



# CPA to shake up SA business

by Fidelis Zvomuya

The Consumer Protection Act (CPA) is undoubtedly a game changing piece of legislation that promises to completely shake up the way business is done in South Africa.

According to trade and industry minister, Rob Davies, effective empowerment of consumers will be an important spur to enterprises, urging them to raise their competitiveness and stimulate innovation, product quality and service choice.

He says consumers have a right to be defended against shoddy and sub-standard goods, and describes the act as "groundbreaking", as he says it will also protect producers from unfair competition from illegal imports.

"I believe the legislation will be of great importance to consumers and producers. It will give them an opportunity to raise their game and improve competitiveness. Fair trade is what we seek to introduce in South Africa," he says, adding that in most cases the poor are victims of unfair trade.

## Equal playing field for all

The Act will help equal the playing field and allow consumers to have the understanding they need to ask the right questions and feel fully informed when making decisions. It lays

down rules that restrict the freedom of consumers and suppliers to form agreements. It also prohibits contractual terms that are unfair, unreasonable or unjust. The CPA aims to rid the market of unethical trading, unsafe products, unfair business practices and irresponsible marketing.

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The recently launched Consumer Commission will be a key pillar in implementing the Act, and the legislation requires that the Commission plays a proactive role in strengthening consumer protection.

## How will the CPA affect business?

Some trade analysts say the Act will affect virtually every business that trades in the country, with some saying it is even applicable to government, where it operates as a supplier. Voluntary associations such as clubs, trade unions, associations and societies are equally affected with regard to goods and services provided to their members. "It applies to the supply of all

goods and services, including importers, distributors, retailers and other role players in the supply chain, as well as to the promotion and marketing of these goods and services,” says trade analyst Themba Bongani Hlatshwayo.

He says common business practices like advertising, marketing, contracts, standard terms and conditions, product labelling, promotional competitions, pricing policies, returns policies, franchises, business names, product liability and product safety, and even to an extent business language, will be strictly regulated.

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“Consumers might well be able to sue suppliers and manufacturers of goods and/or services for damages or injuries suffered by them as a result of using the goods or as a result of the services being rendered, regardless of whether or not such a supplier, manufacturer or service provider was negligent,” he adds.

This is so because of the much debated Section 61, which tends to introduce a system of strict company liability.

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With the power of entry and search and a tribunal empowered to hand down a fine of up to 10% of the annual turnover of the business or R1 million, no organisation can afford not to pay attention to this act and its far reaching implications.

## Possible litigation

Themba says the overzealous attempt to protect consumer rights has resulted in some of the provisions being so broad that much of the Act could end up being written by the courts.

He adds: “A number of the provisions can be resolved only by the courts, so you can expect a spate of litigation. For example, if a consumer gives the request notice to cancel a contract, the Act allows the supplier to impose a “reasonable cancellation penalty”, but gives no guidance how this should be calculated.”

The regulations do allow suppliers to charge a cancellation penalty of up to 10% of the amount of the remaining period of the agreement, but again this is a likely area of contention.

Another legal expert says when similar legislation was introduced in the United Kingdom, general product recalls increased by 125% between 2004 and 2007. Non-food product recalls increased by a whopping 894%.

He adds that South Africa can expect similar increases in recalls and more product liability claims, while insurers are likely to impose higher premiums and increased deductibles.

Beyond product and recall liability, however, the Act is also likely to have implications for financial or economic loss and inefficacy covers. “As such, retailers should ensure that all their suppliers have recall plans in place, as well as recall insurance cover built into their general risk control and insurance programmes,” he says.

Given the increased risk of liability across the whole supply chain, “insurers and brokers

clearly have a responsibility to educate their policyholders on the implications of the Act, as well as justify inevitable premium increases”.

### The act as a marketing tool

The CPA can be used in companies’ marketing by explaining to their customers exactly how well they are protected when shopping.

Braam Botha, a lecturer at Nelson Mandela Metropolitan University (NMMU), says the CPA will not only benefit consumers, but has many advantages for business as well.

He says companies that embrace plain language will be reaping the rewards of ‘clean paper’ and fewer queries, meaning that applications that are in plain language tend to be completed accurately and fully, and have fewer errors.

“This creates exponential cost savings in time and resource requirements,” he says, adding that “plain language involves a mental shift in focus and some strategic thinking in terms of the actual purpose of documents, but companies will benefit from investing in their consumers and empowering them to make the right decisions.”

Consumers can look forward to being more informed and stand a better chance of understanding what they are signing, as the Act makes it possible for consumers to demand information in a language that is clear and jargon free.

Braam says the CPA is here to stay and will have a profound impact on the way of doing business in South Africa, and companies will have to comply.

Brandon Cohen, compliance manager of Associated Motor Holdings (AMH) says the new Act should not be regarded by the motor industry “as the end of the world”.

“It is good and creates opportunities. In fact, it is a real positive.” In his presentation, entitled ‘Consumer Protection Act: Risks and Opportunities’, given at the RMI Business Conference recently, he said there is nothing really revolutionary in the new legislation.

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He gave a detailed overview of the risks and opportunities presented by the new Act. “As far as the risks are concerned, businesses should pay particular attention to what the law now regards as direct marketing, this includes marketing tools such as e-mails, sms’s and product bundling, in other words selling efforts that force the customer to take product B when he buys product A.”



Rob Davies, Minister of Trade and Industry

For more information, contact the Department of Trade and Industry’s National Consumer Commission at telephone 0861 843 384 or send an e-mail to [contactus@thedti.gov.za](mailto:contactus@thedti.gov.za). Alternatively, visit [www.dti.gov.za](http://www.dti.gov.za). **M&J**