Upcoming regulation of e-commerce in the Republic of South Africa

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In addition to new legislation to combat cybercrime, South Africa is becoming increasingly active in crypto, with plans to introduce a new regulation of crypto-assets and potentially to roll out a central bank–issued cryptocurrency. Find out more about recent South African e-commerce developments in our article.

New Cybercrime Act as of December 1, 2021:

A major e-commerce law has been passed to deal with digital offences. With effect from December 1, 2021 through the promulgation of the Cybercrimes Act, cybercrimes are enforceable criminal offences in South Africa. The following are examples of such crimes:

- Hacking—the unlawful access and interception of data;
- Ransomware—unlawful acts with respect to software and hardware with the intent to benefit;
- Cyberfraud, forgery and extortion;
- Theft of intangible property (as opposed to real property, which is the common-law offence of theft);
- Malicious data message communications, such as communications that are defamatory or vengeful.

One particularly notable provision gives SA Courts extraterritorial reach if cybercrimes are committed outside of SA.

E-commerce warnings issued by the Financial Sector Conduct Authority

The financial regulator in SA—the Financial Sector Conduct Authority (FSCA)—continues to regularly issue cautionary notices to consumers. In connection with online retail business and consumer protection, consumers have been warned to act with caution when using any financial services of certain providers. In addition, it is essential to check whether the financial services provider is registered with the FSCA to provide financial advisory or intermediary services and, if so, what is the category of that registration. (In other words, is the financial services provider licensed to provide the specific services offered?)

The FSCA has issued a number of warnings in relation to online financial services in the past six months, including the following:

- A bitminer trading in cryptocurrencies and cryptocurrency mining offered unrealistic returns and was not registered with the FSCA (and thus was not licensed to provide financial advisory and intermediary services).

- An online trading platform from India sought clients in SA to invest. The FSCA found them to be acting to the detriment of those clients.
- An entity used a WhatsApp group to solicit investments from group members in SA, promised unrealistic and excessive returns and furthermore was not licensed by the FSCA.

SA legislation requires providers of financial advisory and intermediary services to be registered with the FSCA and to only render those services that fall under the category for which it was issued a license.

Proposed regulation of crypto-assets

SA is in the process of drafting amendments to various laws, such as the Financial Advisory and Intermediary Services Act (FAIS Act), the Financial Intelligence Centre Act (FICA—which is similar to Know Your Customer requirements), the Financial Markets Act, etc.

The resulting output of those changes will establish a regulatory framework for crypto-assets, crypto-platform service providers and so on, as well as address gaps in the SA regulatory framework for AML/CFT.

The amendments were expected in the first half of 2022, but to date there has been no movement. Crypto-related investments are currently not regulated by the FSCA or any other body in SA, though the revenue service requires income earned and capital gains to be reported by the taxpayer.

Africa Central Bank Digital Currency

Most of the various central banks in Africa, similarly to central banks all over the world, are looking at issuing central bank digital currencies (CBDC). Fiat money is still used extensively in Africa, due in part to the number of individuals in many African countries who don’t have a bank account, as well as the limited reach of commercial banks. Where e-commerce is concerned, this represents one more issue, alongside the lack of logistics or poor logistics support that simply does not allow e-commerce to flourish as it has in the developed world, where goods can be purchased online, tracked online and quickly and efficiently delivered.

Last year Ghana and Nigeria launched pilot programs for their CBDCs—respectively, e-Cedi and eNaira—with both countries still developing the platform software for the currencies. South Africa has done a feasibility study for utilizing CBDC as electronic tender for general purpose retail use and complementary to cash. Under Project Dunbar, the SA central bank together with the Bank for International Settlements have completed a prototype system enabling international settlements using CBDC. Other participants in this project were the central banks of Australia, Malaysia and Singapore. The prototype system allows for direct CBDC transactions between institutions with a reduction in time and cost.

The implementation of CBDCs in Africa will result in banking costs being reduced, intermediaries removed and connectivity greatly improved (considering the huge growth in mobile phone and app use in Africa). With the drive under the African Continental Free Trade Agreement to develop the digital economy in respect of cross-border trade, CBDCs could play a major role in furthering e-commerce in Africa cross-border trade.

Copyright Amendment Bill

A new copyright bill is presently going through the final stages of the legislative process. The bill brings about very significant and rather contentious changes to SA copyright laws and will be of major concern for content providers and copyright owners. We are monitoring the legislative processes and once it is finished, you can expect our detailed report on the impact of these new changes in SA copyright laws.

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