

## **CONSUMER PROTECTION ACT, 68 OF 2008 PRODUCT LIABILITY**

The purpose of the Consumer Protection Act (“the Act”) is to provide a framework for consumer protection, and other articles in this series will deal with the application of the Act, etc. Suffice to say in the context of this aspect of the Act that all suppliers of goods and services, including Chartered Accountants, will need to take note of the provisions of the Act and the impact on their business.

One of the most contentious areas of the Act is the section dealing with product liability, section 61. This section has drastically amended the common law of liability pertaining to manufacturers. Under the common law only the manufacturer or distributor who professed to have the knowledge and expertise about the goods they were supplying, could be held liable for the defective goods in delict (civil wrong). Section 61 now extends this liability (also referred to as ‘strict liability’) to the producer, importer, distributor and retailer and provides that each of the parties is jointly and severally liable for defective goods, irrespective of whether or not negligence could be ascribed to the particular supplier.

Strict liability 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 of the suppliers of goods and services, and they bear the onus of proving their innocence in such claims. The claim extends 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), and in particular, the development of the law surrounding section 61(4)(c) will be keenly anticipated. 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.

In the meantime, suppliers are advised to take preventative measures in order to minimize the chances of being held liable under the Act. This could include ensuring that labels on products adequately warn and instruct the consumer on how to use and maintain the goods, the prompt addressing of any defects after the product has been sold, and making adequate insurance provisions to cover liability risk.

As the Act has been signed and will come into effect in two stages, with the first stage being 24 April 2010 and the second stage 6 months later suppliers should take note that section 61 will apply to all goods being delivered/ supplied on or after 24 April 2010, although most of the Act's other provisions only come into effect during October 2010.

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