operators enter into third party contracting, in line with Object 2(q) of the Act - the purpose of the Act is to “promote small, medium and macro enterprises in the postal industry”].

## 15. CONTRAVENTIONS AND PENALTIES

(3) Any person that contravenes regulation 4 (8) of these Regulations is guilty of an offence and subject, on conviction, to imprisonment for a period not exceeding two years or to both a fine not less than R100 000, 00 (One hundred thousand Rand) but not exceeding R300 000, 00 (Three hundred thousand Rand).

(4) Any person that contravenes regulation 13 (3) and/or (4) of these Regulations, is guilty of an offence and subject, on conviction, to imprisonment of one month and/or a fine not less than R50 000, 00 (Fifty thousand Rand) but not exceeding R100 000, 00 (One hundred thousand Rand).

**[COMMENT: The sub-Regulations 3 and 4 do not prescribe factors that determine the appropriate minimum or maximum fine. CAP proposes that ICASA take into consideration Section 112(3) of the Consumer Protection Act which enlists the factors that should be taken into consideration when imposing an appropriate fine.]**

### 3. BUSINESS PRESENCE

3.1. Number of business outlets / branches:

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3.2. Number of business outlets / branches per province.

3.3. Number of Franchises/Agents

.....

3.4. Number of franchises / agents per province.

#### **[COMMENT:**

3.5 CAP proposes that a column indicating the number of persons living in rural areas, women, youth and persons with disabilities be inserted to show that the disadvantaged groups are given opportunities.]

## CONCLUSIONS

- The Consumer Advisory Panel hope that the comments will assist ICASA in formulating Regulations that will ensure efficient and effective processes and procedures that ensure the quality delivery of goods and services in the Unreserved Postal Services Sector.
- It is also hoped that prescribed appropriate penalties will assist in deterring the contraventions of these Regulations by service providers.
- CAP encourage ICASA to forge close relationship with the Regulators mentioned in the draft to improve on the effectiveness of the Unreserved Postal Services Regulations and to protect the Small, Medium and Macro enterprises.
- Finally, CAP propose that Persons with Disabilities Regulations and other Codes be amended to accommodate the protection of consumers in the Postal Services Sector. CAP will use a separate channel to submit the comments regarding consumer protection (especially persons with disabilities) for consideration by ICASA Council.