

Consumer Awareness

Online Transactions / E-Commerce in Botswana - (Ada Mqadla, Associate)

The current era of technology and the free flow of information has seen the world shift to a more integrated and internet-based system with regard to day to day functions such as shopping and the general acquisition of goods and services. E-commerce, particularly online shopping, has increasingly become more prominent as consumers prefer the efficiency of making purchases using their computers, laptops, smartphones and any other capable device.

The benefits of E-commerce to the global economy are tenfold, however, consumers who make commercial transactions electronically, over the Internet, are at a higher risk to succumb to fraud and goods not being at a satisfactory quality upon delivery. Consumers in Botswana have too often found themselves victim to this. This is primarily attributable to the consumers' inability to inspect goods before they are purchased coupled by the impersonal nature of the transaction.

The Electronic Communication and Transactions Act 14, 2014 ("ECTA"), which came into force on the 1st April 2016, regulates the facilitation of electronic transactions in Botswana and seeks to provide for the protection of the rights and interests of consumers in Botswana who enter into electronic transactions with suppliers for the purchase of goods and services.

The authoritative body responsible for ensuring that the provisions of the ECTA are complied with is the Botswana Communications Regulatory Authority ("BOCRA").

The protection afforded to consumers by the provisions of the ECTA applies to any electronic transaction, irrespective of the applicable or agreed upon legal system or jurisdiction to the transaction or agreement in question.

It is therefore imperative that consumers in Botswana familiarise themselves with all rights afforded to them in respect of E-commerce/on-line shopping under the ECTA.

The ECTA, defines the word "Electronic" as anything in relation to technology, having electrical, digital, magnetic, wireless, optical electromagnetic or similar capabilities and also defines the word "Electronic Transaction" as a transaction, action or set of actions of either a commercial or non-commercial nature, and includes the provision of information or e-government services.

Consumer's right to a cooling-off period

The ECTA provides for a cooling-off period where a consumer is entitled to cancel, without reason and penalty, any transaction and any related credit agreement for the supply of goods within 7 days after the date of the receipt of the goods or with regards to services, within 7 days after date of the conclusion of the agreement.

If payment for the goods or services has been effected prior to a consumer exercising the right to cancel, the consumer is entitled to a full refund of such payment, and the supplier shall refund the consumer within 30 days of the date of cancellation.

Supplier's Obligations

The ECTA provides that a supplier, who offers goods or services for sale, for hire or for exchange by way of an electronic transaction, shall disclose the following information to consumers:

- its full contact details, including its place of business, email address, mobile number, and telefax number;
- a sufficient description of the main characteristics of the goods or services offered by that supplier to enable the consumer to make an informed decision on the proposed electronic transaction;

- the full price of the goods or services, including transport costs, taxes and any other fees or costs;
- information regarding the payment system that is sufficiently secure with reference to accepted technological standards at the time of the transaction and the type of transaction concerned;
- any terms of agreement including guarantees that will apply to the transaction and how those terms will be accessed, stored and reproduced electronically by the consumer; and
- the manner and period within which consumers can access and maintain a full record of the transaction.

If the supplier fails to comply with its obligations in terms of the ECTA, a consumer is at liberty to cancel the transaction within 14 days of receiving the goods or services and return the goods or cease using the services performed. The supplier shall, upon receipt of the returned goods refund all payments made by the consumer less the direct costs of returning the goods.

The supplier is obliged to provide a consumer with an opportunity to review the entire electronic transaction, before final placement of the order takes place and afford the consumer the chance to correct any mistakes or to withdraw from the transaction if they so wish.

After receipt of an order, a supplier is obliged to execute that order within 30 days, unless the consumer and supplier have agreed otherwise. Failure to execute the order within the 30-day period or agreed period entitles the consumer to cancel the agreement by giving 7 days' written notice to the supplier.

In addition, a supplier who is unable to perform in terms of the agreement between the supplier and consumer on the grounds that the goods and services ordered are unavailable, the supplier shall immediately notify the consumer of this fact and refund any payments within 30 days after the date of notification.

The protection afforded by the ECTA to consumers, however, does not extend to electronic transactions that are, *inter alia*, by way of an auction, for the supply of foodstuffs, beverages or goods intended for everyday consumption, where the price for the goods and services are dependent on fluctuations in the financial markets and cannot be controlled by the supplier of the goods, sale of newspapers, periodicals, magazines or books, on-line gambling and for the provision of accommodation, transport, catering or leisure services.

The ECTA provides adequate measures for the protection of consumers' interests and rights pertaining to electronic transactions, which is very commendable. Notwithstanding this, there is still some uncertainty as to how the provisions of the ECTA will be practically enforced against suppliers of goods who are based in different jurisdictions and even continents. We will therefore have to wait and see how the Courts interpret the ECTA and its application in respect of online purchases of goods in other jurisdictions.