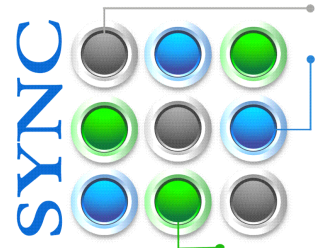


Consumer Protection Act



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Dear Client

Welcome to our 2nd Newsletter for **2011**. We trust that this finds you in good health. This time we focus on the new Consumer Protection Act. (Act 68 of 2008) from the supplier point.

BUSINESS PROFILE

When you interact with us you interact with people, people who value you as a fellow human, dedicated to providing you with their best efforts.

We have team members with many years combined experience. Our motto is to provide you the client with outstanding services in these focus areas:

- **Compliance services**
 - Financial statements, payroll, all SARS returns & other statutory requirements, secretarial work, tax returns and more
- **Advisory services**
 - Tax & business planning, processes, procedures and analysis, business restructuring, set up of trusts, business decisions, funding and more

"We are here for our clients - providing outstanding service that is honest, ethical and friendly"

The **Consumer Protection Act, 2008 (the CPA)** came into force on 1 April 2011. It will have a significant effect on the supply of **goods and services**. The Act regulates the relationship between suppliers and consumers in detail. The Act applies to all transactions occurring within South Africa – this means that the Act will provide protection to a consumer where a product is purchased in South Africa, even if it is manufactured outside of South Africa.

The definition of a "consumer" includes not only the person (either a natural or juristic person) to whom goods or services are promoted or supplied, but also the actual user of the goods or the recipients or beneficiary of the services. In other words, a consumer may be a person other than the person who entered into an agreement with a supplier and paid for the goods or services. With regard to juristic persons, the Act will only provide protection to small businesses (in other words, where the consumer is a juristic person with an asset value or annual turnover below a threshold or R3m).

In terms of section 5 of the Act, certain transactions will be excluded from the application of the Act.

Exempted transactions include those where:

- ✓ goods or services are supplied to the State (transactions where the State will be the consumer); or
- ✓ where the transaction constitutes a credit agreement under the National Credit Act (the goods or services that are the subject of the credit agreement are not excluded from the ambit of the Act); or
- ✓ a transaction pertaining to services under an employment contract; or
- ✓ a transaction which gives effect to a collective bargaining

One of the most controversial provisions of the CPA relates to the **liability of suppliers**. If someone supplies goods, and those goods cause harm to the consumer, the supplier will be liable for the harm. This will be the case even if the supplier was not negligent. Further, all parties in the supply chain can be held liable by the consumer. This includes the manufacturer, the wholesaler and the business that sell the goods to the public.

This means that the consumer will not have to prove that the damages suffered as a result of defective goods was due to the fault (usually negligence) of the producer, importer, etc. The Act now imposes this liability on the suppliers of goods and services, and they bear the onus of proving their innocence in such claims. Such claims extend to damages for death, injury, illness, loss or damage to property, or economic loss as a result of any of the foregoing. The Act provides for a number of defences to such claims in section 61(4). This section provides that the supplier will not be held liable if it was unreasonable to have expected the distributor or retailer to have discovered the unsafe product or characteristic or defect having regard to the supplier's role in the market.

*If you are reselling/importing products make sure you have some recourse against the manufacturer. Also do your homework to ensure that the product you are selling will perform as marketed/sold, that it is of decent quality, do not contain harmful materials or parts and will not harm the user in any way. **(Clear and easy to understand user manual or instruction guide or label is a must to cover your own back)***

Suppliers must also take note of the **standard warranties** that will apply to goods supplied to consumers. These warranties cannot be excluded.

Consumers will have the right to receive goods that:

- ✓ Are reasonably suitable for the purposes for which they are intended,
- ✓ Are of good quality, in good working order and free of any defects,
- ✓ Will be useable and durable for a reasonable period of time, having regard to certain factors,
- ✓ Comply with any applicable standards set under the Standards Act, 1993.

If the goods do not meet the above requirements the consumer may within **six months** after delivery of the goods, without penalty and at the supplier's risk and expense, return the goods to the supplier.

A supplier will have to ensure that its packaging and/or labelling comply with the CPA's requirements. The Minister of Trade and Industry will prescribe certain information or descriptions that must be applied to specific goods. In addition, the CPA has strict requirements relating to the disclosure of the price of goods. If goods are displayed for sale, the supplier must also display the price of those goods at the same time.

The CPA also deals with the **marketing of goods**. Consumers will have the right to restrict unwanted direct marketing (this will include promotional e-mails and telesales). Further, if a consumer bought goods as a result of direct marketing, the consumer will be entitled to cancel the sale of those goods within a specified period.

Another important aspect of the CPA relates to **business names**. In future, a supplier will not be able to trade under a name, unless:

- ✓ In the case of an individual, that name is displayed in his or her identity document,
- ✓ In the case of a juristic person (e.g. a company), the name is registered, or
- ✓ The name is registered in terms of the process prescribed by the CPA.

These issues are just some of those that are dealt with in the CPA. It is important for all businesses to make sure that they are informed about the CPA. They will have to take steps to mitigate their risks against the CPA's strict liability provisions.

We at *SYNC Accounting & Business Services* offer services on any of the above matters. If you would like us to help you in any way, or if you need more information regarding this, please do not hesitate to contact us.

Kind Regards and happy business

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Deadlines coming up:

- CIPRO annual returns – companies & corporations with an April anniversary – 31 May 2011
- EMP501 reconciliation and filing – by 3 June 2011
- First Provisional Tax 2012 – due date 31 August 2011

Important dates:

- New Companies Act – was scheduled to come into effect on 1 April 2011 (DELAYED TO 1 MAY 2011?)
- New Consumer Protection Act – IT IS IN

Other matters:

- The processing of documentation (CK & CM forms) at CIPRO is still taking a long time although it has improved.
- To get refunds from SARS has become a nightmare. We are spending many hours following up on outstanding queries to try and get your refunds but they (deliberately?) make it as difficult and time consuming as possible.

DISCLAIMER

This newsletter is a general information sheet and should not be used or relied on as legal or other professional advice. No liability can be accepted for any errors or omissions nor for any loss or damage arising from reliance upon any information herein. Always contact your professional adviser for specific and detailed advice.

"Out of clutter, find Simplicity. From discord, find Harmony. In the middle of difficulty lies Opportunity."

Albert Einstein

OUR SERVICES (to Companies, corporations, trusts, partnerships, individuals)

Consulting

Business Process Improvement

Dramatically improve financial and operational performance by -

- ✓ improving, developing or standardising operations, systems & procedures
- ✓ enhance business strategies
- ✓ performance management and reporting systems
- ✓ effective planning, budgeting, forecasting and cash flow management

IT Systems

Select, design & implement ERP, Financial and other IT systems, or evaluate and enhance the use of your current system. We are Pastel and Pastel Payroll resellers and can provide assistance on most of the problems or issues you might encounter.

Optimising return on assets

Identifying cost saving opportunities and implementing cost saving initiatives;
Reduce working capital and implementing initiatives to reduce working capital. (Debtors, inventory, creditors, etc)

Accounting

We provide a full accounting function to a wide range of clients. Contact us for any accounting matters, monthly bookkeeping, VAT returns, management accounts, annual accounts, treasury functions, capital expenditure evaluation, special projects, and business valuations.

Payroll

Legal and other statutory requirements for payrolls are complex and time consuming. It is strongly advised that business owners consider outsourcing this function.

We provide all payroll services; payroll runs, payslips, monthly SARS return filing, annual and biannual SARS returns, IRP5 certificates, leave records, etc to ensure you comply with all legal and SARS requirements. We can also handle any EE recordkeeping requirements.

Tax

Completion of all tax returns, tax saving advice, arrear tax returns, tax clearances.

Accounting Officer/Audits

Extra Value adding services are included. Get more than just a signature.

Business set-up, registrations & Secretarial work

We can register new CC's or companies with CIPRO and do the required registrations with SARS, WCA, UIF, DOL, etc and help you set up your systems to ensure a smooth running of your business. We also handle all secretarial requirements.

Other

Other functions include assistance with BBBEE certificates; debt collection, business plans