THE REGULATORY DEBATES

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Editorial

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Corporate Governance, King IV and COVID 19

By Mrs Nicolene Schoeman-Louw: Managing Director, Schoeman Law Inc

According to the Institute of Directors of Southern Africa ("IODSA"), the King lV Report on Corporate Governance ("King IV") recognises companies as integral parts of the broader society. Also, King IV defines corporate governance as the exercise of ethical and practical leadership by the management towards the achievement of defined governance outcomes: ethical culture, good performance, effective control, and legitimacy.

With the crisis of the Covid-19 pandemic and the South African government's reaction thereto under the Disaster Management Act 57 of 2002 as amended, the role of leadership in both the public and private sector has become pivotal. So, the question is, how should boards, governing bodies and management as envisioned in the Companies Act 71 of 2008 as amended (the "Act"), adapt? Also, what is expected of them in this context?

According to the IODSA, three main components – as a point of departure, have been highlighted:[1]

1. Consider whether the Company's current culture and values are appropriate in light of changing market values and priorities.

2. Ensure clarity regarding the roles of the Management and Management.

3. Reassess whether the management team has the skills, competency and experience to deal with the crisis; and determine whether additional resources or strategic counsel are required.

As a first step, before anything is undertaken a specific focus on human health and safety and the broader responsibilities flowing from there, should be the main priority and therefore the following should be considered:

- Health and safety of employees, as well as customers interacting with the workforce.
- Succession plans for Management.
- Multi-skilling, cross-skilling and upskilling.
- Productivity measures and precise output requirements.

[1] https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/04630F89-33B7-43E7-82B3-87833D1DC2E3/King_Committee_Guidance_in_response_to_Covid19.pdf: accessed 21 June 2020

- Technological support and adaptive methods of working, including methods of employees staying connected while working from home.

In the absence of relevant experience when conducting the skills mentioned above, encourage the Company to seek out best practices, locally and globally, newly available resources and guidance issued by regulators, and external advice where appropriate.

Where revision and alignment are taking place, the extent to which the current governance process and structures are working or need to be revisited needs to be established. A proper record should be kept of its deliberations, especially the critical matters considered, key decisions and the reasons therefore. Importantly, assess the adequacy of reporting. It should enable the necessity of Management to deal with issues expeditiously and keep them accountable.

Companies should ask themselves whether measures that are being considered align with the following:

1. The Company's response is in line with the fundamental culture and values of the Company.
2. Demonstrate responsible leadership.
3. How it engages with employees, customers, suppliers, the community, government and other stakeholders and the extent to which the Company can support such stakeholders

In conclusion, it is essential to adequately consider and assess whether changes that are being adopted would have long term sustainability and relevance post-COVID-19. The following are critical towards achieving this:

- Trends and changes in the industry.
- How Management can mitigate future risks, including learnings from lockdown that could be implemented and adopted as new ways of working where it has improved performance.
- Regard should be given to the solvency and liquidity test the Act.
- The Company must ensure that it follows applicable laws, rules and regulations, or face serious consequences and potential reputational harm.
- Management should understand the impact of the pandemic on the performance of contractual obligations by the Company and third parties, and mechanisms available to address areas of non-compliance adequately.
- Management should understand the nature and extent of specific litigation arising from the COVID-19 pandemic. Alternative dispute resolution mechanisms are to be considered to resolve legal disputes.

Possibility of unsuitable Covid-19 PPE & decontamination products triggering product liability claims.

By Mr Mthokozisi Maphumulo: Associate, Litigation Attorney at Adams & Adams Attorneys.

The whole world continues to battle with the Covid-19 pandemic and there still is no end in sight. As cases continue to surge, the need for more personal protective equipment (PPE) also rises. As the demand for PPE and decontamination products rise, there is a possibility of rushed, fake or unsuitable PPE being sold – knowingly and unknowingly. With job losses on the increase, there is even a greater chance of people selling PPE of which the quality or suitability has not been tested. The most pertinent product in this regard would be sanitisers because its production involves technical expertise. There already have been talks of unsuitable sanitisers being made available for use in public spaces and, also, allegations of "fake sanitisers" being supplied to schools in the Eastern Cape province. As one would imagine, the use of such products has a potential of badly damaging the person's hands and, depending on the person's skin, may spread to other parts of the body. This may have severe consequences for the person concerned who may need medical intervention (which could be costly); may develop more serious health complications; who may be unable to work; who may, at worst, lose their job. In a case where it is a child who has used the unsuitable product, the consequences may even be dire. These are but some of the possible consequences. It therefore becomes necessary to look at whether the persons concerned may have any legal protection in such cases.

The position relating to such claims is regulated by both the common law (law of contract and delict) as well as legislation– the Consumer Protection Act 68 of 2008 (CPA). Much attention will be given to the latter as it has remedied the shortcomings of the common law. It is important to note at the outset that, to succeed with this claim, the claimant must prove that the product is defective, and the use of the said product has caused them harm. Harm may relate to health and/or finances. If the claimant can prove all these elements, then they will succeed with the claim. As one would imagine, for a person who does not possess know-how with regard to the production of sanitisers, proving fault (either negligence or intention) on the part of producer is almost impossible. One way of overcoming this hurdle is to involve an expert – this will have cost implications and not everyone will be inclined to involve a costly expert without any guarantee that they will succeed with their claim. Claiming under law of contract presents its own challenges as the claimant has to prove the existence of a contract between the parties. This can be challenging to prove in the context of the use of sanitisers in the public space – for example, when a person uses hand sanitiser placed at the entrance to a mall To prove a legally binding contract in that instance is not that simple. It is for these reasons that we have to consider the provisions of the CPA, instead.

As stated above, the CPA has remedied the aforementioned shortcomings, to an extent, and section 61 deals with liability for harm caused by defective goods. It is worth noting that in terms of the CPA, the claimant is not required to prove negligence on the part of the wrongdoer – this is known as "strict product liability". Section 61 provides that the producer, importer, distributor or retailer of any goods is liable for any harm caused wholly or as a consequence of supplying any unsafe goods; a product failure, defect or hazard in any goods; or inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods*, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor or retailer as the case may be*.

If someone suffered harm as a result of an unsafe, hazardous or defective product, they merely need to prove that the product caused the harm. This harm can include death, injury, illness or even economic loss. However, one would still need to prove that the relevant product caused the harm. This might be difficult in some cases, for example a consumer might visit numerous stores in a shopping Centre and hand sanitiser could be applied at each of those stores. The challenge will be to prove which product (sanitiser) caused the harm in such a situation. There are also exceptions to the CPA's product liability provisions, for example where a business supplied a product to someone and the product was not defective at the time of the sale or where it would be unreasonable to expect the distributor or retailer to have discovered the defect, hazard or other characteristic, having regard to their role in marketing of goods to consumers.

It is crucial to note that the producer, importer, distributor or retailer are jointly and severally liable for harm caused. This means that any party in the supply chain can be held liable. Holding any or every potential wrongdoer in the supply chain liable is to the greater advantage of the claimant. It would otherwise have been very challenging to pinpoint one specific wrongdoer.

Apart from regulating product liability, the CPA also imposes product standards on suppliers. Section 55 deals with consumers' rights to safe, good quality goods. Every producer, importer, distributor or seller is deemed to guarantee that their product complies with these standards and that the product is safe for use, of good quality and reasonably suited for the purpose for which they are intended. There are remedies provided for by the Act for the consumer in case of breach of these provisions.

Based on the above, it is imperative for all relevant stakeholders from producers to the retailers to ensure that their PPE and disinfection products are of the legally required standard failing which there may be serious legal implications. As much as appropriate quality products come at a price, product liability litigation can also be costly for suppliers. Therefore it is crucial that good quality goods are supplied. In order to minimise risks and the possibility of claims, businesses should ensure that they purchase products from reputable suppliers. They should also verify the quality of the products and ensure that they conclude contracts that contain clauses that protect them in relation to product quality and safety. Sufficient product liability insurance should also be obtained.

The COVID-19 Pandemic's Financial Impact on South African Consumers

By Carmen Williams, Director of Research and Consulting at TransUnion Africa

The COVID-19 pandemic is creating major economic and financial distress for consumers across the globe. Many jobs in the South African economy are being impacted or are at risk due to drastic demand shifts and reduced trading and production capabilities.

TransUnion launched its **Financial Hardship Survey** in South Africa at the beginning of April 2020, shortly after the country went into level 5 lockdown. The research was designed to help better understand consumers' experiences, perceptions and expectations in how the evolving pandemic is affecting their financial situation. Six survey waves have been conducted at roughly one month intervals to provide a trended view of the economic hardship being endured by consumers. Over 7,000 consumer responses have been represented in this survey series to date.

Financial Impact: What is the scale and type of impact?

The financial impact of the COVID-19 crisis on South African consumers remains high. Although the number of consumers saying their household income has been negatively impacted dropped from an 84% peak in June to 77% in August, the pandemic is still impacting financial conditions for the vast majority of households.

Worryingly, job losses continue to increase. In our latest round of research, 21% of financially impacted consumers reported that they had lost their job as a result of the pandemic, up from 10% in April.

Managing household budgets: What has changed?

In all, 89% of financially impacted respondents remain concerned about their ability to pay bills and loans. While the scale of impact remains massive, there is a positive change in the length of time consumers estimate they will be able to maintain bill payments. Almost one in four respondents (24%) said they will be able to maintain bill payments for longer than three months, up from 15% in April. Rent and utilities continue to be major financial stressors, with 37% of impacted consumers concerned about their ability to pay these bills. Their ability to pay retail/clothing accounts and personal loans are of equal concern.

Recovery: What's the game plan?

Consumers are taking a range of actions to try and cope with the financial impact of the pandemic. Nearly three in five (59%) are cutting back on discretionary spends. Of those financially impacted, more than one in three (34%) are using money from their savings to help pay bills and one in four (25%) report borrowing money from friends or family. While it is encouraging to see consumers being cautious and showing resilience, about one in four (24%) don't know how they are going to pay their bills – up by six percentage points from last month, and back to April levels.

The role of the business and lending community in assisting consumers

The lending community has an important role to play in protecting and helping to restore the financial health of consumers. There are two key elements to this.

1) ***The lending community must educate consumers to maintain their credit health***

   According to our research, 17% of all consumer households say they have received a form of payment holiday, most commonly with car leases, bond payments and personal loans. Worryingly, of those who aren't in receipt of a payment holiday, 23% reported not knowing how to apply for some form of payment accommodation.

   Consumer education is critical to ensure individuals make informed choices – and the lending community should be focusing efforts to educate consumers around the implications of their financial decisions. If creditors provide consumer awareness tools, there will be clear benefits for all parties. The Transunion Financial Hardship Survey shows that during COVID-19 ,more people have taken the opportunity to check their credit score, but that almost one-third (29%) do not monitor it at all. When consumers self-monitor credit, evidence suggests that they improve their credit scores and are less likely to default.

2) ***Entities must keep consumers safe online***

   As lockdown and social distancing are likely to continue in some form for an indeterminate amount of time, consumers will continue to need access to credit. It's an important stimulant for our economy.

   However, as the need to transact digitally has grown, so has digital fraud. Almost four in 10 consumers (39%) say they have been a target of digital fraud related to COVID-19, with the top three scams being unemployment related (34%), third-party seller scams on legitimate online retail websites (25%) and charity or fundraising fraud (23%).

   Organisations must manage consumer trust while preventing fraud and maintaining customer service. Consumers have heightened expectations for a seamless user experience on digital channels, and conversely the fraud detection and prevention methods used traditionally add an evident layer of friction to that experience. The challenge going forward will be to provide a digital onboarding process that delivers a 'friction-right' experience, while reducing fraud and driving operational efficiencies.

The financial pain of COVID-19 is expected to be far reaching and long lasting and will continue to be marked with high rates of unemployment and a negative impact on GDP, with a significant effect on millions of South African consumers. It is imperative, now more than ever, that businesses and regulators band together to tackle the dramatic impact of the pandemic as a collective challenge.

South Africa's Covid-19 Alcohol Sales Ban: the potential for better policymaking

By Richard Matzopoulos: School of Public Health & Family Medicine, University of Cape Town,

Helen Walls: Burden of Disease Research Unit, South African Medical Research Council.

Sarah Cook : Faculty of Public Health and Policy, London School of Hygiene and Tropical Medicine

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Evidence of the social impacts of emergency responses to coronavirus disease 2019 (Covid-19) is emerging in several countries, including increased prevalence of domestic violence[2]. Alcohol is the elephant in the room in mediating many such impacts. The dramatic decrease in violence and injuries following an alcohol sales ban in South Africa has implications for its alcohol policy post-lockdown as well as the current emergency response in other countries.

In mid-March 2020, South Africa limited alcohol sales until 6pm and restricted establishments selling alcohol to a maximum of 50 patrons. Subsequently, a national lockdown prohibited the sale of all liquor. These measures are considerably stricter than those of other countries. In the United Kingdom and New Zealand, for example, allowances have been made for alcohol purchases ostensibly out of concern for sudden/unsupported withdrawal on dependent people.

The rationale in South Africa for implementing stricter measures is founded partly on alcohol's role in undermining social distancing and compromising immune response. However, the government's resolve seems strengthened by alcohol's contribution to the high levels of interpersonal violence and injuries. Violence-related trauma admissions and homicides in South Africa are strongly associated with drinking. Men constitute the overwhelming majority of victims and are also the main perpetrators of interpersonal violence[3]. With men confined to their homes during lockdown, increased domestic violence is a concern. These dynamics appear to have been confirmed by both early reports of a significant reduction in trauma unit admissions for alcohol-related

[2] Peterman A, Potts A, O'Donnell M, et al. Pandemics and Violence Against Women and Children. Washington, DC: Center for Global Development; 2020. https://www.cgdev.org/publication/pandemicsand-violence-against-women-and-children. Accessed April 23, 2020.

[3] Matzopoulos R, Bowman B, Mathews S, Myers J. Applying upstream interventions for interpersonal violence prevention: An uphill struggle in low- to middle-income contexts. Health Policy. 2010;97:62-70. doi:10.1016/j.healthpol.2010.03.003

injury[4] and a reported increase in domestic violence complaints to the police[5]. The decline in alcohol-related trauma, alongside alcohol's perceived role in crime and undermining public safety, has won political and popular support for maintenance of these restrictions[6]. The national police minister has even seemingly expressed a desire for a permanent prohibition[7], although historical precedents and the enduring impasse of the war on drugs suggest that prohibitions should only ever be considered as temporary measures.

More importantly, the South African public's recognition that controlling alcohol availability during the lockdown was in the interest of the public good suggests that the sales ban was akin to a public health "teachable moment" – the impact of alcohol has become immediately apparent through its absence. This should resonate in settings where alcohol fuels violence and injuries and plays a similar role in undermining the Covid-19 response. It also has future relevance given that lockdowns of various forms and intensity are likely to continue in many countries for the foreseeable future.

South Africa's rapid and forceful restrictions on alcohol under Covid-19 are in stark contrast to previous resistance to policy changes to address the main drivers of alcohol harms at the population level. Alcohol imposes an enormous toll on South African society through associated economic, social and health costs – estimated at 10-12% of GDP[8]. Despite this, lobbying efforts by South Africa's powerful alcohol industry have ensured that business interests take precedence[9]. The Control of Marketing of Alcoholic Beverages Bill placed before Cabinet in 2013 restricts advertising/marketing of alcoholic beverages except at point of sale, sponsorship and promotion of alcoholic beverages. Meanwhile alcohol has become 60% more affordable in South Africa over the past 50 years[10].

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4 Isaacs L. Groote Schuur: Two-thirds drop in trauma cases due to lockdown's booze ban. Eye Witness News. April 8, 2020. https://ewn.co.za/2020/04/08/groote-schuur-two-thirds-drop-in-traumacases-due-to-lockdown-s-booze-ban. Accessed April 23, 2020.

5 Newham G, Du Plessis A. How might the Covid-19 lockdown affect public safety in SA? Daily Maverick. April 6, 2020. https://www.dailymaverick.co.za/article/2020-04-06-how-might-the-covid-19-lockdown-affect-public-safety-in-sa/. Accessed April 23, 2020.

6 University of Johannesburg. Research survey shows that the Lockdown fosters distress and social division. Polity. April 21, 2020. https://www.polity.org.za/article/research-survey-showsthat-the-lockdown-fosters-distress-and-social-division-2020-04-21. Accessed April 23, 2020.

7 Masuabi K. Bheki Cele: 'I wish alcohol ban could be extended beyond lockdown.' City Press. April 5, 2020. https://city-press.news24.com/News/bheki-cele-i-wish-alcohol-ban-could-be-extended-beyondlockdown-20200405. Accessed April 23, 2020

8 Matzopoulos R, Truen S, Bowman B, Corrigall J. The cost of harmful alcohol use in South Africa. South African Med J. 2014;104:127-132.

9 Bertscher A, London L, Orgill M. Unpacking policy formulation and industry influence: The case of the draft control of marketing of alcoholic beverages bill in South Africa. Health Policy Plan. 2018;33:786-800. doi:10.1093/heapol/czy049

10 Van Walbeek C, Blecher M. The economics of alcohol use, misuse and policy in South Africa. Cape Town, 2014.

While the Sustainable Development Goals (SDGs) recognise alcohol as a developmental impediment, any new approach to regulation in South Africa needs to consider wider impacts on the 'alcohol environment', including health/social outcomes. Measures taken because of Covid-19 – and later counter strategies – all shape this dynamic environment[11]. If restrictions on the alcohol trade are to be considered post-lockdown they must be designed not only to reduce harm, but also to mitigate against unintended consequences. For example, approximately 50,000 South Africans derive subsistence livelihoods from the informal alcohol trade[12] While there may now be impetus for tighter restrictions on the retail environment, these should be accompanied by investment in alternative income opportunities. Industry-aligned groups have also highlighted the plight of alcoholics suffering unplanned withdrawals during lockdown. Therefore management of alcohol dependency needs to be included explicitly as part of the overarching strategy to reduce alcohol harm.

In the short-term the current alcohol sales ban will need careful phase-out to prevent a subsequent surge in drinking. The end-point should at least ensure that national norms and standards for retailer operating hours devised in 2015 are included in the National Liquor Act and applied throughout the country. Policy advocates and activists must not only use the current moment as a political 'window of opportunity', but must also use it to highlight the enduring nature of the alcohol – trauma nexus. Reliable, current data are essential to show the association between alcohol availability and injury caseloads clearly and to ensure that the appetite for public health-oriented policy extends beyond the current crisis. This applies equally to countries considering the implementation of similar restrictions.

Much is being discussed currently about how countries can ease lockdown and get 'back to normal'. In South Africa, where the alcohol ban differs hugely from the easing of social-distancing measures is that returning alcohol availability to 'normal' will return communities to situations of highly hazardous use. Instead, we have an opportunity for stakeholders to work together to develop better alcohol policy and safeguard the post-Covid future of all South Africans. The country's response will set an important precedent for countries elsewhere confronting similar challenge.

[11] Walls H, Cook S, Matzopoulos R, London L. Advancing alcohol research in low-income and middle-income countries: a global alcohol environment framework. BMJ Global Health. 2020;5(4):e001958. doi:10.1136/bmjgh-2019-001958
[12] Statistics South Africa. Quarterly Labour Force Survey (4th Quarter 2019). Pretoria, South Africa, 2019. http://nesstar.statssa.gov.za:8282/webview/. Accessed April 23, 2020.

COVID 19 and copyright issues– Its impact on access to Information, Education and Knowledge-sharing

By Denise Rosemary Nicholson: Copyright Services Librarian, University of the Witwatersrand,:

In his online newsletter, President Ramaphosa regularly speaks about unemployment, poverty and various socio-economic problems, as well as COVID-19 issues, which are negatively affecting millions of people in the country. The president stresses the importance of education, social upliftment, and the need to improve the lives of people with disabilities. He stresses the importance of a reading culture, civic participation, and an employed public. He talks about the various Government initiatives and progressive plans underway to address many of these issues. What he has yet to discuss is how access to information, education, and knowledge-sharing, together with appropriate legislation, are the key elements for socio-economic development and advancement, teaching and learning, as well as creativity, research, innovation, and 4IR developments in South Africa.

The COVID-19 pandemic has not only harmed the economy, education, health, and the livelihoods of millions of South Africans. It has highlighted the long-known omissions, inadequacies and restrictions in the current Copyright Act No. 98 of 1978 and Regulations, that negatively affect or prevent access to information and educational resources, and hamper knowledge-sharing and the provision of relevant teaching and research materials, particularly in the digital space.

Since 27 March 2020, South Africa has been under strict lockdown conditions. On level 5, all libraries, archives and museums, educational institutions and businesses were closed at very short notice. Access to hard-copy study material, multimedia and other works in library and related collections became totally inaccessible, and still remain inaccessible in most provinces. Educational institutions at primary, secondary and tertiary level had no way of providing courses or teaching material unless they moved to online platforms immediately. Many students had to leave their textbooks in their rooms when they were evacuated from university residences at very short notice. As a result, educators and librarians were forced to provide course and other study materials via password-protected e-learning platforms, resulting in unforeseen expenditure on technology and equipment, data, training, software, and other related necessities, as well as unplanned-for copyright fees.

The current copyright law does not address the digital environment. It has created many barriers and challenges in the past, but, more recently, in the COVID-19 lockdown, where educators and librarians have been trying their best to provide study materials under very difficult circumstances. Inadequate copyright limitations and exceptions and restrictive licences, especially relating to e-databases and e-books, prevent or limit what can and cannot be used, shared, converted, or uploaded to e-learning platforms. Even those institutions with blanket copyright licences with collecting societies have had to find additional funding for separate transactional licences to use additional or extra portions from copyright materials, as hard-copies are inaccessible due to most libraries still being closed. In addition, public libraries that, as a matter of course, promote authors' works by reading books to school-children and in their reading circles, have been forced to apply for copyright permission and pay fees to read books on online platforms, such as YouTube or social media, or to use alternative material for this important library function. A handful of South African publishers and various international publishers made some concessions to open up content usually locked behind paywalls for the duration of the lockdown. Unfortunately, in many instances these concessions were discipline-specific or country-specific, so they were not as helpful to South African educational institutions or libraries as was originally expected.

As EIFL states **"***In countries where copyright laws have a good range of digital exceptions for libraries, research and education, a flexible fair use-type exception, and a provision that protects library exceptions from being overridden by licence terms, libraries are best placed to support research and education"*.

To address all the above issues, South Africa has a progressive Copyright Amendment Bill, which was approved by Parliament on 28 March 2019. The Bill proposes to update and quantum leap our 42-year old copyright law into the 21st century, and to align the legislation with countries around the world. It has fair and appropriate limitations and exceptions for education and research, libraries and archives, museums and galleries, and for persons with disabilities, many of which are modelled on progressive copyright laws in developed countries, the EIFL Model Copyright Law, and international research, studies, and treaty proposals that South Africa has strongly supported through the Africa Group at WIPO in Geneva. The Bill also enables preservation in the digital space, format-shifting and conversions to new technologies, deposits in open access institutional repositories, legal deposit of our documentary heritage, and inter-library loans and digital document delivery. It empowers authors and creators by giving them more control over their works. In response to the Farlam Copyright Review Commission Report, 2011, the Bill will also regulate collecting societies so authors and creators get a fair share of royalties going forward. Most importantly, it facilitates better access to information and knowledge-sharing for all South Africans, whether users, custodians, or producers of intellectual property.

Had the Bill been signed by the President and enacted last year, its limitations and exceptions would have been exceptionally helpful for educators, librarians, students, researchers, authors and creators, and people with disabilities during the COVID-19 lockdown. Although the lockdown is now on level 2, the difficulties and challenges experienced by educational institutions and libraries continue. Online teaching is currently the only mode of teaching for the majority of students and school-children. The further delay in updating the current copyright law seriously affects the youth of South Africa and continues to delay action on Phase 2 of the Third Cultural Amendment Act 2008 (i.e. the amendment of 11 pieces of legislation relating to libraries, archives, and cultural heritage). It also delays South Africa's ratification of the 2013 Marrakesh Treaty, which would enable cross-border exchange of works in accessible formats for people with disabilities. Unfortunately, access delayed is access denied.

Consumer Credit Insurance: Consumers are not informed about the product.

By Ishmael Hamad, Research Intern: the dtic CCRB and Ms Lekgala Morwamohube, Deputy Director: the dtic CCRB

According to the National Credit Act (NCA): Consumer Credit Insurance (CCI) includes cover payable in the event of a consumer's death, disability, terminal illness, unemployment, or other insurable risk that is likely to impair the consumer's ability to earn an income or meet the obligations under a credit agreement. Section 106 of the NCA allows credit providers to require consumers to take out mandatory credit life insurance on their outstanding loan balance. Many consumers are not aware that they have credit life insurance in place and that the premium for this insurance is already included in the cost of credit.

A 2013 research on credit life insurance in South Africa conducted by FinMark Trust found that credit life insurance policies are not explained properly to consumers and that they simply do not understand them.[13] This is made difficult by the fact that policies are often complex, legalistic and written in confusing language making consumer comprehension difficult. The move towards plain english documentation can assist consumers in finding it easier to understand the information they receive.

The FinMark Trust study further found that credit life insurance has negative perceptions among consumers and is regarded as an extra finance charge than as a financial product with value. The benefits of this type of insurance tend to be under-estimated by consumers with low financial literacy and with little knowledge of these products.[14] Research undertaken by Switch2 which is the provider of credit life insurance also showed that most consumers do not know what credit life insurance is nor what it entails. Only about one-third of consumers questioned knew what credit life insurance was, and, of those, 74% thought the insurance they took out with their purchases was free.[15]

The 2017 credit insurance regulations states that the exclusions and limitations that apply to a credit life insurance policy must be explained to a consumer on the date on which the credit agreement is entered into "and communicated to the consumer at regular intervals thereafter. The research evidence above clearly confirms that most consumers are unaware that they are paying credit life insurance and therefore aren't aware that in the event of their death, disability or retrenchment their credit life insurance cover will take effect.[16] This implies that

13 FinMark Trust 2013: Credit life insurance in South Africa: the customer's perspective
14 ibid
15 https://www.iol.co.za/personal-finance/what-do-you-know-about-credit-life-cover 14727754#:~:text=Sasha%20Knott%2C%20the%20chief%20executive,offer%20questionable%20value%20for%20money.
16 https://www.creditombud.org.za/consumers-in-the-dark-about-credit-insurance/

ongoing education about consumer rights and the hidden details of financial products is key and equally important that they understand the terms and conditions of their existing agreements, and that they are equipped to demand that their current service providers stick to the legal terms of their contracts.

According to Yalu Financial Services (Pty) Ltd[17], premiums paid by consumers of credit life insurance have amounted to about R15-billion a year in the past five years, yet insurers only paid out claims amounting to only R1.5-billion a year.[18] This indicates a low claims ratio in the credit life insurance market. A claims ratio shows the amount paid out in claims as a percentage of premiums collected.[19]

With the national lockdown in full swing, many South Africans are unable to earn an income while others are receiving little to no income with the reduced working hours. Consumers whose salaries are affected by Covid 19 need to submit claims to test the effectiveness of the credit insurance product in the current Covid 19 pandemic for insurers and insurance products to demonstrate their relevance and ability to have a real impact during a crisis.

[17] the provider of Credit Life Insurance
[18] https://www.sowetanlive.co.za/business/money/2018-06-15-consumers-missing-out-on-benefits-of-credit-insurance/
https://www.creditombud.org.za/consumers-missing-out-on-benefits-of-credit-insurance/
[19]

IMPORTANT CONTACT DETAILS OF CCRB AGENCIES

LEGISLATION	DEPARTMENT/ AGENCY	SWITCHBOARD/ CALL CENTRE	COMPLAINTS/ COMPLIANCE LINE OR EMIAL ADDRESS	
National Credit Act (Act No. 34 of 2005)	National Credit Regulator (NCR)	011 554 2700	086 062 7627	complaints@ncr.org.za For complaints regarding debt counselling: dccomplaints@ncr.org.za.
Consumer Protection Act (Act No. 68 of 2008)	National Consumer Commission(NCC)	012 428 7726	0124287000	complaints@thencc.org.za
	Consumer Goods & Services Ombudsman (CGSO)	011 781 2607	086 000 0272	complaints@cgso.org.za/ info@cgso.org.za
	Consumer Goods Council of South Africa(CGCSA)	086 124 2000		info@cgcsa.co.za
	National Consumer Tribunal (NCT)	012 683 8140		registry@thenct.org.za
	National Regulator for Compulsory Specifications (NRCS)	012 482 8700		
Companies Act (Act No. 71 of 2008)	Companies and Intellectual Property Commission (CIPC)	086 100 2471		
	Companies Tribunal (CT)	012 394 3071/ 5553		registry@companiestribunal.org.za
	Takeover Regulation Panel (TRP)	011 784 0035		admin@trpanel.co.za
Liquor Act (Act No. 59 of 2003)	**the dti**: National Liquor Authority (NLA)	012 394 1683		
Lotteries Act (Act No. 57 of 1997)	National Lotteries Commission (NLC)	012 432 1300/ 1399	012 432 1434 08600 65 383	
	National Lotteries Distribution Trust Fund (NLDTF)	086 006 5383		nldtf@nlcsa.org.za
National Gambling Act (Act No. 7 of 2004)	National Gambling Board (NGB)	086 722 7713	010 003 3475	info@ngb.org.za