

THE NEW CONSUMER PROTECTION BILL, 2017: INTRODUCING MORE RIGHTS FOR CONSUMERS - (Simon Bathusi, Associate)

The Consumer Protection Act of 1998 was passed by Parliament of the Republic of Botswana to provide for the protection of the interests of consumers by means of investigation, prohibition and control of unfair business practice. The Act defines unfair business practice as any business practice which, directly or indirectly, has or is likely to have the effect of unfairly affecting any consumer. It does not, however, prescribe conducts deemed to be unfair business practices.

The new Consumer Protection Bill ("Bill") seeks to, amongst other things, clear this gap and make provision for a new set of rights to be enjoyed by consumers.

It is proposed that the Bill will be administered by the Competition and Consumer Authority to be created under the Competition Bill 2017. The Competition and Consumer Authority will have wider functions to include those which are currently within the mandate of the Consumer Protection Office.

The Bill makes it a criminal offence to make false or misleading representations by word or conduct with respect to the goods or services being sold. The prohibited false representations include those with respect to the quality, composition, model, goods that are new or reconditioned, goods that have sponsorship approval, affiliation or performance characteristics, benefits, uses, accessories that they do not have, price and place of origin of the goods. The offence created for this prohibition attracts a fine not exceeding P500,000 or imprisonment for a term not exceeding 3 years.

The Bill also prohibits suppliers from offering gifts, prizes or free items with the intention of not providing such gifts, in the manner offered. It goes further to prohibit the increase in the purchase price of goods or reduce the quantity or quality, on the basis of gifts offered, for acquiring the goods.

One other notable introduction under the Bill is the prohibition to directly or indirectly promote or join or participate in pyramid schemes or multiplication schemes or chain letter schemes. The Bill provides that a person who participates in such a scheme commits an offence and shall be liable, upon conviction, to a fine not exceeding P100, 000 or to imprisonment for a term not exceeding 5 years or both.

The Bill also introduces consumers' rights with respect to delivery of the services or goods. In terms of Section 14 of the Bill, the consumer has a right to timely performance and completion of services, performance of the services in a manner and quality, that the consumers are reasonably entitled to expect.

The Bill also requires agreements for supply of goods, to contain warranties by the producer or importer or the distributor that the goods comply with the standards under Section 16. It has been noted however, that Section 16 does not set out any standards or requirements for purposes of the warranty. Goods supplied, failing to comply with the standards set, may be returned by a consumer within 6 months after delivery in their merchantable state or original state without penalty and at the supplier's risk and expense. A supplier would then be required to repair or replace the defective goods or refund the consumer the amount already paid.

The Bill introduces a section to deal with unfair contract terms between suppliers and consumers. Under the Bill, a contract for the supply of goods may not have terms which, amongst other things; enables

the supplier to unilaterally change the terms of the contract, enables the supplier to price the goods in a manner that is unfair, unreasonable or unjust, to waive the rights of the consumers or to waive the liability of the supplier.

Suppliers are required, under the Bill, to ensure that every term in supply contracts is brought to the attention of the consumer. This applies especially to terms that limit the liability of the supplier, constitute an assumption of risk or liability to the consumer, impose an obligation on the consumer not to hold the supplier responsible for any loss or requires the consumer to be aware of any risk associated with the goods or services, that under normal circumstances, the consumer would not be expected to be aware of.

The supplier is required to ensure that the consumer consents to the above terms and show such consent by signing or initialling next to each term.

The business community should be prepared for the passing of this Bill into an Act, as it has provisions which will affect how they have been conducting their businesses. From a consumer rights' perspective, this Bill is a welcomed development under The Consumer Protection Law of Botswana and will go a long way to ensure that consumers' rights are protected.