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Expect tough opposition - Are you ready for the CPA?

One might call the new Consumer Protection Act 68 of 2008 (CPA), which was gazetted on 29 April 2009, the 'mother of all consumer acts.' The CPA will to a large extent be introduced in two parts such that its first phase introduction, which is scheduled for April 2010, will primarily see the establishment of the National Consumer Commission which will be the body that is empowered to investigate public complaints, issue compliance notices and refer matters to the National Consumer Tribunal which was established under the National Credit Act. The second phase will see the majority of the other provisions of the CPA becoming effective on October 2010 and requiring implementation. Virtually every business in South Africa will feel the affect of the Act.

Indeed, South African consumers will be amongst the world's most protected buyers. Service or product delivering businesses, amongst others, will in all likelihood require specialist advice to ensure that they are complying with the provisions of the CPA. Lack of knowledge of the full application of the Act could cost a business dearly. Courts are given wide powers to grant orders dealing with any contravention of the Act and if businesses are convicted for its contravention, they may face hefty fines or even imprisonment.

Says Terry Booysen, CEO of CGF Research Institute (Pty) Ltd, "Businesses will be required to assess and duly amend their business models, strategies and service delivery methods in order to meet the timing set out in the CPA. Simone Monty, a director of Eversheds and specialist in the CPA confirms that, in addition, documentation and agreements, instructions and manuals will all need revision. The cost implications will in many instances be sizeable and perhaps totally unexpected, particularly considering that the CPA applies to "every transaction" occurring within the Republic that involves the supply and or the promotion of any goods and services between businesses and their customers.

Monty confirms that extensive protection of consumer rights is built into the CPA covering both the obvious areas one would expect of such Act as well as novel legislative provisions placing much responsibility on the supplier. For example, the disclosure requirements placed on suppliers in respect of limitation of risk and liability clauses, as well as the prohibition by the CPA of many common limitations of liability previously included in agreements with consumers. Another example of responsibility not previously legislated in South African law are the provisions of the CPA regarding implied warranties in respect of safety and quality as well as the strict liability provisions both of which create an onus of responsibility for the supplier.

Both Booyesen and Monty agree that the CPA goes a long way to equalize the relationship between the suppliers and the consumers and that through the promulgation of the CPA, the Act will 'consolidate' the effects of the older acts which dealt with consumer protection on an ad hoc basis including; the Unfair Business Practices Act, the Trade Practices Act, the Sales and Service Matters Act, the Price Control Act and the Merchandise Marks Act.

Understandably, the implications both legally and logistically for those in the supply chain will be substantive, with knock - on effects should one supplier not fulfill its legal obligations to another supplier, and the eventual affect on the final supplier facing the consumer. The interests of the consumer will be paramount with the supplier being held in check. Suppliers may not knowingly or unknowingly take advantage of a consumer. Consumers will now truly have the advantage over those businesses and suppliers who deliver products and services which are not what they purport to be.

"Good governance - underpinned by fairness, accountability, responsibility and transparency - brings on a new meaning and era of service expectation and delivery for the consumer. Now 'armed with powerful arsenal' such as the National Credit Act, the Competition Act and the Consumer Protection Act, consumer activism will rapidly change the mindsets of those businesses who have traditionally called the shots," concludes Booyesen.

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