

# FINANCE AND BANKING ALERT

## IN THIS ISSUE

### GAUTENG CONSUMER POLICY: A VOICE AMPLIFIER FOR THE VOICELESS

Consumer rights are at the cornerstone of our economy and are necessary in order to promote a healthy and competitive economy. With this in mind, the Gauteng Consumer Protection Policy (Policy) proposes necessary measures to ensure adequate protection of consumer rights enshrined in the Consumer Protection Act, 2008 (CPA), at a provincial level.

# GAUTENG CONSUMER POLICY: A VOICE AMPLIFIER FOR THE VOICELESS

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On 31 May 2017, the Department of Economic, Environment, Agriculture and Rural Development published the Policy for public comment (Department). The Department will host a public hearing on 28 July 2017 and all stakeholders have been invited to attend this hearing to provide comments on the Policy. The purpose behind the Policy is to balance the different interests of the consumer industry, the community, society, and specifically the promulgation of the CPA. The Gauteng Provincial Government proposes this Policy to:

1. facilitate the access to justice for vulnerable consumers;
2. provide awareness and educational programmes to empower consumers;
3. facilitate responsible attitudes to marketing, advertising, sale and consumption of consumer goods; and
4. to ensure that appropriate measures are in place to prevent or reduce the harm caused by prohibited conduct.

#### **Co-operative governance**

The CPA provides certain rights to consumers. However, the Gauteng Provincial Government (Gauteng) has stated that those rights are meaningless without quick and effective redress and enforceability. Gauteng has further acknowledged that some issues are better regulated at a provincial or local level and that it is important to establish a system of uniformity across all provinces.

Section 69 and 70 of the CPA clearly calls for certain structures to either be created or confirmed by the provinces in order to protect consumer rights. In this regard, the Policy seeks to align the provincial legislation and national legislation and give effect to the role played by the Gauteng Province, as established in the CPA.

Section 83(1) of the CPA regulates the co-operative exercise of concurrent jurisdiction. However, the CPA does not clearly identify the respective roles played by the national and provincial government in consumer protection. Chapter 6 of the Policy recognises that a tacit agreement already exists, in that the role of national government is to investigate and prosecute businesses with national reach or presence, while provincial consumer courts will focus on individual complaints against regional or local businesses. However, it is said that those roles are to be completely clarified by the Policy in order to avoid duplication and misallocation of resources.

#### **Consumer redress**

Chapter 6 of the Policy, importantly, deals with improving access to redress in Gauteng for consumers. Consumers are given a range of bodies responsible for their protection, however, the Policy aims to create a single access point (regional offices) for all consumer related complaints and enquires. The Policy has a view that this single point of access will

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make it easy for the consumer to access information about their rights and recourse, advice on consumer matters, and all issues relating to enforcement of rights. These regional offices will be established in order to address consumer complaints more effectively.

Also proposed in the Policy is a new complaint handling approach, as opposed to the "traditional" lengthy investigation of each individual complaint. The Policy emphasises the importance of a quick turnaround time on consumer complaints. The Policy states that the new approach will focus on complaint resolution and negotiation as a first step. This will include taking statements from consumers and witnesses under oath before matters can be presented to the Gauteng Consumer Tribunal by way of an application procedure. It is hoped, that this new approach will, relieve the parties from having to testify in lengthy proceedings.

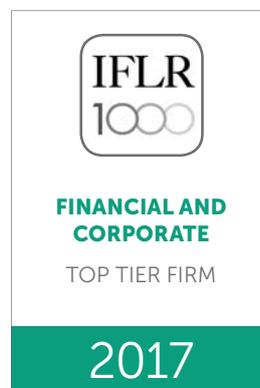
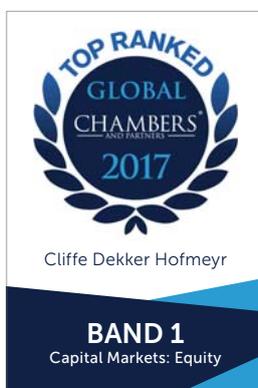
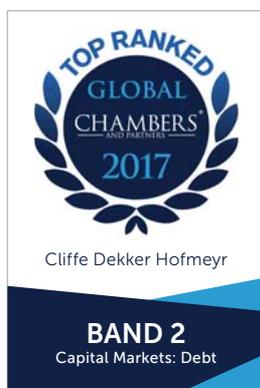
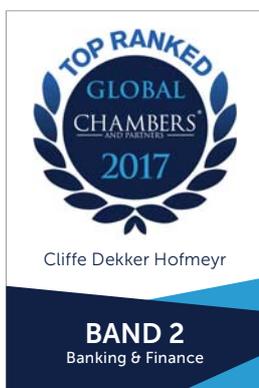
If an agreement is reached during the negotiation and mediation process, such agreement can be made a consent order by application to the Gauteng Consumer Tribunal.

Chapter 8 of the Policy, proposes that findings and orders of the Gauteng Consumer Tribunal be given the same status as an order of the Magistrate's Court in terms of the Magistrate's Court Act, 1944 and be enforced and executed in terms of that Act.

## Conclusion

This Policy will go a long way in addressing certain objectives of the CPA, such as, to promote consumer rights and to protect their interests. The provincial government has to be hands on in ensuring the proper implementation and application of the CPA. Consumers should be educated on their rights as well as the enforceability thereof and the Policy goes a long way to address that.

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