

EXECUTIVE SUMMARY

In this month's issue, we discuss the new Special Voluntary Disclosure Programme for offshore assets, an exception to the *voetstoets* clause, and how the POPI Act will impact your business. We also welcome our new associate, Jonathan Montgomery.

While we have shared the salient points in this eFile, more detailed versions of each of these articles can be found on [our Web site](#).

SPECIAL VOLUNTARY DISCLOSURE PROGRAMME FOR OFFSHORE ASSETS

This year's Budget Speech for 2016/2017 saw the announcement of a Special Voluntary Disclosure Programme (SVDP). This programme, devised in the context of the new global standard for automatic exchange of tax information between countries, allows non-compliant taxpayers to voluntarily disclose their offshore assets and income.

As SARS will start receiving this information from 2017, the SVDP is a critical opportunity for voluntary disclosure of foreign assets, as well as for relief for contravention of the Exchange Control Regulations. Applications for relief under the SVDP will be valid for 6 months, from 1 October 2016 until 31 March 2017. The SVDP covers companies, deceased estates, beneficiaries of foreign discretionary trusts and individuals. However, trusts will not qualify.

For strategic assistance on application under the SVDP, or voluntary disclosure of foreign assets, [get in touch with us](#).

VOETSTOOTS CLAUSE NO DEFENCE AGAINST FRAUD

The *voetstoets* clause has historically been championed as a sound defence mechanism for a seller to contract out of liability against a buyer's claim based on a discovery of a latent defect. However, recent case law has held that this defence falls away in the case of a seller behaving fraudulently.

This is evident in the recent case of *Ellis vs Cilliers*. When a buyer purchased a property and subsequently discovered that the floors were uneven, the court held that this amounted to 'latent defect.' The seller, in turn, was found to have behaved fraudulently by laying cement screed over the wooden floors and covering them with carpets and tiles to deliberately conceal the unevenness.

Despite the fact that the contract of sale included a *voetstoets* clause, the court held that the presence of fraudulent conduct meant that the seller could not rely on it to escape liability. The court found that the seller was aware of the uneven flooring and fraudulently and deliberately concealed the defect. This meant that the purchaser was entitled to relief, in the form of its proven damages, plus legal costs.

THE PROTECTION OF PERSONAL INFORMATION ACT AND YOUR BUSINESS

The introduction of the Protection of Personal Information (POPI) Act provides consumers with the security and knowledge that their data will only be used for sanctioned purposes. However, this has a significant impact on businesses, which have enjoyed the benefits of mining the data of consumers to add value to their businesses and inform their marketing strategies.

The aspects of the Act that apply to companies are not yet in effect. However, the projected one-year period between enactment and compliance is relatively short, so we advise companies to start their journeys towards compliance as soon as possible.

The Act challenges companies to find a balance between deriving substantial value from client information, while refraining from using this available data in a manner that would be perceived as detrimental to the individual. This legislation will require companies that deal with personal information to invest in the best security systems and processes, and employ IT staff members that are familiar with these systems and the legislation.

This highlights an important issue of trust between companies and their employees. Data now has significant value and employees need to be trusted with the level of information to which they are exposed, as well as their ability to honour the POPI Act's distinction between personal information and special personal information. Managers in charge of data storage need to look at the Act carefully to ensure that standard practices, some of which may have been in place for many years, do not violate the Act.

WELCOMING JONATHAN MONTGOMERY

This month we welcome new associate, Jonathan Montgomery. Jonathan graduated from the University of Pretoria in 2013 with an LLB focussing on commercial law subjects.

He began his career in 2013 and has since broadened his experience at a number of commercial firms in pursuit of further exposure to commercial law. The experience gained in this time has enabled him to hone his analytical approach to matters to ensure the best results. Jonathan has since begun a second degree, a Bcom Financial Management. This will provide an additional business-minded perspective when handling commercial legal matters.

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