

South Africa's Move Towards Tech Regulation in 2019

Introduction

In the last few years, the tech boom has been changing the traditional norms of society, affecting everything from how we travel to how we handle our personal or business affairs. Considering how influential it has become, the Government has been placing importance on moving towards tech regulation. Regulation would support the growth of possible socio-economic game-changer businesses while protecting the interests of consumers engaging with an e-commerce business.

Often the conversation regarding e-commerce business is two-sided. Positively, the industry can be praised for being innovative and helpful in the creation of employment. Conversely, already entrenched entities validly make the point that being e-based means certain regulatory red-tape can be avoided, resulting in fewer financial obligations.

In this article, I will highlight a few proposed regulations that will affect e-commerce businesses. I will focus on three areas being transport regulation amendments, cryptocurrency and advertising with an emphasis on influencer marketing.

National Land Transport Amendment Bill (B7A – 2016)

This Bill aims to be the first amendment to the National Land Transport Act 5 of 2009. Most notably this amendment seeks to regulate the e-hailing service industry which currently includes companies such as Uber and Bolt (formerly known as Taxify).

As per proposed S66A of the Amendment Bill, e-hailing services are now expressly recognised with consumer-protection elements included. As an example, applications linked to these services must provide customers with estimates of fares including distance and time of travel. Furthermore, operating as part of an e-hailing service without the proper operating license or permit could result in a fine not exceeding R100 000 or a period of imprisonment not exceeding two years.

Most controversially is the inclusion of S66A(5)(b). This clause compels the Minister of Transport or MEC to institute regulations providing for the 'special marking' of vehicles used for e-hailing services. Considering the recent increase of violence against e-hailing service drivers it would be easy to note concerns over a highlighting system increasing visibility in less than safe situations.

Cryptocurrency

If you have had any access to social media, you will no doubt be aware of the Bitcoin phenomenon. Essentially Bitcoin is a form of decentralised cryptocurrency whereby users can using their computer, earn 'coins' through solving complex mathematical algorithms. These coins can later be used to trade in exchange for goods or services as with any other currency. A recent Google Trends survey conducted in 2017 by CNBC News¹ showed that in the 12 months before, South Africa was second in the world only to Nigeria in searches for the word 'Bitcoin'.

This trend has unsurprisingly caught the eye of financial regulators in the country with the South African Reserve Bank (SARB) releasing a 'Consultation Paper' earlier this year addressing the regulation of cryptocurrencies in general. Summarily, the paper discusses the fact that South Africa is one of the twenty-five countries actively proposing an approach to the management of cryptocurrencies. This approach would involve establishing a framework to regulate crypto asset service providers instead of the currencies itself. Regulation of these service providers would make for better practical implementations as there is currently no international policy providing a blanket system for management.

To this end, the SARB has stated that it will be releasing a policy paper implementing the first phase of this process by the end of the first quarter of 2019. The policy would involve the registering of such service providers.

Influencer Marketing

The Advertising Regulatory Body (formerly known as the 'Advertising Standards Authority') recently released the proposed Advertising Code of Practice for Social Media focusing on influencer marketing. Under the proposed policy, marketers are to state whether advertising with influencers has been paid for, with posts including the use of identifiers such as #AD #Advertisement #Sponsored.

Social media influencers are furthermore to declare if they have received any goods or services whether permanently or on loan in return for marketing-related posts to support transparency when

¹ <https://www.cnbc.com/2017/11/29/this-chart-show-bitcoins-meteoric-rise-over-the-last-6-years.html> (accessed on 16 March 2019)

advertising to consumers. There will also be a tighter grip placed on brands and influencers as they will be held to the Code of Advertising Practice, specifically Code 10 dealing with testimonials. A brand must ensure that an influencer has a 'sufficient understanding' of a product or service and the industry standards before allowing them to advertise and cannot mislead said influencer into being overly positive in the review.

Although this document has been submitted for public review, there are a few concerns.

Firstly, the Advertising Regulatory Body only has jurisdiction over its members and as such, cannot hold accountable any non-member individuals or companies as per the Supreme Court of Appeal in the case of *The Advertising Standards Authority v Herbex (Pty) Ltd* (902/16) [2017] ZASCA.

Secondly, there are no penalties or systems included to address members who fail to adhere to these regulations making it more of a suggestion guide than a policy in its current form.

Conclusion

None of these documents has been finalised; the discussion of South Africa's move towards tech regulation is still very much open to public input and proper consideration. Proper regulation could help build the country's reputation as being fertile soil for internationally operating e-commerce institutions to test pilot programs or systems. For us to ensure our consumers do not always fall victim to these experimental or established innovations, we need to make sure the conversation is had with the proper considerations and with the intention of creating reliable, practical implementations.

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