

## **If you did not buy it, you still benefit from the purchase agreement**

### **Overview of the Consumer Protection Bill, 2008**

The Consumer Protection Bill is intended to promote and advance the social and economic welfare of consumers in South Africa, essentially by protecting consumers' rights against exploitation by business, and in the process empowering consumers.

Widely welcomed by trade and consumer publics, the general feel is that it will benefit consumers, albeit also to encourage them to become more consumer effective.

How would the new Bill apply in practice?

According to the Bill the definition of a consumer includes 'a user of the goods or a recipient or beneficiary of the services, irrespective of whether that user, recipient or beneficiary was a party to the purchasing transaction'.

So, if a father contracts with a cell phone service provider and gives the phone – and the line, so to speak - to his son, the son is regarded as a consumer. Should something go wrong with the cell phone or the service that came with the contract, the son would have recourse against the service provider for contravening the provisions of the Bill. This is notwithstanding the fact that he was not party to the transaction.

So, if you did not buy it, you still benefit from the purchase agreement!

The Bill will have far-reaching consequences in the area of product liability, like the right to fair value, good quality and safety. The proposed legislation will impose strict liability on a producer, distributor or supplier of goods for any loss or damage which results as a consequence of a product failure, defect or inadequate instructions or warnings provided to the consumer.

There will be duties to investigate apparent defects or failures and to notify consumers of defects and to repair or replace hazardous goods.

Insurers providing liability and product liability cover will need to consider the final provisions of the legislation for the purposes of both underwriting any product liability risk and the rating of that risk, and to consider amendments to the wording of their policies. Product manufacturers, suppliers and distributors will need to review their risk control procedures in the context of the final provisions of the Bill.

The Bill also proposes the establishment of a commission, which, together with a tribunal, will provide for the effective administration of the Consumer Protection Act. This commission will be the administrative regulator responsible for investigation of complaints and enforcement of the Act, while the tribunal established under the National Credit Act will conduct hearings on complaints and adjudicate certain disputes and alleged prohibited conduct under the Act.

The Bill also makes provision for criminal and administrative sanctions which relate to offences and prohibited conduct.

The Department of Trade and Industry hails the Bill as a bill of rights for consumers, a form of compliance code for business, an improved tool for the enforcement of rights that have existed in the past but have never been properly enforced due to limited redress and weak enforcement capacity, and a codification of the common law.

The department also believes that the Bill will give life to consumerism and introduce effective consumers. Hopefully this will lead to improved competitiveness, better quality of goods and services, more competitive pricing, innovation and economic sustainability.

While the Bill applies to every transaction occurring between a supplier and a consumer; and every advertisement transmitted or published in the ordinary course of business to prospective consumers in the country, it does not apply to employment contracts, credit agreements and transactions where the consumer is the State, or to transactions between two parties who are part of the 'supply chain', for example when a distributor sells goods to a retailer, if the value of the transaction falls above a threshold prescribed by the Minister.

On the one hand the Bill defines a consumer as somebody to whom goods and services are advertised, offered, supplied, performed or delivered in the ordinary course of business, a user of such goods and services, or somebody who has entered into an agreement or transaction with a supplier.

On the other hand the Bill defines a supplier as somebody who promotes, makes available, agrees to supply or supplies any goods and services.

Transactions under the Bill are defined as any offer between two or more people for the supply of any goods and services in exchange for consideration of payment. Goods are defined as any tangible object, including but not limited to literature, music, software and electricity while services are defined as any work or undertaking performed like educational and consulting services.

The Bill highlights the fundamental rights of consumers like the right of equality in the consumer market, the right to privacy, the right to choose, the right to disclosure and information, the right to fair and responsible marketing, the right to honest dealing and fair agreements, and the right to fair value, good quality and safety.

There are numerous wide-ranging impacts the Bill will have on the economy such as increased insurance premiums for business to cover risk for strict liability.

The Bill certainly heralds a new era in consumerism in South Africa. However, the success will be to what extent consumers and suppliers alike will apply the Bill to benefit the South African society.

Further amendments of the Bill were published on 28 September and promulgation is expected by the end of the year or early in 2009.

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