

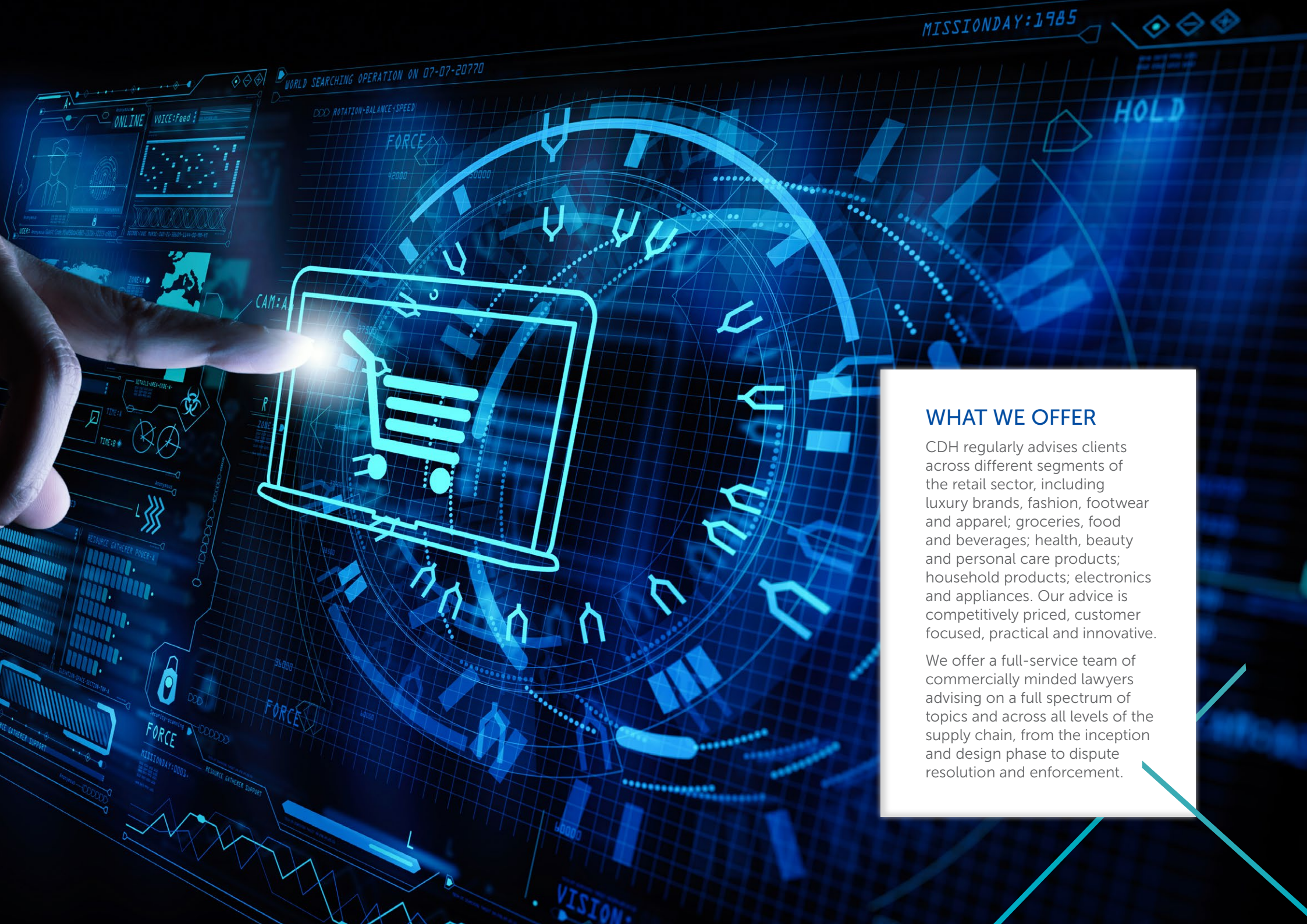


CONSUMER GOODS & RETAIL SECTOR



The Consumer Goods, Services and Retail Sector is a strong, dynamic and innovative segment of the South African economy. A growing consumer class, increase in consumerism and globalisation are amongst the factors driving demand and growth in this sector. Time-constrained consumers seeking convenient retail experiences, the COVID-19 pandemic and increased access to the internet have resulted in a shift towards e-commerce retail offerings and has reshaped the Consumer Goods, Services and Retail Sector. The shifting regulatory landscape and changing market conditions mean that our clients face increasingly complex commercial and regulatory challenges in this sector.

Our multidisciplinary team of specialist lawyers have the skills and expertise to understand these challenges and are able to provide innovative, practical, and commercial advice to our clients to help them achieve their business objectives, protect existing interests, reduce the risks involved in operating in this fast-changing sector and maximise opportunities for growth. Our lawyers have extensive experience in this sector, understand how the industry is being regulated, foresee legal problems and provide expert advice that is supported with a sharp understanding of developing trends.



WHAT WE OFFER

CDH regularly advises clients across different segments of the retail sector, including luxury brands, fashion, footwear and apparel; groceries, food and beverages; health, beauty and personal care products; household products; electronics and appliances. Our advice is competitively priced, customer focused, practical and innovative.

We offer a full-service team of commercially minded lawyers advising on a full spectrum of topics and across all levels of the supply chain, from the inception and design phase to dispute resolution and enforcement.

CONSUMER LAW AND CONSUMER FINANCE

Consumer protection and consumer finance regulation is constantly developing and, as such, it is vital that our clients remain abreast of matters in order to ensure compliance and avoid penalties and possible legal action. Our lawyers hold in-depth knowledge and experience in consumer protection and consumer finance regulation and are able to efficiently navigate our clients through the intricacies of the developing South African consumer protection and consumer finance legal and regulatory landscape.

Our lawyers have experience in advising on compliance with Consumer Goods, Services and Retail Sector regulatory legislation impacting our clients such as the National Credit Act 34 of 2005 and Consumer Protection Act 68 of 2008 (Consumer Protection Act), including:

- advising on aspects of consumer finance, such as credit sale and store-cards
- advising on loyalty programmes
- reviewing commercial contracts to ensure compliance with all consumer protection and consumer finance laws and regulations, such as ensuring that commercial contracts do not contain any unfair contract terms as stipulated in section 48 of the Consumer Protection Act
- facilitating interactions with the numerous voluntary associations such as the Consumer Goods Council of South Africa
- advising on any consumer complaints and investigations and ensuring their effective resolution
- representing our clients in the various consumer protection forums such as the National Consumer Tribunal and Consumer Goods and Services Ombud
- assisting our clients with drafting and implementing company policies which ensure compliance with consumer protection and consumer finance laws and regulations, such as drafting *"Treating Customers Fairly"* policies
- providing tailored training to frontline and managerial employees on consumer protection law
- assisting in structuring product offerings and programs in compliance with the applicable legal requirements
- advising on franchising arrangements under consumer law
- reviewing business processes and recordkeeping practices to drive compliance with consumer protection laws
- assisting clients with product recall notifications and processes.



CORPORATE & COMMERCIAL

Our corporate and commercial lawyers provide premium services in all areas of corporate and commercial law and corporate governance. Our specialists have advised a number of multinational and local companies on establishing and building their presence in the South African market, and we have long-standing relationships with clients in the sector.

Our corporate and commercial lawyers provide the following services:

- assistance with commercial contracts such as distribution contracts, sales and marketing contracts, supply contracts, consultancy contracts, agency contracts, franchising contracts, consignment contracts, packaging and manufacturing contracts, logistics contracts, outsourcing contracts, licensing contracts to name a few
- corporate advisory services in respect of corporate transactions such as mergers and acquisitions, share subscriptions, share buybacks, schemes of arrangement, share purchases, drafting and reviewing commercial agreements, conducting due diligence investigations and drafting advisory opinions
- advising on joint ventures
- advising on B-BBEE transactions, drafting enterprise and supplier development agreements and drafting opinions on the B-BBEE Codes (and/or relevant Consumer Goods, Services and Retail Sector codes) regarding their application to our clients and/or their organisations
- liaising with regulators such as the Takeover Regulation Panel
- corporate governance related assistance, including general company secretarial work, assisting with annual general meetings, drafting constitutional documents and advising on good corporate governance practices



COMPETITION LAW

There are frequent legal and regulatory changes affecting the Consumer Goods, Services and Retail Sector. As a result, companies in the Consumer Goods, Services and Retail Sector are tasked with navigating many competition issues that affect business performance. Our competition practice has deep experience advising clients on all competition law issues, including mergers, market inquiries, prohibited practices litigation, general compliance, corporate leniency, whistle blower cases and, exemption applications and merger notifications.

Our services and experience include:

- advising on compliance (such as opinions, training workshops, dawn raid advice, and general advice on business strategy in light of competition legislation)
- advising on mergers and acquisitions cartels and abuse of dominance cases
- representing clients in merger proceedings before the competition authorities in South Africa and across several other African jurisdictions, including very significant transactions in the beverages, clothing apparel and consumer security services markets
- representing clients in market inquiry processes before the competition authorities in a range of markets, including property, retail and telecommunications
- advising clients as both complainants and respondents in relation to prohibited practices occurring in the retail and consumer markets
- advising on the implementation of Competition Act 89 of 1998 compliance programmes
- advising on industry block exemption in the retail property sector in terms of the Competition Act 89 of 1998
- representing clients and providing advice in terms of the Grocery Retail Sector Market Inquiry undertaken by the Competition Commission of South Africa (including the various outcomes thereof, for example, industry Codes and undertakings)
- advising on all levels of the value chain in the Consumer Goods, Services and Retail Sector



EMPLOYMENT LAW

The Consumer Goods, Services and Retail Sector faces continual challenges in managing large work forces with a varied skill levels, irregular working patterns and high staff turnover. Our employment law practitioners are positioned to offer our clients premium services. They possess a deep and thorough understanding of the unique challenges that the sector faces and have extensive experience in all aspects of employment law. Our employment practice has kept itself at the forefront of new employment law issues, particularly issues impacting our clients in the Consumer Goods, Services and Retail Sector, and prides itself as a national thought leader in its field. The practice remains at the cutting edge of employment law, releasing innovative e-training products and dealing swiftly and effectively with unprecedented legal issues such as those introduced by the COVID-19 pandemic, the lockdown and mandatory vaccinations.

Our services and experience include:

- appearing in all employment-related forums, including bargaining councils, the Commission for Conciliation, Mediation and Arbitration, Labour Court, Labour Appeal Court, High Court, Supreme Court of Appeal and Constitutional Court, and representing our clients in their dealings with the national Department of Labour
- advising and assisting in relation to wage negotiations, large-scale retrenchments and restructuring, collective bargaining, the conclusion of collective agreements and demarcation disputes, strikes, and collective and individual disciplinary procedures
- chairing and initiating individual and collective disciplinary hearings
- advising in relation to the implications of mergers and acquisitions, including business transfers
- advising on employee benefits and incentives
- advising on workplace occupational health and safety
- advising on client strategies in relation to collective and individual employment related matters
- providing employment and labour related training

FOOD SAFETY, PRODUCT REGULATION AND PRODUCT LIABILITY

The importance of sound compliance with food safety and product standards cannot be understated. Failure to adequately comply with such laws and regulations can expose clients to immense liability through, amongst others, hefty penalties and class actions. Our lawyers offer a range of expertise in this area and are able to avoid crisis situations through advising on sound compliance with the relevant laws and regulations as well as provide incident support service in managing and navigating our clients out of such crisis.

Our services and experience include:



Advising on general food safety and product compliance



Advising on relevant legislation, being the Agricultural Product Standards Amendment Act 63 of 1998, the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 (Foodstuffs Act), the National Health Act 61 of 2003 and the Meat Safety Act 40 of 2000



Advising on compliance with packaging requirements of products stipulated in South African legislation such as the Consumer Protection Act, the Foodstuffs Act, the Food Labelling Regulations (R146) and the Liquor Products Act 60 of 1989

SABS

Assisting and facilitating interactions with product standards regulators such as South African Bureau of Standards



General compliance advice throughout the lifecycle of a product, including record keeping, product management



Product liability claims, class actions, product liability disputes and exposure assessments

RECALL

Product recall campaigns

HEALTH & SAFETY

Our environmental and regulatory practice specialises in advising on the regulation of occupational health and safety as well as food, cosmetics and disinfectants, offering compliance advice to clients in respect of the extensive requirements prescribed under various laws regulating the Consumer Goods, Services and Retail Sector, including the Occupational Health and Safety Act 85 of 1993 (OHSA), the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) and the Foodstuffs Act.

Our services and experience include:

- assessing and advising on material risks, general compliance and permitting requirements
- advising on the necessary consents required by the Department of Employment and Labour in respect of regulations relating to asbestos
- advising on contractual liability in terms of OHSA for health and safety incidents and assessing whether such liability is properly regulated in relation to customers and contractors
- assessing compliance with obligations under COIDA in relation to casual and full-time employees
- undertaking due diligence investigations and assessing health and safety liability in respect of compliance with the Consumer Goods, Services and Retail Sector legislation and regulations
- drafting health and safety legal registers
- advising on and drafting health and safety contractual provisions

INTELLECTUAL PROPERTY

In the increasingly complex and competitive retail environment, brand protection and commercialisation is of significant importance and intellectual property often accounts for some of the most valuable assets within a business in the Consumer Goods, Services and Retail Sector. We regularly advise on transactions in this sector which involve intellectual property and are experienced in key areas including:

- the preparation of franchise, licence, assignment, sponsorship, hypothecation and supplier agreements
- providing advice on and obtaining approvals for cross-border intellectual property transactions
- conducting due diligence investigations in respect of intellectual property portfolios
- providing advice on product labelling, advertising and promotional competitions

In addition, we regularly work together with boutique intellectual property law firms which specialise in the registration, management, enforcement and licensing of intellectual property, including copyright, trademarks, domain names, designs and patents, as well as the registration of hypothecations, assignments and registered users to ensure that our client's intellectual property is protected and enforceable.

REAL ESTATE

Our real estate practice advises clients on a range matters from the structuring and planning phase until implementation. We have a strong focus on commercial property spanning microbusinesses, franchises and global retailers. Our real estate practice understands the markets and environment in which our clients operate and provides strategic, legal and commercial support to them.

Our services and experience include:

- assisting with a wide range of conveyancing issues in terms of property transfers, consolidations, subdivisions, servitudes, land swaps, leases and advising in respect of various legal and regulatory issues that may arise
- planning, structuring and implementing property development of shopping centres and other retail outlets
- advising on sale and lease of retail property
- assisting clients on mortgage finance transactions for the acquisition or development of retail property including the registration of mortgage bonds over immovable property and notarial bonds over movable assets

- dealing with related security requirements required by the financial institutions when granting mortgage finance including the provision of security in the form of guarantees, suretyships, cessions
- advising on the financing and transfer of vessels
- conducting due diligences for a range of Consumer Goods, Services and Retail purposes





TAX, EXCHANGE CONTROL AND CUSTOMS, AND EXCISE

The structuring of a transaction will have different and often conflicting tax consequences for different parties to the transaction which need to be appropriately and effectively handled at the early stages of the transaction. In addition, given the increase in e-commerce and general trends of globalisation, businesses in the Consumer Goods, Services and Retail Sector are increasingly transacting across borders. These transactions may attract exchange control, customs and excise and valued-added tax (VAT) and need to be understood and properly managed in order to avoid major economic penalties.

Our tax and exchange control practice specialises in giving tax and exchange control advice on a wide range of matters that are regulated by South Africa's extensive tax legislation framework, such as income tax and VAT legislation, as well as exchange control legislation.

The matters our tax and exchange control practice advise on include corporate restructurings, mergers and acquisitions, cross-border transactions, financing transactions, utilisation of tax allowances available to taxpayers, the settlement of disputes with SARS and engaging with the South African Reserve Bank and Authorised Dealers to obtain exchange control approval for transactions. Our clients have the benefit of working with leading specialists who have advised a number of clients operating in the Consumer Goods, Services and Retail Sector about structuring their affairs in the most efficient manner, while ensuring that they comply with the applicable legal framework.

Our services and experience include:

- advising and representing clients in advance tax rulings and tax dispute resolution
- conducting independent tax reviews and tax due diligences
- providing advice and opinions relating to exchange control, customs and excise and valued-added tax

TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

Given the increasing shift from brick-and-mortar establishments to digital and e-commerce markets in the Consumer Goods, Services and Retail Sector, premium legal assistance in this practice area is essential. Our technology, media and telecommunications practice is unique because we draw on international experience when partnering with clients. Borders are no barrier to our lawyers providing sophisticated, highly practical information and legal advice for clients which not only considers the legal position but also draws on international best practice and commercial considerations.

We constantly stay abreast of international trends, precedents and developments in order to provide practical advice to our clients. This approach has proved invaluable as, given the global nature of the digital and e-commerce market, it is no longer sufficient to understand complex local regulations and consumer protection laws. Rather, it is crucial to appreciate their interplay in the context of a global online market.

Our services and experience include:

- assisting and advising clients on current legislation regulating electronic transactions, including the Electronic Communications and Transactions Act 25 of 2002 and the Consumer Protection Act
- advising in respect of website and mobile application terms and conditions, privacy policies and click-wrap agreements and assisting with consumer contract terms and conditions in respect of liability and warranties
- advising on the use of machine learning, big data analytics and artificial intelligence in a number of sectors
- tracking the developments in cybersecurity and cybercrime policy responses in South Africa since the inception of the policy and legislative frameworks. We work in a cross disciplinary manner with technical information technology experts and forensic experts to assist our clients to understand the risks, develop response plans and ensure compliance with the dictates of legislation. We also offer training and advisory services tailored to clients' needs and we assist clients with managing risk and security by being well placed to assist clients in preventing data breaches and in taking the required legal and mitigating action should a breach have occurred
- advising on fintech and related fields, and regularly advising on the payment regulations and licensing requirements for online payment systems
- advising on the transfer and protection of intellectual property, e-commerce, branding, social media and information technology assets as part of mergers and acquisitions and other transactions
- assisting with compiling policies for compliance with Protection of Personal Information Act 4 of 2013 (and the General Data Protection Regulation 2016/679) and with developing data management strategies
- advising clients on data protection issues in corporate transactions, navigating international transfers of personal information and drafting intra-group and third party data transfer agreements and various forms of data privacy policies. Of particular relevance to the Consumer Goods, Services and Retail Sector is our experience in direct marketing campaigns and on the application of related privacy and consumer protection laws
- advising on managing consent for direct marketing to consumers as well as the management of consumer databases in the context of applicable privacy legislation



Payment Successful

Payment Successful



DISPUTE RESOLUTION

Our dispute resolution practice has a reputation for succeeding in the most sensitive and complex of matters in the Consumer Goods, Services and Retail Sector. Through our approach of providing pragmatic, commercially-focused legal solutions for our clients' most labyrinthine issues, we have earned the confidence of the leading Consumer Goods, Services and Retail Sector brands in Southern Africa, who entrust us with their most important matters.

Our services and experience include:

- product liability disputes and exposure assessments
- franchise disputes
- consumer complaints
- product recall campaigns
- supply chain disputes
- trademark and copyright infringements
- Consumer Protection Act 68 of 2008 disputes and compliance
- retail finance disputes
- advertising campaigns, sponsorship and/or promotional disputes
- notarial bond perfections and shortfall recoveries;
- lease disputes and the potential exposure that lease disputes present in relation to product and stock securities
- business rescue, restructuring and/or insolvency proceedings from the perspective of a retailer, landlord or supplier
- forensic investigations relating to product/stock theft and/or employee, service provider, retailer or supplier fraud

MARKET RECOGNITION

The way we support and interact with our clients attracts significant external recognition.

Tim Smit is the Joint Head of the Consumer Goods, Services & Retail sector, and a director in our Dispute Resolution practice. *The Legal 500 EMEA 2020–2023* recommended him as a next generation lawyer for dispute resolution.

Chambers Global 2023 ranked **Albert Aukema** in Band 5 for competition/antitrust. *Chambers Global 2020–2022* ranked him as an up and coming competition/antitrust lawyer. *The Legal 500 EMEA 2021–2022* recommended Albert for competition.

The Legal 500 EMEA 2021–2023 recommended **Simóne Franks** for real estate.

Chambers Global 2019–2023 ranked **Peter Hesseling** in Band 2 for corporate/M&A. *Chambers Global 2023* ranked him in Band 3 for Capital Markets: Equity. *Chambers Global 2017–2018* ranked him in Band 3 for corporate/M&A. *The Legal 500 EMEA 2022* recommended Peter for banking & finance. *The Legal 500 EMEA 2012–2023* recommended Peter for commercial, corporate/M&A. *IFLR1000 2021–2022* recommended Peter as a market leader for restructuring & insolvency, and M&A. *IFLR1000 2018–2020* recommended Peter as a highly regarded lawyer for restructuring & insolvency, and M&A.

Chambers Global 2014–2023 ranked **Willem Jacobs** in Band 2 for corporate/M&A and in 2022–2023 ranked him in Band 3 for corporate/M&A: Private Equity. *The Legal 500 EMEA 2016–2023* recommended him as a leading individual for commercial, corporate/M&A. Willem was also recommended in 2012–2016 for mining. *IFLR1000 2018–2022* recommended Willem as a highly regarded lawyer for M&A, and private equity.

Susan Meyer is the Joint Head of the Healthcare & Pharmaceuticals sector, and a director in our Competition Law practice. *The Legal 500 EMEA 2021–2023* recommended Susan for competition. *IFLR1000 2018–2022* recommended her as a notable practitioner.

IFLR1000 2021–2022 ranked **Anita Moolman** as highly regarded in M&A.



OUR TEAM

For more information about our Consumer Goods & Retail sector and services in South Africa and Kenya, please contact:



Pitso Kortjaas

Joint Sector Head:
Consumer Goods, Services & Retail
Director: Finance & Banking
T +27 (0)11 562 1589
E pitso.kortjaas@cdhlegal.com



Tim Smit

Joint Sector Head:
Consumer Goods, Services & Retail
Director: Dispute Resolution
T +27 (0)11 562 1085
E tim.smit@cdhlegal.com



Albert Aukema

Director:
Competition Law
T +27 (0)11 562 1205
E albert.aukema@cdhlegal.com



Simone Franks

Director:
Real Estate Law
T +27 (0)21 481 6464
E simone.franks@cdhlegal.com



Peter Hesseling

Director:
Corporate & Commercial
T +27 (0)21 405 6009
E peter.hesseling@cdhlegal.com



Willem Jacobs

Director:
Corporate & Commercial
T +27 (0)11 562 1555
E willem.jacobs@cdhlegal.com



Susan Meyer

Joint Sector Head: Healthcare
Director: Competition Law
T +27 (0)21 481 6469
E susan.meyer@cdhlegal.com



Anita Moolman

Director:
Corporate & Commercial
T +27 (0)11 562 1376
E anita.moolman@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 100 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

©2023 9430/APR