CONSUMER PROTECTION ACT
NO. 68 OF 2008

[View Regulation]

[ASSENTED TO: 24 APRIL, 2009]
[DATE OF COMMENCEMENT: 31 MARCH, 2011]

(Unless otherwise indicated)

(English text signed by the President)

This Act has been updated to *Government Gazette* 38557 dated 13 March, 2015.

as amended by

National Credit Amendment Act, No. 19 of 2014
[with effect from 13 March, 2015**]**

GENERAL NOTE

In terms of Item 2 in Schedule 2, any provision authorising the Minister to make regulations commences on the 24 April, 2010.

In terms of item 2 (3) (*b*) (*a*) of this Act, the Minister of Trade and Industry hereby defers the general effective date of the Act until 31 March 2011. (Editorial Note: Please note that item 2 (3) (*b*) (*a*) was published under Government Notice No. 917 in *Government Gazette* 33581, dated 23 September, 2010, but does not exist in this Act. It is suggested that Schedule 2, item 2 (3) (*a*) of this Act is in fact meant.)

In terms of item 2 (3) (*b*) (i) of this Act, the Minister of Trade and Industry hereby defers the application of the Act to all municipalities other than high capacity municipalities as defined in terms of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) until further notice. (Editorial Note: Please note that item 2 (3) (*b*) (i) was published under Government Notice No. 221 in *Government Gazette* 34116, dated 14 March, 2011 and it is suggested that Schedule 2, item 2 (3) (*b*) (i) of this Act is in fact meant.)

ACT

To promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection, to provide for improved standards of consumer information, to prohibit certain unfair marketing and business practices, to promote responsible consumer behaviour, to promote a consistent legislative and enforcement framework relating to consumer transactions and agreements, to establish the National Consumer Commission, to repeal sections 2 to 13 and sections 16 to 17 of the Merchandise Marks Act, 1941 (Act No. 17 of 1941), the Business Names Act, 1960 (Act No. 27 of 1960), the Price Control Act, 1964 (Act No. 25 of 1964), the Sales and Service Matters Act, 1964 (Act No. 25 of 1964), the Trade Practices Act, 1976 (Act No. 76 of 1976), the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), and to make consequential amendments to various other Acts; and to provide for related incidental matters.

PREAMBLE

The people of South Africa recognise-

That apartheid and discriminatory laws of the past have burdened the nation with unacceptably high levels of poverty, illiteracy and other forms of social and economic inequality;

That it is necessary to develop and employ innovative means to-

(*a*) fulfil the rights of historically disadvantaged persons and to promote their full participation as consumers;

(*b*) protect the interests of all consumers, ensure accessible, transparent and efficient redress for consumers who are subjected to abuse or exploitation in the marketplace; and

(*c*) to give effect to internationally recognised customer rights;

That recent and emerging technological changes, trading methods, patterns and agreements have brought, and will continue to bring, new benefits, opportunities and challenges to the market for consumer goods and services within South Africa; and

That it is desirable to promote an economic environment that supports and strengthens a culture of consumer rights and responsibilities, business innovation and enhanced performance.

For the reasons set out above, and to give effect to the international law obligations of the Republic, a law is to be enacted in order to-

- promote and protect the economic interests of consumers;
- improve access to, and the quality of, information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs;
- protect consumers from hazards to their well-being and safety;
- develop effective means of redress for consumers;
- promote and provide for consumer education, including education concerning the social and economic effects of consumer choices;
- facilitate the freedom of consumers to associate and form groups to advocate and promote their common interests; and
- promote consumer participation in decision-making processes concerning the marketplace and the interests of consumers.

ARRANGEMENT OF SECTIONS

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

CHAPTER 1
INTERPRETATION, PURPOSE AND APPLICATION

Part A
Interpretation

1. Definitions.-In this Act-

"accredited consumer protection group" means a consumer protection group that has been accredited by the Commission in terms of section 78 for the purposes contemplated in that section or elsewhere in this Act;

"advertisement" means any direct or indirect visual or oral communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person seeks to-

(*a*) bring to the attention of all or part of the public-

(i) the existence or identity of a supplier; or

(ii) the existence, nature, availability, properties, advantages or uses of any goods or services that are available for supply, or the conditions on, or prices at, which any goods or services are available for supply;

(*b*) promote the supply of any goods or services; or

(*c*) promote any cause;

"agreement" means an arrangement or understanding between or among two or more parties that purports to establish a relationship in law between or among them;

"alternative dispute resolution agent" means-

(*a*) an ombud with jurisdiction;

(*b*) an industry ombud accredited in terms of section 82 (6); or

(*c*) a person or entity providing conciliation, mediation or arbitration services to assist in the resolution of consumer disputes, other than an ombud with jurisdiction, or an accredited industry ombud;

"applicable provincial consumer legislation" means legislation concerning consumer protection that has been enacted by a province;

"apply", when used in relation to a trade description, price, notice or any similar form of information, means to emboss, impress, engrave, etch, print or weave into, work into or onto, annex or affix to, or incorporate within;

"business" means the continual marketing of any goods or services;

"business name" means a name under which a person carries on a business other than the person's full name;

"Cabinet" means the body of the national executive described in section 91 of the Constitution;

"clearly", in relation to the quality of any text, notice or visual representation to be produced, published or displayed to a consumer, means in a form that satisfies the requirements of section 22;

"Commission" means the National Consumer Commission established by section 85;

"complainant" means-

(*a*) a person who has filed a complaint with the Commission in terms of section 71; or

(*b*) the Commission in respect of a complaint that it has initiated, either directly or at the-

(i) direction of the Minister in terms of section 86 (*b*); or

(ii) request of a provincial consumer protection authority or other regulatory authority, as the case may be;

"consideration" means anything of value given and accepted in exchange for goods or services, including-

(*a*) money, property, a cheque or other negotiable instrument, a token, a ticket, electronic credit, credit, debit or electronic chip or similar object;

(*b*) labour, barter or other goods or services;

(*c*) loyalty credit or award, coupon or other right to assert a claim; or

(*d*) any other thing, undertaking, promise, agreement or assurance,

irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly, or involves only the supplier and consumer or other parties in addition to the supplier and consumer;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"consumer", in respect of any particular goods or services, means-

(*a*) a person to whom those particular goods or services are marketed in the ordinary course of the supplier's business;

(*b*) a person who has entered into a transaction with a supplier in the ordinary course of the supplier's business, unless the transaction is exempt from the application of this Act by section 5 (2) or in terms of section 5 (3);

(*c*) if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and

(*d*) a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5 (6) (*b*) to (*e*);

"consumer agreement" means an agreement between a supplier and a consumer other than a franchise agreement;

"consumer court" means a body of that name, or a consumer tribunal, that has been established in terms of applicable provincial consumer legislation;

"consumer protection group" means an entity promoting the interests or protection of consumers as contemplated in section 77;

"court" does not include a consumer court;

"direct marketing" means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of-

(*a*) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or

(*b*) requesting the person to make a donation of any kind for any reason;

"display", when used-

(*a*) in relation to any goods, means placing, exhibiting or exposing those goods before the public in the ordinary course of business in a manner consistent with an open invitation to members of the public to inspect, and select, those or similar goods for supply to a consumer; or

(*b*) in relation to a price, mark, notice or other visual representation, means to place or publish anything in a manner that reasonably creates an association between that price, mark, notice or other visual representation and any particular goods or services;

"distributor", in relation to any particular goods, means a person who, in the ordinary course of business-

(*a*) is supplied with those goods by a producer, importer or other distributor; and

(*b*) in turn, supplies those goods to either another distributor or to a retailer;

"electronic communication" means communication by means of electronic transmission, including by telephone, fax, sms, wireless computer access, email or any similar technology or device;

"Electronic Communications and Transactions Act" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"estimate" means a statement of the projected total price for any service to be provided by a supplier, including any goods or components to be supplied in connection with that service;

"equality court" has the meaning set out in the Promotion of Equality and Prevention of Unfair Discrimination Act;

"facility" means any premises, space or equipment set up to fulfil a particular function, or at, in, or on which a particular service is available;

"franchise agreement" means an agreement between two parties, being the franchisor and franchisee, respectively-

(*a*) in which, for consideration paid, or to be paid, by the franchisee to the franchisor, the franchisor grants the franchisee the right to carry on business within all or a specific part of the Republic under a system or marketing plan substantially determined or controlled by the franchisor or an associate of the franchisor;

(*b*) under which the operation of the business of the franchisee will be substantially or materially associated with advertising schemes or programmes or one or more trade marks, commercial symbols or logos or any similar marketing, branding, labelling or devices, or any combination of such schemes, programmes or devices, that are conducted, owned, used or licensed by the franchisor or an associate of the franchisor; and

(*c*) that governs the business relationship between the franchisor and the franchisee, including the relationship between them with respect to the goods or services to be supplied to the franchisee by or at the direction of the franchisor or an associate of the franchisor;

"goods" includes-

(*a*) anything marketed for human consumption;

(*b*) any tangible object not otherwise contemplated in paragraph (*a*), including any medium on which anything is or may be written or encoded;

(*c*) any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a licence to use any such intangible product;

(*d*) a legal interest in land or any other immovable property, other than an interest that falls within the definition of "service" in this section; and

(*e*) gas, water and electricity;

"importer", with respect to any particular goods, means a person who brings those goods, or causes them to be brought, from outside the Republic into the Republic, with the intention of making them available for supply in the ordinary course of business;

"inspector" means a person appointed as such in terms of section 88;

"intermediary" means a person who, in the ordinary course of business and for remuneration or gain, engages in the business of-

(*a*) representing another person with respect to the actual or potential supply of any goods or services;

(*b*) accepting possession of any goods or other property from a person for the purpose of offering the property for sale; or

(*c*) offering to sell to a consumer, soliciting offers for or selling to a consumer any goods or property that belongs to a third person, or service to be supplied by a third person,

but does not include a person whose activities as an intermediary are regulated in terms of any other national legislation;

"investigator" means a person appointed as such in terms of section 88;

"juristic person" includes-

(*a*) a body corporate;

(*b*) a partnership or association; or

(*c*) a trust as defined in the Trust Property Act, 1988 (Act No. 57 of 1988);

"licence", depending on the context, means the authority, regardless of its specific title or form, issued to a person and in terms of which that person is either-

(*a*) authorised in terms of a public regulation to conduct business; or

(*b*) authorised by another person to-

(i) access any facility or use any goods; or

(ii) supply any goods or services;

"loyalty credit or award" means any-

(*a*) benefit accruing to a consumer;

(*b*) right to any goods, service or other benefit granted to a consumer; or

(*c*) point, credit, token, device or other tangible or intangible thing which, when accumulated in sufficient quantities, entitles the holder to seek, request or assert a claim for any goods, service or other benefit, allocated to a consumer,

in terms of a loyalty programme, irrespective of the name, nature, form or characterisation assigned by that loyalty programme to any such goods, service or other benefit, right or thing;

"loyalty programme" means any arrangement or scheme in the ordinary course of business, in terms of which a supplier of goods or services, association of such suppliers, or other person on behalf of or in association with any such suppliers, offers or grants to a consumer any loyalty credit or award in connection with a transaction or an agreement;

"mark", when used as a noun, means any visual representation, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour or container for goods or other sign capable of being represented graphically, or any combination of those things, but does not include a trade mark;

"market", when used as a verb, means to promote or supply any goods or services;

"MEC" means the Member of the Executive Council;

"Minister" means the member of the Cabinet responsible for consumer protection matters;

"National Credit Act" means the National Credit Act, 2005 (Act No. 34 of 2005);

"ombud with jurisdiction", in respect of any particular dispute arising out of an agreement or transaction between a consumer and a supplier who is-

(*a*) subject to the jurisdiction of an "ombud", or a "statutory ombud", in terms of any national legislation, means that ombud, or statutory ombud; or

(*b*) a "financial institution", as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), means "the ombud", as determined in accordance with section 13 or 14 of that Act;

"organ of state" means an organ of state as defined in section 239 of the Constitution;

"person" includes a juristic person;

"premises" includes land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

"prescribed" means determined, stipulated, required, authorised, permitted or otherwise regulated by a regulation made, or notice given, by the Minister in terms of this Act;

"price", when used in relation to-

(*a*) a representation required to be displayed by section 23, includes any mark, notice or visual representation that may reasonably be inferred to indicate or express an association between any goods or services and the value of the consideration for which the supplier is willing to sell or supply those goods or services; or

(*b*) the consideration for any transaction, means the total amount paid or payable by the consumer to the supplier in terms of that transaction or agreement, including any amount that the supplier is required to impose, charge or collect in terms of any public regulation;

"producer", with respect to any particular goods, means a person who-

(*a*) grows, nurtures, harvests, mines, generates, refines, creates, manufactures or otherwise produces the goods within the Republic, or causes any of those things to be done, with the intention of making them available for supply in the ordinary course of business; or

(*b*) by applying a personal or business name, trade mark, trade description or other visual representation on or in relation to the goods, has created or established a reasonable expectation that the person is a person contemplated in paragraph (*a*);

"prohibited conduct" means an act or omission in contravention of this Act;

"promote" means to-

(*a*) advertise, display or offer to supply any goods or services in the ordinary course of business, to all or part of the public for consideration;

(*b*) make any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration; or

(*c*) engage in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction;

"Promotion of Equality and Prevention of Unfair Discrimination Act" means the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);

"provincial consumer protection authority" means a body established within the provincial sphere of government, and designated by the responsible Member of the Executive Council of a province to have general authority to deal with consumer protection matters within that province;

"public regulation" means any national, provincial or local government legislation or subordinate legislation, or any licence, tariff, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;

"Registrar" means the Registrar of Companies appointed in terms of the Companies Act, 1973 (Act No. 61 of 1973), or the official performing similar functions in terms of any subsequent legislation;

"regulation" means a regulation made under this Act;

"regulatory authority" means an organ of state or entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry;

"rental" means an agreement for consideration in the ordinary course of business, in terms of which temporary possession of any premises or other property is delivered, at the direction of, or to the consumer, or the right to use any premises or other property is granted, at the direction of, or to the consumer, but does not include a lease within the meaning of the National Credit Act;

"repealed law" means an Act mentioned in section 121 (2), or a public regulation made in terms of such an Act;

"respondent" means a person or firm against whom a complaint or application has been initiated in terms of this Act;

"retailer", with respect to any particular goods, means a person who, in the ordinary course of business, supplies those goods to a consumer;

"service" includes, but is not limited to-

(*a*) any work or undertaking performed by one person for the direct or indirect benefit of another;

(*b*) the provision of any education, information, advice or consultation, except advice that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

(*c*) any banking services, or related or similar financial services, or the undertaking, underwriting or assumption of any risk by one person on behalf of another, except to the extent that any such service-

(i) constitutes advice or intermediary services that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); or

(ii) is regulated in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

(*d*) the transportation of an individual or any goods;

(*e*) the provision of-

(i) any accommodation or sustenance;

(ii) any entertainment or similar intangible product or access to any such entertainment or intangible product;

(iii) access to any electronic communication infrastructure;

(iv) access, or of a right of access, to an event or to any premises, activity or facility; or

(v) access to or use of any premises or other property in terms of a rental;

(*f*) a right of occupancy of, or power or privilege over or in connection with, any land or other immovable property, other than in terms of a rental; and

(*g*) rights of a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5 (6) (*b*) to (*e*),

irrespective of whether the person promoting, offering or providing the services participates in, supervises or engages directly or indirectly in the service;

"service provider" means a person who promotes, supplies or offers to supply any service;

"sms" means a short message service provided through a telecommunication system;

"special-order goods" means goods that a supplier expressly or implicitly was required or expected to procure, create or alter specifically to satisfy the consumer's requirements;

"supplier" means a person who markets any goods or services;

"supply", when used as a verb-

(*a*) in relation to goods, includes sell, rent, exchange and hire in the ordinary course of business for consideration; or

(*b*) in relation to services, means to sell the services, or to perform or cause them to be performed or provided, or to grant access to any premises, event, activity or facility in the ordinary course of business for consideration;

"supply chain", with respect to any particular goods or services, means the collectivity of all suppliers who directly or indirectly contribute in turn to the ultimate supply of those goods or services to a consumer, whether as a producer, importer, distributor or retailer of goods, or as a service provider;

"this Act" includes any Schedule to this Act, regulations made or notice issued by the Minister under this Act;

"trade description" means-

(*a*) any description, statement or other direct or indirect indication, other than a trade mark, as to-

(i) the number, quantity, measure, weight or gauge of any goods;

(ii) the name of the producer or producer of any goods;

(iii) the ingredients of which any goods consist, or material of which any goods are made;

(iv) the place or country of origin of any goods;

(v) the mode of manufacturing or producing any goods; or

(vi) any goods being the subject of any patent, privilege or copyright; or

(*b*) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (*a*);

"trade mark" means-

(*a*) a trade mark as defined in section 2 (1) of the Trade Marks Act, 1993 (Act No. 194 of 1993); or

(*b*) a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993;

"transaction" means-

(*a*) in respect of a person acting in the ordinary course of business-

(i) an agreement between or among that person and one or more other persons for the supply or potential supply of any goods or services in exchange for consideration; or

(ii) the supply by that person of any goods to or at the direction of a consumer for consideration; or

(iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration; or

(*b*) an interaction contemplated in section 5 (6), irrespective of whether it falls within paragraph (*a*);

"Tribunal" means the National Consumer Tribunal established by section 26 of the National Credit Act;

"unconscionable", when used with reference to any conduct, means-

(*a*) having a character contemplated in section 40; or

(*b*) otherwise unethical or improper to a degree that would shock the conscience of a reasonable person;

"unit price" means a price for any goods or services expressed in relation to a well-known measure such as quantity, weight, volume, duration or other measurable unit by which the goods or services are allocated;

"used goods", when used in respect of any goods being marketed, means goods that have been previously supplied to a consumer, but does not include goods that have been returned to the supplier in terms of any right of return contemplated in this Act; and

"visual representation" means any representation or illustration capable of being reproduced upon a surface, whether by printing or otherwise, but does not include a trade mark.

(Date of commencement of s. 1: 24 April, 2010.)

2. Interpretation.-(1) This Act must be interpreted in a manner that gives effect to the purposes set out in section 3.

(2) When interpreting or applying this Act, a person, court or Tribunal or the Commission may consider-

(*a*) appropriate foreign and international law;

(*b*) appropriate international conventions, declarations or protocols relating to consumer protection; and

(*c*) any decision of a consumer court, ombud or arbitrator in terms of this Act, to the extent that such a decision has not been set aside, reversed or overruled by the High Court, the Supreme Court of Appeal or the Constitutional Court.

(3) If a provision of this Act requires a document to be signed or initialled by a party to a transaction, that signing or initialling may be effected in any manner recognised by law, including by use of-

(*a*) an advanced electronic signature, as defined in the Electronic Communications and Transactions Act; or

(*b*) an electronic signature, as defined in the Electronic Communications and Transactions Act.

(4) The supplier must take reasonable measures to prevent the use of a consumer's electronic signature for any purpose other than the signing or initialling of the particular document that the consumer intended to sign or initial.

(5) Despite the periods of time set out in section 6, each successive threshold determined by the Minister in terms of that section continues in effect until a subsequent threshold in terms of that section takes effect.

(6) When a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by-

(*a*) excluding the day on which the first such event occurs;

(*b*) including the day on or by which the second event is to occur; and

(*c*) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (*a*) and (*b*), respectively.

(7) Unless the context indicates otherwise, any use of the word "includes" or "including" in relation to a defined or generic word or expression, on the one hand, and one or more enumerated examples or specific items, on the other, is not to be construed as limiting the defined or generic expression to the examples or items so

enumerated.

(8) If there is an inconsistency between any provision of Chapter 5 of this Act and a provision of the Public Finance Management Act, 1999 (Act No. 1 of 1999), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), the provisions of the Public Finance Management Act, 1999, or of the Public Service Act, 1994, as the case may be, prevail.

(9) If there is an inconsistency between any provision of this Act and a provision of any Act not contemplated in subsection (8)-

(*a*) the provisions of both Acts apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second; and

(*b*) to the extent that paragraph (*a*) cannot apply, the provision that extends the greater protection to a consumer prevails over the alternative provision,

provided that in the case of hazardous chemical products only the provisions of this Act relating to consumer redress will apply.

(10) No provision of this Act must be interpreted so as to preclude a consumer from exercising any rights afforded in terms of the common law.

(Date of commencement of s. 2: 24 April, 2010.)

Part B
Purpose, policy and application of Act

3. Purpose and policy of Act.-(1) The purposes of this Act are to promote and advance the social and economic welfare of consumers in South Africa by-

(*a*) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;

(*b*) reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers-

(i) who are low-income persons or persons comprising low-income communities;

(ii) who live in remote, isolated or low-density population areas or communities;

(iii) who are minors, seniors or other similarly vulnerable consumers; or

(iv) whose ability to read and comprehend any advertisement, agreement, mark, instruction, label, warning, notice or other visual representation is limited by reason of low literacy, vision impairment or limited fluency in the language in which the representation is produced, published or presented;

(*c*) promoting fair business practices;

(*d*) protecting consumers from-

(i) unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and

(ii) deceptive, misleading, unfair or fraudulent conduct;

(*e*) improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour;

(*f*) promoting consumer confidence, empowerment, and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism;

(*g*) providing for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions; and

(*h*) providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.

(2) To better ensure the realisation of the purposes of this Act, and the enjoyment of the consumer rights recognised or conferred by this Act, the Commission, in addition to its responsibilities set out elsewhere in this Act, is responsible to-

(*a*) take reasonable and practical measures to promote the purposes of this Act and to protect and advance the interests of all consumers, and in particular those consumers contemplated in subsection (1) (*b*);

(*b*) monitor and report each year to the Minister on the following matters:

(i) The availability of goods and services to persons contemplated in subsection (1) (*b*), including price and market conditions, conduct and trends affecting their consumer rights;

(ii) access to the supply of goods and services by small businesses and persons contemplated in subsection (1) (*b*); and

(iii) any other matter relating to the supply of goods and services; and

(*c*) conduct research and propose policies to the Minister in relation to any matter affecting the supply of goods and services, including proposals for legislative, regulatory or policy initiatives that would improve the realisation and full enjoyment of their consumer rights by persons contemplated in subsection (1) (*b*).

(Date of commencement of s. 3: 24 April, 2010.)

4. Realisation of consumer rights.-(1) Any of the following persons may, in the manner provided for in this Act, approach a court, the Tribunal or the Commission alleging that a consumer's rights in terms of this Act have been infringed, impaired or threatened, or that prohibited conduct has occurred or is occurring:

(*a*) A person acting on his or her own behalf;

(*b*) an authorised person acting on behalf of another person who cannot act in his or her own name;

(*c*) a person acting as a member of, or in the interest of, a group or class of affected persons;

(*d*) a person acting in the public interest, with leave of the Tribunal or court, as the case may be; and

(*e*) an association acting in the interest of its members.

(2) In any matter brought before the Tribunal or a court in terms of this Act-

(*a*) the court must develop the common law as necessary to improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3 (1) (*b*); and

(*b*) the Tribunal or court, as the case may be, must-

(i) promote the spirit and purposes of this Act; and

(ii) make appropriate orders to give practical effect to the consumer's right of access to redress, including, but not limited to-

(*aa*) any order provided for in this Act; and

(*bb*) any innovative order that better advances, protects, promotes and assures the realisation by consumers of their rights in terms of this Act.

(3) If any provision of this Act, read in its context, can reasonably be construed to have more than one meaning, the Tribunal or court must prefer the meaning that best promotes the spirit and purposes of this Act, and will best improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3 (1) (*b*).

(4) To the extent consistent with advancing the purposes and policies of this Act, the Tribunal or court must interpret any standard form, contract or other document prepared or published by or on behalf of a supplier, or required by this Act to be produced by a supplier, to the benefit of the consumer-

(*a*) so that any ambiguity that allows for more than one reasonable interpretation of a part of such a document is resolved to the benefit of the consumer; and

(*b*) so that any restriction, limitation, exclusion or deprivation of a consumer's legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to-

(i) the content of the document;

(ii) the manner and form in which the document was prepared and presented; and

(iii) the circumstances of the transaction or agreement.

(5) In any dealings with a consumer in the ordinary course of business, a person must not-

(*a*) engage in any conduct contrary to, or calculated to frustrate or defeat the purposes and policy of, this Act;

(*b*) engage in any conduct that is unconscionable, misleading or deceptive, or that is reasonably likely to mislead or deceive; or

(*c*) make any representation about a supplier or any goods or services, or a related matter, unless the person has reasonable grounds for believing that the representation is true.

(Date of commencement of s. 4: 24 April, 2010.)

5. Application of Act.-(1) This Act applies to-

(*a*) every transaction occurring within the Republic, unless it is exempted by subsection (2), or in terms of subsections (3) and (4);

(*b*) the promotion of any goods or services, or of the supplier of any goods or services, within the Republic, unless-

(i) those goods or services could not reasonably be the subject of a transaction to which this Act applies in terms of paragraph (*a*); or

(ii) the promotion of those goods or services has been exempted in terms of subsections (3) and (4);

(*c*) goods or services that are supplied or performed in terms of a transaction to which this Act applies, irrespective of whether any of those goods or services are offered or supplied in conjunction with any other goods or services, or separate from any other goods or services; and

(*d*) goods that are supplied in terms of a transaction that is exempt from the application of this Act, but only to the extent provided for in subsection (5).

(2) This Act does not apply to any transaction-

(*a*) in terms of which goods or services are promoted or supplied to the State;

(*b*) in terms of which the consumer is a juristic person whose asset value or annual turnover, at the time of the transaction, equals or exceeds the threshold value determined by the Minister in terms of section 6;

(*c*) if the transaction falls within an exemption granted by the Minister in terms of subsections (3) and (4);

(*d*) that constitutes a credit agreement under the National Credit Act, but the goods or services that are the subject of the credit agreement are not excluded from the ambit of this Act;

(*e*) pertaining to services to be supplied under an employment contract;

(*f*) giving effect to a collective bargaining agreement within the meaning of section 23 of the Constitution and the Labour Relations Act, 1995 (Act No. 66 of 1995); or

(*g*) giving effect to a collective agreement as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(3) A regulatory authority may apply to the Minister for an industry-wide exemption from one or more provisions of this Act on the grounds that those provisions overlap or duplicate a regulatory scheme administered by that regulatory authority in terms of-

(*a*) any other national legislation; or

(*b*) any treaty, international law, convention or protocol.

(4) The Minister, by notice in the *Gazette* after receiving the advice of the Commission, may grant an exemption contemplated in subsection (3)-

(*a*) only to the extent that the relevant regulatory scheme ensures the achievement of the purposes of this Act at least as well as the provisions of this Act; and

(*b*) subject to any limits or conditions necessary to ensure the achievement of the purposes of this Act.

(5) If any goods are supplied within the Republic to any person in terms of a transaction that is exempt from the application of this Act, those goods, and the importer or producer, distributor and retailer of those goods, respectively, are nevertheless subject to sections 60 and 61.

(6) For greater certainty, the following arrangements must be regarded as a transaction between a supplier and consumer, within the meaning of this Act:

(*a*) The supply of any goods or services in the ordinary course of business to any of its members by a club, trade union, association, society or other collectivity, whether corporate or unincorporated, of persons voluntarily associated and organised for a common purpose or purposes, whether for fair value consideration or otherwise, irrespective of whether there is a charge or economic contribution demanded or expected in order to become or remain a member of that entity;

(*b*) a solicitation of offers to enter into a franchise agreement;

(*c*) an offer by a potential franchisor to enter into a franchise agreement with a potential franchisee;

(*d*) a franchise agreement or an agreement supplementary to a franchise agreement; and

(*e*) the supply of any goods or services to a franchisee in terms of a franchise agreement.

(7) Despite subsection (2) (*b*), this Act applies to a transaction contemplated in subsection (6) (*b*) to (*e*) irrespective of whether the size of the juristic person falls above or below the threshold determined in terms of section 6.

(8) The application of this Act in terms of subsections (1) to (7) extends to a matter irrespective of whether

the supplier-

(*a*) resides or has its principal office within or outside the Republic;

(*b*) operates on a for-profit basis or otherwise; or

(*c*) is an individual, juristic person, partnership, trust, organ of state, an entity owned or directed by an organ of state, a person contracted or licensed by an organ of state to offer or supply any goods or services, or is a public-private partnership; or

(*d*) is required or licensed in terms of any public regulation to make the supply of the particular goods or services available to all or part of the public.

(Date of commencement of s. 5: 24 April, 2010.)

6. Threshold determination.-(1) On the early effective date as determined in accordance with item 2 of Schedule 2, and subsequently at intervals of not more than five years, the Minister, by notice in the *Gazette*, must determine a monetary threshold applicable to the size of the juristic person for the purposes of section 5 (2) (*b*).

(2) The initial threshold determined by the Minister in terms of this section takes effect on the general effective date as determined in accordance with item 2 of Schedule 2, and each subsequent threshold takes effect six months after the date on which it is published in the *Gazette.*

(Date of commencement of s. 6: 24 April, 2010.)

7. Requirements of franchise agreements.-(1) A franchise agreement must-

(*a*) be in writing and signed by or on behalf of the franchisee;

(*b*) include any prescribed information, or address any prescribed categories of information; and

(*c*) comply with the requirements of section 22.

(2) A franchisee may cancel a franchise agreement without cost or penalty within 10 business days after signing such agreement, by giving written notice to the franchisor.

(3) The Minister may prescribe information to be set out in franchise agreements, generally, or within specific categories or industries.

(Date of commencement of s. 7: 24 April, 2010.)

CHAPTER 2
FUNDAMENTAL CONSUMER RIGHTS

Part A
Right of equality in consumer market

8. Protection against discriminatory marketing.-(1) Subject to section 9, a supplier of goods or services must not unfairly-

(*a*) exclude any person or category of persons from accessing any goods or services offered by the supplier;

(*b*) grant any person or category of persons exclusive access to any goods or services offered by the supplier;

(*c*) assign priority of supply of any goods or services offered by the supplier to any person or category of persons;

(*d*) supply a different quality of goods or services to any person or category of persons;

(*e*) charge different prices for any goods or services to any persons or category of persons;

(*f*) target particular communities, districts, populations or market segments for exclusive, priority or preferential supply of any goods or services; or

(*g*) exclude a particular community, district, population or market segment from the supply of any goods or services offered by the supplier,

on the basis of one or more grounds of unfair discrimination contemplated in section 9 of the Constitution or Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act.

(2) Subject to section 9, a supplier must not directly or indirectly treat any person differently than any other,

in a manner that constitutes unfair discrimination on one or more grounds set out in section 9 of the Constitution, or one or more grounds set out in Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, when-

(*a*) assessing the ability of the person to pay the cost, or otherwise meet the obligations, of a proposed transaction or agreement;

(*b*) deciding whether to enter into a transaction or agreement, or to offer to enter into a transaction or agreement;

(*c*) determining any aspect of the cost of a transaction or agreement to the consumer;

(*d*) interacting with the consumer-

(i) in the supplier's place of business, or

(ii) in the course of displaying or demonstrating any goods, testing or fitting any goods, or negotiating the terms of a transaction or agreement; or

(*e*) selecting, preparing, packaging or delivering any goods for or to the consumer, or providing any services to the consumer;

(*f*) proposing or agreeing the terms and conditions of a transaction or agreement;

(*g*) assessing or requiring compliance by the person with the terms of a transaction or agreement;

(*h*) exercising any right of the supplier under a transaction or agreement in terms of this Act or applicable provincial consumer legislation;

(*i*) determining whether to continue, enforce, seek judgment in respect of, or terminate a transaction or agreement; or

(*j*) determining whether to report, or reporting, any personal information of such person.

(3) Subsections (1) and (2) also apply in respect of a consumer that is an association or juristic person, to prohibit unfair discrimination against that association or juristic person based on the characteristics of any natural person who is a member, associate, owner, manager, employee, client or customer of that association or juristic person.

(4) Nothing in this section is intended to limit the authority of a court to-

(*a*) consider any conduct between a supplier and a consumer that is not contemplated in this section; or

(*b*) find that any such conduct constitutes unfair discrimination within the meaning of the Constitution or the Promotion of Equality and Prevention of Unfair Discrimination Act.

9. Reasonable grounds for differential treatment in specific circumstances.-(1) It is not a contravention of section 8 for a supplier to-

(*a*) refuse to supply or provide access to any particular goods or services to a minor, or to require the consent of a parent, guardian or other responsible adult before supplying or providing access to any particular goods or services to an unemancipated minor-

(i) in accordance with any public regulation; or

(ii) as a reasonable precaution to protect the health, welfare or safety of a minor;

(*b*) refuse on reasonable grounds to-

(i) enter into an agreement with a minor for the supply of any goods or services; or

(ii) continue, or renew, an agreement contemplated in subparagraph (i), unless the supplier has reason to believe that the minor is emancipated;

(*c*) reasonably designate any facility or service, permanently, or from time to time, for the exclusive use of-

(i) minors generally;

(ii) minors who are above or below a specified age, or between specified ages; or

(iii) adults who have attained a specified age of at least 60 years; or

(*d*) advertise, offer or agree to supply, or supply, any goods or services at a discounted price solely on the basis that the consumer-

(i) is a minor who has not yet attained a specified age; or

(ii) is an adult who has attained a specified age of at least 60 years.

(2) It is not a contravention of section 8 for a supplier to reasonably-

(*a*) provide and designate separate but substantially equivalent facilities for the exclusive use of persons of each gender; or

(*b*) offer to supply or provide access to a facility exclusively to persons of one gender.

(3) It is not a contravention of section 8 for a supplier to market any goods or services in a manner that implies or expresses a preference for a particular group of consumers who are distinguishable from the general population on the basis of a ground of discrimination set out in section 9 (3) of the Constitution, if the particular goods or services are reasonably intended or designed to satisfy any specific needs or interests that are common to, or uniquely characteristic of, that particular group of consumers.

(4) Nothing in this section is intended to limit the authority of a court to-

(*a*) assess the reasonableness of any conduct, to the extent contemplated in subsections (1) (*b*) or (*c*), (2) or (3), and determine whether any conduct not reasonably justified, as contemplated in those subsections, constitutes unfair discrimination within the meaning of the Constitution or the Promotion of Equality and Prevention of Unfair Discrimination Act; or

(*b*) determine whether any conduct contemplated in section 8 was fair in the circumstances of a particular transaction or the marketing of any particular goods or services, as the case may be.

10. Equality court jurisdiction over this Part.-(1) In respect of an alleged contravention of this Part, an accredited consumer protection group, or any person contemplated in section 20 (1) of the Promotion of Equality and Prevention of Unfair Discrimination Act, may either-

(*a*) institute proceedings before an equality court in terms of Chapter 4 of that Act; or

(*b*) file a complaint with the Commission, which must refer the complaint to the equality court, if the complaint appears to be valid.

(2) In any proceedings contemplated in this Part-

(*a*) there is a presumption that any differential treatment contemplated in section 8 is unfair discrimination, unless it is established that the discrimination is fair; and

(*b*) a court may draw an inference that a supplier has discriminated unfairly if-

(i) the supplier has done anything contemplated in section 8 with respect to a consumer in a manner that constituted differential treatment compared to that accorded to another consumer;

(ii) in the circumstances, the differential treatment appears to be based on a prohibited ground of discrimination; and

(iii) the supplier, when called upon to do so, has refused or failed to offer an alternative reasonable and justifiable explanation for the difference in treatment.

Part B
Consumer's right to privacy

11. Right to restrict unwanted direct marketing.-(1) The right of every person to privacy includes the right to-

(*a*) refuse to accept;

(*b*) require another person to discontinue; or

(*c*) in the case of an approach other than in person, to pre-emptively block,

any approach or communication to that person, if the approach or communication is primarily for the purpose of direct marketing.

(2) To facilitate the realisation of each consumer's right to privacy, and to enable consumers to efficiently protect themselves against the activities contemplated in subsection (1), a person who has been approached for the purpose of direct marketing may demand during or within a reasonable time after that communication that the person responsible for initiating the communication desist from initiating any further communication.

(3) The Commission may establish, or recognise as authoritative, a registry in which any person may register a pre-emptive block, either generally or for specific purposes, against any communication that is primarily for the purpose of direct marketing.

(4) A person authorising, directing or conducting any direct marketing-

(*a*) must implement appropriate procedures to facilitate the receipt of demands contemplated in subsection (2); and

(*b*) must not direct or permit any person associated with that activity to direct or deliver any communication for the purpose of direct marketing to a person who has-

(i) made a demand contemplated in subsection (2); or

(ii) registered a relevant pre-emptive block as contemplated in subsection (3).

(Date of commencement of sub-para. (ii) to be proclaimed (refer to Item 4 in Schedule 2).)

(5) No person may charge a consumer a fee for making a demand in terms of subsection (2) or registering a pre-emptive block as contemplated in subsection (3).

(6) The Minister may prescribe regulations for the operation of a registry contemplated in subsection (3).

12. Regulation of time for contacting consumers.-(1) A supplier must not engage in any direct marketing directed to a consumer at home for any promotional purpose during a prohibited period prescribed in terms of this section, except to the extent that the consumer has expressly or implicitly requested or agreed otherwise.

(2) In order to protect the privacy of consumers, the Minister, by notice in the *Gazette*, may prescribe specific days, dates, public holidays or times of days for the purpose of subsection (1).

Part C
Consumer's right to choose

13. Consumer's right to select suppliers.-(1) A supplier must not require, as a condition of offering to supply or supplying any goods or services, or as a condition of entering into an agreement or transaction, that the consumer must-

(*a*) purchase any other particular goods or services from that supplier;

(*b*) enter into an additional agreement or transaction with the same supplier or a designated third party; or

(*c*) agree to purchase any particular goods or services from a designated third party,

unless the supplier-

(i) can show that the convenience to the consumer in having those goods or services bundled outweighs the limitation of the consumer's right to choice;

(ii) can show that the bundling of those goods or services results in economic benefit for consumers; or

(iii) offers bundled goods or services separately and at individual prices.

(2) Except to the extent that any other law provides otherwise, in any transaction between a franchisee and franchisor in terms of their franchise agreement, it is a defence to an allegation that the franchisor, as supplier to the franchisee, has contravened this section if any goods or services that the franchisee was required to purchase from or at the direction of the franchisor are reasonably related to the branded products or services that are the subject of the franchise agreement.

14. Expiry and renewal of fixed-term agreements.-(1) This section does not apply to transactions between juristic persons regardless of their annual turnover or asset value.

(2) If a consumer agreement is for a fixed term-

(*a*) that term must not exceed the maximum period, if any, prescribed in terms of subsection (4) with respect to that category of consumer agreement;

(*b*) despite any provision of the consumer agreement to the contrary-

(i) the consumer may cancel that agreement-

(*aa*) upon the expiry of its fixed term, without penalty or charge, but subject to subsection (3) (*a*); or

(*bb*) at any other time, by giving the supplier 20 business days' notice in writing or other recorded manner and form, subject to subsection (3) (*a*) and (*b*); or

(ii) the supplier may cancel the agreement 20 business days after giving written notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time;

(*c*) of not more than 80, nor less than 40, business days before the expiry date of the fixed term of the consumer agreement, the supplier must notify the consumer in writing or any other recordable form, of the impending expiry date, including a notice of-

(i) any material changes that would apply if the agreement is to be renewed or may otherwise continue beyond the expiry date; and

(ii) the options available to the consumer in terms of paragraph (*d*); and

(*d*) on the expiry of the fixed term of the consumer agreement, it will be automatically continued on a month-to-month basis, subject to any material changes of which the supplier has given notice, as contemplated in paragraph (*c*), unless the consumer expressly-

(i) directs the supplier to terminate the agreement on the expiry date; or

(ii) agrees to a renewal of the agreement for a further fixed term.

(3) Upon cancellation of a consumer agreement as contemplated in subsection (1) (*b*)-

(*a*) the consumer remains liable to the supplier for any amounts owed to the supplier in terms of that agreement up to the date of cancellation; and

(*b*) the supplier-

(i) may impose a reasonable cancellation penalty with respect to any goods supplied, services provided, or discounts granted, to the consumer in contemplation of the agreement enduring for its intended fixed term, if any; and

(ii) must credit the consumer with any amount that remains the property of the consumer as of the date of cancellation,

as prescribed in terms of subsection (4).

(4) The Minister may, by notice in the *Gazette*, prescribe-

(*a*) the maximum duration for fixed-term consumer agreements, generally, or for specified categories of such agreements;

(*b*) the manner and form of providing notices to the consumer in terms of subsection (2) (*c*);

(*c*) the manner, form and basis for determining the reasonableness of credits and charges contemplated in subsection (3); and

(*d*) other incidental matters as required to provide for the proper administration of this section.

15. Pre-authorisation of repair or maintenance services.-(1) This section applies only to a transaction or consumer agreement-

(*a*) with a price value above the threshold prescribed in terms of subsection (5); and

(*b*) if, in terms of that transaction or agreement, a service provider supplies a repair or maintenance service to, or supplies or installs any replacement parts or components in, any property belonging to or in the control of the consumer, and-

(i) the service provider has, or takes, possession of that property for the purpose contemplated in this paragraph; or

(ii) in any other case, the consumer requests an estimate before any services or goods are supplied.

(2) A service provider to whom this section applies, must not charge a consumer for the supply of any goods or services contemplated in subsection (1), unless-

(*a*) the supplier or service provider has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorised the work; or

(*b*) the consumer, in writing, or by another recorded manner or form, has-

(i) declined the offer of an estimate, and authorised the work; or

(ii) pre-authorised any charges up to a specified maximum, and the amount charged does not exceed that maximum.

(3) A service provider to whom this section applies must not charge a consumer for preparing an estimate required in terms of subsection (2) (*a*), including-

(*a*) any cost of performing any diagnostic work, disassembly or re-assembly required in order to prepare an estimate; or

(*b*) any damage to or loss of material or parts in the course of preparing an estimate,

unless, before preparing the estimate the service provider has disclosed the price for preparing that estimate, and the consumer has approved it.

(4) If a supplier has provided an estimate for any service, or goods and services, the supplier may not charge the consumer a price for that service, or those goods and services, that exceeds the estimate, unless after providing the estimate-

(*a*) the service provider has informed the consumer of the additional estimated charges; and

(*b*) the consumer has authorised the work to continue.

(5) The Minister may, by notice in the *Gazette*, prescribe a monetary threshold for the purpose of subsection (1) (*a*).

16. Consumer's right to cooling-off period after direct marketing.-(1) This section does not apply to a transaction if section 44 of the Electronic Communications and Transactions Act applies to that transaction.

(2) To the extent that this section applies to a transaction or agreement, it is in addition to and not in substitution for any right to rescind a transaction or agreement that may otherwise exist in law between a supplier and a consumer.

(3) A consumer may rescind a transaction resulting from any direct marketing without reason or penalty, by notice to the supplier in writing, or another recorded manner and form, within five business days after the later of the date on which-

(*a*) the transaction or agreement was concluded; or

(*b*) the goods that were the subject of the transaction were delivered to the consumer.

(4) A supplier must-

(*a*) return any payment received from the consumer in terms of the transaction within 15 business days after-

(i) receiving notice of the rescission, if no goods had been delivered to the consumer in terms of the transaction; or

(ii) receiving from the consumer any goods supplied in terms of the transaction; and

(*b*) not attempt to collect any payment in terms of a rescinded transaction, except as permitted in terms of section 20 (6).

17. Consumer's right to cancel advance reservation, booking or order.-(1) This section does not apply to a franchise agreement, or in respect of any special-order goods.

(2) Subject to subsections (3) and (4), a consumer has the right to cancel any advance booking, reservation or order for any goods or services to be supplied.

(3) A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date may-

(*a*) require payment of a reasonable deposit in advance; and

(*b*) impose a reasonable charge for cancellation of the order or reservation, subject to subsection (5).

(4) For the purposes of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to-

(*a*) the nature of the goods or services that were reserved or booked;

(*b*) the length of notice of cancellation provided by the consumer;

(*c*) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and

(*d*) the general practice of the relevant industry.

(5) A supplier may not impose any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of the death or hospitalisation of the person for whom, or for whose benefit the booking, reservation or order was made.

18. Consumer's right to choose or examine goods.-(1) Despite any statement or notice to the contrary, a consumer is not responsible for any loss or damage to any goods displayed by a supplier, unless the loss or damage results from action by the consumer amounting to gross negligence or recklessness, malicious behaviour or criminal conduct.

(2) If any goods are displayed in or sold from open stock, the consumer has the right to select or reject any particular item from that stock before completing the transaction.

(3) If the consumer has agreed to purchase goods solely on the basis of a description or sample, or both, provided by the supplier, the goods delivered to the consumer must in all material respects and characteristics correspond to that which an ordinary alert consumer would have been entitled to expect based on the description or on a reasonable examination of the sample, as the case may be.

(4) If a supply of goods is by sample, as well as by description, it is not sufficient that any of the goods correspond with the sample if the goods do not also correspond with the description.

19. Consumer's rights with respect to delivery of goods or supply of service.-(1) This section does not apply to-

(*a*) the supply of goods or services to a franchisee in terms of a franchise agreement; or

(*b*) a transaction if the performance of that transaction is governed by section 46 of the Electronic Communications and Transactions Act.

(2) Unless otherwise expressly provided or anticipated in an agreement, it is an implied condition of every transaction for the supply of goods or services that-

(*a*) the supplier is responsible to deliver the goods or perform the services-

(i) on the agreed date and at the agreed time, if any, or otherwise within a reasonable time after concluding the transaction or agreement;

(ii) at the agreed place of delivery or performance; and

(iii) at the cost of the supplier, in the case of delivery of goods; or

(*b*) the agreed place of delivery of goods or performance of services is the supplier's place of business, if the supplier has one, and if not, the supplier's residence; and

(*c*) goods to be delivered remain at the supplier's risk until the consumer has accepted delivery of them, in accordance with this section.

(3) If an agreement does not provide a specific date or time for delivery of any goods or performance of any services, the supplier must not require that the consumer accept delivery or performance of the services at an unreasonable time.

(4) The consumer is regarded to have accepted delivery of any goods on the earliest of the following circumstances:

(*a*) When the consumer expressly or implicitly communicates to the supplier that the consumer has accepted delivery of such goods; or

(*b*) when the goods have been delivered to the consumer, and-

(i) the consumer does anything in relation to the goods that would be inconsistent with the supplier's ownership of them; or

(ii) after the lapse of a reasonable time, the consumer retains the goods without intimating to the supplier that the consumer has rejected delivery of them, subject to subsection (5).

(5) When a supplier tenders delivery to a consumer of any goods, the supplier must, on request, allow the consumer a reasonable opportunity to examine those goods for the purpose of ascertaining whether the consumer is satisfied that the goods-

(*a*) are of a type and quality reasonably contemplated in the agreement, and meet the tests set out in section 18 (3) and (4); and

(*b*) in the case of a special-order agreement, reasonably conform to the material specifications of the special order.

(6) If the supplier tenders the delivery of goods or the performance of any services at a location, on a date or at a time other than as agreed with the consumer, the consumer may either-

(*a*) accept the delivery or performance at that location, date and time;

(*b*) require the delivery or performance at the agreed location, date and time, if that date and time have not yet passed; or

(*c*) cancel the agreement without penalty, treating any delivered goods or performed services as unsolicited goods or services in accordance with section 21.

(7) If the supplier delivers to the consumer a larger quantity of goods than the consumer agreed to buy, the consumer may either-

(*a*) reject all of the delivered goods; or

(*b*) accept delivery of the goods, and-

(i) pay for the agreed quantity at the agreed rate; and

(ii) treat the excess quantity as unsolicited goods in accordance with section 21.

(8) If the supplier delivers to the consumer some of the goods the supplier agreed to supply mixed with goods of a different description not contemplated in the agreement, the consumer may-

(*a*) accept delivery of the goods that are in accordance with the agreement and reject the rest; or

(*b*) reject all of the delivered goods.

20. Consumer's right to return goods.-(1) This section is in addition to and not in substitution for-

(*a*) the right to return unsafe or defective goods, contemplated in section 56; or

(*b*) any other right in law between a supplier and consumer to return goods and receive a refund.

(2) Subject to subsections (3) to (6), the consumer may return goods to the supplier, and receive a full refund of any consideration paid for those goods, if the supplier has delivered-

(*a*) goods to the consumer in terms of an agreement arising out of direct marketing, and the consumer has rescinded that agreement during the cooling-off period, in accordance with section 16;

(*b*) goods that the consumer did not have an opportunity to examine before delivery, and the consumer has rejected delivery of those goods for any of the reasons contemplated in section 19 (5);

(*c*) a mixture of goods, and the consumer has refused delivery of any of those goods, as contemplated in section 19 (8); or

(*d*) goods intended to satisfy a particular purpose communicated to the supplier as contemplated in section 55 (3), and within 10 business days after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose.

(3) Subsection (2) does not apply with respect to any goods if-

(*a*) for reasons of public health or otherwise, a public regulation prohibits the return of those goods to a supplier once they have been supplied to, or at the direction of, a consumer; or

(*b*) after having been supplied to, or at the direction of, the consumer, the goods have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

(4) Goods returnable in terms of-

(*a*) subsection (2) (*a*) must be returned to the supplier at the consumer's risk and expense; or

(*b*) subsection (2) (*b*) to (*d*) must be returned to the supplier at the supplier's risk and expense,

within 10 business days after delivery to the consumer.

(5) Upon return of any goods in terms of this section, the supplier must refund to the consumer the price paid for the goods, less any amount that may be charged in terms of subsection (6).

(6) In determining the right of a supplier to impose a charge contemplated in subsection (5), if any goods returned to the supplier in terms of this section are-

(*a*) in the original unopened packaging, the supplier may not charge the consumer any amount in respect of the goods;

(*b*) in their original condition and repackaged in their original packaging, the supplier may charge the consumer a reasonable amount for-

(i) use of the goods during the time they were in the consumer's possession, unless they are goods that are ordinarily consumed or depleted by use, and no such consumption or depletion has occurred; or

(ii) any consumption or depletion of the goods, unless that consumption or depletion is limited to a reasonable amount necessary to determine whether the goods were acceptable to the consumer; or

(*c*) in any other case, the supplier may charge the consumer a reasonable amount-

(i) as contemplated in paragraph (*b*); and

(ii) for necessary restoration costs to render the goods fit for re-stocking, unless, having regard to the nature of the goods, and the manner in which they were packaged, it was necessary for the consumer to destroy the packaging in order to determine whether the goods-

(*aa*) conformed to the description or sample provided, in the case of goods that had not been examined by the consumer before delivery, as contemplated in subsection (2) (*b*); or

(*bb*) were fit for the intended purpose, in a case contemplated in subsection (2) (*d*).

21. Unsolicited goods or services.-(1) For the purpose of this Act, goods or services are unsolicited in any of the following circumstances, subject to subsection (2):

(*a*) If, during any direct marketing of goods or services, a supplier or person acting on behalf of a supplier has left any goods with, or performed any service for, a consumer without requiring or arranging payment for them, those goods or services, as the case may be, are unsolicited;

(*b*) if a consumer is a party to an agreement contemplating the periodic delivery of goods during the life of the agreement, and-

(i) during the course of that agreement, the supplier introduces goods or services that are materially different from the goods or services previously supplied to an extent not reasonably contemplated in the agreement, the new goods or services are unsolicited, unless the consumer expressly consented to the material change; or

(ii) after the termination of that agreement, the supplier delivers any further goods to the consumer, other than in terms of a different agreement or transaction, those further goods are unsolicited goods;

(*c*) if a supplier delivers goods or performs services at a location, date or time other than as agreed, and the consumer has rejected that delivery or performance of services, as contemplated in section 19 (6), those goods or services are unsolicited;

(*d*) if a supplier delivers a larger quantity of goods than the consumer agreed to buy, the excess goods are unsolicited unless the consumer has rejected the entire delivery, as contemplated in section 19 (7) (*a*); or

(*e*) if any goods have been delivered to, or any services performed for, a consumer by or on behalf of a supplier without the consumer having expressly or implicitly requested that delivery or performance, the goods or services, as the case may be, are unsolicited goods.

(2) Despite subsection (1), if-

(*a*) within 10 business days after delivery of any goods to a consumer, the supplier informs the consumer that the goods were delivered in error, those goods become unsolicited only if the supplier fails to recover them within 20 business days after so informing the consumer; or

(*b*) any goods are delivered to a consumer and-

(i) those goods are clearly addressed to another person, and have obviously been misdelivered; or

(ii) having regard to the circumstances of the delivery, if would be apparent to the ordinary alert consumer that the goods were intended to be delivered to another person,

the goods become unsolicited goods only if the recipient informs the apparent supplier or the deliverer that the goods were misdelivered, and the goods are not recovered within the following 20 business days.

(3) If a person is in possession of goods contemplated in this section, the person-

(*a*) must not frustrate or impede any reasonable action by the supplier or deliverer to recover the goods within the time allowed in subsection (2);

(*b*) is not responsible for any cost pertaining to the recovery of the goods or further delivery of them to another person; and

(*c*) is not liable for any loss or damage to the goods during the time they are in the person's possession or control, other than loss caused by the person's intentional interference with the goods, if any.

(4) A person who fails to comply with subsection (3) (*a*) is liable to the supplier or deliverer, as the case may be, for any additional costs for recovery of, or damage to, the goods arising as a result of anything done to frustrate or impede the lawful recovery of those goods.

(5) If a person is in possession of any unsolicited goods, the person may-

(*a*) retain the goods; or

(*b*) return the goods to the apparent supplier or deliverer at the risk and expense of the supplier or deliverer, as the case may be.

(6) If a person lawfully retains any unsolicited goods-

(*a*) the property in those goods passes unconditionally to the person, subject only to any right or valid claim that an uninvolved third party may have with respect to those goods; and

(*b*) the person who supplied or delivered those goods is liable to any other person in respect of any right or valid claim relating to such goods.

(7) A person has no obligation to pay a supplier for unsolicited goods or services, or a deliverer for the cost of delivery of any unsolicited goods.

(8) A supplier must not demand or assert any right to, or attempt to collect, any payment from a consumer in respect of any charge relating to unsolicited goods left in the possession of a consumer, or the delivery of any such goods, or unsolicited services supplied to or for the benefit of, a consumer, except as contemplated in subsection (4).

(9) If a consumer has made any payment to a supplier or deliverer in respect of any charge relating to unsolicited goods or services, or the delivery of any such goods, the consumer is entitled to recover that amount, with interest from the date on which it was paid to the supplier, in accordance with the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

Part D
Right to disclosure and information

22. Right to information in plain and understandable language.-(1) The producer of a notice, document or visual representation that is required, in terms of this Act or any other law, to be produced, provided or displayed to a consumer must produce, provide or display that notice, document or visual representation-

(*a*) in the form prescribed in terms of this Act or any other legislation, if any, for that notice, document or visual representation; or

(*b*) in plain language, if no form has been prescribed for that notice, document or visual representation.

(2) For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to-

(*a*) the context, comprehensiveness and consistency of the notice, document or visual representation;

(*b*) the organisation, form and style of the notice, document or visual representation;

(*c*) the vocabulary, usage and sentence structure of the notice, document or visual representation; and

(*d*) the use of any illustrations, examples, headings or other aids to reading and understanding.

(3) The Commission may publish guidelines for methods of assessing whether a notice, document or visual representation satisfies the requirements of subsection (1) (*b*).

(4) Guidelines published in terms of subsection (3) may be published for public comment.

23. Disclosure of price of goods or services.-(1) This section does not apply to a transaction if-

(*a*) a supplier has provided an estimate pertaining to that transaction, or the consumer has waived such an estimate, as contemplated in section 15; or

(*b*) section 43 of the Electronic Communications and Transactions Act applies to that transaction.

(2) In this section, "price" includes a unit price.

(3) Subject to subsection (4), a retailer must not display any goods for sale without displaying to the consumer a price in relation to those goods.

(4) A retailer is not required to display a price for any goods that are displayed predominantly as a form of advertisement of the supplier, or of goods or services, in an area within the supplier's premises to which the public does not ordinarily have access.

(5) A price is adequately displayed to a consumer if, in relation to any particular goods, a written indication of the price, expressed in the currency of the Republic, is-

(*a*) annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;

(*b*) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services in question; or

(*c*) published in relation to the goods in a catalogue, brochure, circular or similar form of publication available to that consumer, or to the public generally, if-

(i) a time is specified in the catalogue, brochure, circular or similar form of publication as the time after which the goods may not be sold at that price, and that time has not yet passed; or

(ii) in any other case, the catalogue, brochure, circular or similar form of publication is dated, and in the circumstances may reasonably be regarded as not out of date.

(6) Subject to subsections (7) to (10), a supplier must not require a consumer to pay a price for any goods or services-

(*a*) higher than the displayed price for those goods or services; or

(*b*) if more than one price is concurrently displayed, higher than the lower or lowest of the prices so displayed.

(7) Subsection (6) does not apply in respect of the price of any goods or services if the price of those goods or services is determined by or in terms of any public regulation.

(8) If a price that was once displayed has been fully covered and obscured by a second displayed price, that second price must be regarded as the displayed price.

(9) If a price as displayed contains an inadvertent and obvious error, the supplier is not bound by it after-

(*a*) correcting the error in the displayed price; and

(*b*) taking reasonable steps in the circumstances to inform consumers to whom the erroneous price may have been displayed of the error and the correct price.

(10) A supplier is not bound by a price displayed in relationship to any goods or services if an unauthorised person has altered, defaced, covered, removed or obscured the price displayed or authorised by the supplier.

(11) If, in addition to displaying a price in relation to any goods or services, a supplier has advertised or displayed a placard or similar device announcing that prices are, will be or have been reduced by-

(*a*) a monetary value, generally or in relationship to any particular goods or services, the displayed price for the purpose of subsection (6) must be regarded as being the price immediately displayed in relationship to the goods or services, minus the announced monetary reduction; or

(*b*) a percentage value, generally or in relationship to any particular goods or services, the displayed price for the purpose of subsection (6) must be regarded as being the price immediately displayed in relationship to the goods or services, minus an amount determined by multiplying that price by the percentage shown,

unless the supplier has applied two or more prices immediately to the goods or services concerned, and the difference between the highest and lower or lowest of those applied prices is equivalent to the advertised or placarded reduction in price.

24. Product labelling and trade descriptions.-(1) For the purposes of this section, a trade description is applied to goods if it is-

(*a*) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;

(*b*) displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or

(*c*) is contained in any sign, advertisement, catalogue, brochure, circular, wine list, invoice, business letter, business paper or other commercial communication on the basis of which a consumer may request or order the goods.

(2) A person must not-

(*a*) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description; or

(*b*) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers.

(3) A retailer of goods must-

(*a*) not offer to supply, display or supply any particular goods if the retailer knows, reasonably could determine or has reason to suspect that-

(i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or

(ii) a trade description or trade mark applied to those goods has been altered as contemplated in subsection (2) (*b*); and

(*b*) with respect to any goods within the retailer's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (*a*) or subsection (2) (*b*).

(4) The Minister may prescribe-

(*a*) categories of goods that are required to have a trade description applied to them, as contemplated in subsection (5);

(*b*) the rules to be used in accordance with any international agreement for the purpose of determining the country of origin of any goods or components of any goods; and

(*c*) the information that is required to be included in any trade description, from among the categories of information contemplated in the definition of "trade description" in section 1.

(5) The producer or importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing-

(*a*) the country of origin of the goods; and

(*b*) any other prescribed information.

(6) Any person who produces, supplies, imports or packages any prescribed goods must display on, or in association with the packaging of those goods, a notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of those goods in accordance with applicable regulations.

25. Disclosure of reconditioned or grey market goods.-(1) A person who offers or agrees to supply, or supplies, any goods that-

(*a*) have been reconditioned, rebuilt or remade; and

(*b*) that bear the trade mark of the original producer or supplier,

must apply a conspicuous notice to those goods stating clearly that they have been reconditioned, rebuilt or remade, as the case may be.

(2) A person who markets any goods that bear a trade mark, but have been imported without the approval or licence of the registered owner of that trade mark, must apply a conspicuous notice to those goods in the prescribed manner and form.

26. Sales records.-(1) This section does not apply to a transaction if-

(*a*) section 43 of the Electronic Communications and Transactions Act applies to that transaction; or

(*b*) the transaction has been exempted in terms of subsection (3).

(2) A supplier of goods or services must provide a written record of each transaction to the consumer to whom any goods or services are supplied.

(3) The record contemplated in subsection (2) must include at least the following information:

(*a*) The supplier's full name, or registered business name, and VAT registration number, if any;

(*b*) the address of the premises at which, or from which, the goods or services were supplied;

(*c*) the date on which the transaction occurred;

(*d*) a name or description of any goods or services supplied or to be supplied;

(*e*) the unit price of any particular goods or services supplied or to be supplied;

(*f*) the quantity of any particular goods or services supplied or to be supplied;

(*g*) the total price of the transaction, before any applicable taxes;

(*h*) the amount of any applicable taxes; and

(*i*) the total price of the transaction, including any applicable taxes.

(4) The Minister may, by notice in the *Gazette*, exempt categories of goods or services, or circumstances of trade, from the application of subsections (2) and (3).

27. Disclosure by intermediaries.-(1) An intermediary must-

(*a*) disclose prescribed information to-

(i) any person whom the intermediary solicits or agrees to represent with respect to the sale of any property or services, or from whom the intermediary accepts any property for the purpose of offering it for sale; and

(ii) any person from whom the intermediary solicits an offer, or to whom the intermediary offers to supply or supplies-

(*aa*) any service to be performed by a third person; or

(*bb*) any goods or property belonging to a third person; and

(*b*) keep the prescribed records of all relationships and transactions contemplated in this section.

(2) Subsection (1) does not apply to an intermediary who is-

(*a*) the executor or other administrator of a deceased's estate, in respect of any property of that estate;

(*b*) the liquidator of an insolvent estate, in respect of any property of that estate; or (*c*) a trustee in respect of any trust property.

(3) The Minister may prescribe-

(*a*) the information, including the manner and form of delivery of any such information, that an intermediary, or different categories of intermediary, must provide in terms of this section; and

(*b*) any records, including the form and content of any such records, that an intermediary, or different categories of intermediary, must keep in terms of this section.

28. Identification of deliverers, installers and others.-Whenever a person is engaged in direct marketing in person at the premises of a consumer, or performing any services for a consumer at any such premises, or delivering any goods to, or installing any goods for, a consumer, at any such premises, that person must-

(*a*) visibly wear or display a badge or similar identification device that satisfies any prescribed standards; or

(*b*) provide suitable identification on request by the consumer.

Part E
Right to fair and responsible marketing

29. General standards for marketing of goods or services.-A producer, importer, distributor, retailer or service provider must not market any goods or services-

(*a*) in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services, as contemplated in section 41; or

(*b*) in a manner that is misleading, fraudulent or deceptive in any way, including in respect of-

(i) the nature, properties, advantages or uses of the goods or services;

(ii) the manner in or conditions on which those goods or services may be supplied;

(iii) the price at which the goods may be supplied, or the existence of, or relationship of the price to, any previous price or competitor's price for comparable or similar goods or services;

(iv) the sponsoring of any event; or

(v) any other material aspect of the goods or services.

30. Bait marketing.-(1) A supplier must not advertise any particular goods or services as being available at a specified price in a manner that may result in consumers being misled or deceived in any respect relating to the actual availability of those goods or services from that supplier, at that advertised price.

(2) If a supplier advertises particular goods or services as being available at a specified price, and the advertisement expressly states a limitation in respect of the availability of those goods or services from that supplier at that price, the supplier must make those goods or services available at that price, to the extent of the expressed limits.

(3) It is a defence to an alleged failure to comply with subsection (1) or (2) if-

(*a*) the supplier offered to supply or procure another person to supply a consumer with the same or equivalent goods or services of the kind advertised within a reasonable time, in a reasonable quantity, and at the advertised price; and

(*b*) the consumer-

(i) unreasonably refused that offer; or

(ii) accepted the offer, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted.

31. Negative option marketing.-(1) A supplier must not-

(*a*) promote any goods or services;

(*b*) offer to enter into or modify an agreement for the supply of any goods or services; or

(*c*) induce a person to accept any goods or services or to enter into or modify such an agreement,

on the basis that the goods or services are to be supplied, or the agreement or modification will automatically come into existence, unless the consumer declines such offer or inducement.

(2) An agreement purportedly entered into as a result of an offer or inducement contemplated in subsection (1) is void.

(3) A modification of an agreement purportedly agreed to as a result of an offer or inducement contemplated in subsection (1) is void.

32. Direct marketing to consumers.-(1) A person who is directly marketing any goods or services, and who concludes a transaction or agreement with a consumer, must inform the consumer, in the prescribed manner and form, of the right to rescind that agreement, as set out in section 16.

(2) If a person who has marketed any goods as contemplated in subsection (1) left any goods with the consumer without requiring or arranging payment for them, those goods are unsolicited goods, to which section 21 applies.

33. Catalogue marketing.-(1) This section does not apply to-

(*a*) a franchise agreement; or

(*b*) a transaction if Chapter 7 of the Electronic Communications and Transactions Act applies to it.

(2) This section applies to an agreement for the supply of goods or services that is not entered into in person, including an agreement concluded-

(*a*) telephonically, if the contact is initiated by the consumer; or

(*b*) by postal order or fax,

or in any similar manner in which, with respect to goods, the consumer does not have the opportunity to inspect the goods that are the subject of the transaction before concluding the agreement.

(3) Before concluding an agreement or transaction, a supplier must disclose the following information to a consumer, in an appropriate manner, having regard to the manner in which the supplier and consumer communicate in concluding the transaction:

(*a*) The supplier's name and licence or registration number, if any;

(*b*) the address of the supplier's physical business premises and related contact details;

(*c*) the sales record information required by section 26;

(*d*) the currency in which amounts under the agreement are payable;

(*e*) the supplier's delivery arrangements, including-

(i) the identity of the shipper;

(ii) the mode of transportation; and

(iii) the place of delivery to the consumer;

(*f*) the supplier's cancellation, return, exchange and refund policies, if any;

(*g*) the manner and form in which a complaint may be lodged; and

(*h*) any other prescribed information.

34. Trade coupons and similar promotions.-(1) This section does not apply to-

(*a*) a franchise agreement;

(*b*) a loyalty programme, loyalty credit or award regulated in terms of section 35; or

(*c*) a promotional competition, as defined and regulated in terms of section 36.

(2) In this section, "promotional offer" means an offer or promise, expressed in any manner, of any prize, reward, gift, free good or service, price reduction or concession, enhancement of quantity or quality of goods or services, irrespective of whether or not acceptance of the offer is conditional on the offeree entering into any other transaction.

(3) A person must not make a promotional offer with the intention of-

(*a*) not fulfilling it; or

(*b*) fulfilling it other than as offered.

(4) Any document setting out a promotional offer must clearly state-

(*a*) the nature of the prize, reward, gift, free good or service, price reduction or concession, enhancement of quantity or quality of goods or services, or other discounted or free thing being offered;

(*b*) the goods or services to which the offer relates;

(*c*) the steps required by a consumer to accept the offer or to receive the benefit of the offer; and

(*d*) the particulars of any person from whom, any place where, and any date and time on or at which, the consumer may receive the prize, reward, gift, free good or service, price reduction or concession, enhancement of quantity or quality of goods or services or other discounted or free thing.

(5) Subject to subsection (6), a person who makes or sponsors a promotional offer must-

(*a*) ensure that the supply of the particular prize, reward, gift, free or reduced price good, or the capacity to provide enhanced quality or services, is sufficient to accommodate all reasonably anticipated demands resulting from the offer;

(*b*) not limit or restrict capacity to supply any such goods or services in response to the acceptance of the offer, on any basis other than that it applies to such a supply in exchange for any other form of consideration;

(*c*) not require the consumer to accept an inferior quality of any such goods or services than those generally available to any other consumer on the same date who tenders a different form of consideration; and

(*d*) not impose any monetary charge for the administration, processing or handling of a transaction in respect of which the consumer tenders a trade coupon.

(6) It is a defence to an alleged failure to comply with subsection (5) (*a*) if the supplier offered to supply or procure another person to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer's acceptance of the promotional offer, and the consumer-

(*a*) accepted the supplier's offer, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted; or

(*b*) unreasonably refused the supplier's offer.

35. Customer loyalty programmes.-(1) Despite any provision in any law, agreement or notice to the contrary, for all purposes of this Act, loyalty credits or awards are a legal medium of exchange when offered or tendered as consideration for any goods or services offered, or transaction contemplated, in terms of that loyalty programme.

(2) A person must not offer participation in a loyalty programme, or offer any loyalty credit or award with the intention of-

(*a*) not providing it; or

(*b*) providing it in a manner other than as offered.

(3) Any document setting out an offer contemplated in subsection (2) must clearly state-

(*a*) the nature of the programme, credit or award being offered;

(*b*) the goods or services to which the offer relates;

(*c*) the steps required by a consumer to participate in the programme or to receive any benefit in terms of the programme; and

(*d*) any person from whom, any place where, and any date and time on or at which, the consumer may gain access to the programme, or to any loyalty credit or awards in terms of the programme.

(4) Subject to subsections (5) and (6), the sponsor of a loyalty programme, or a supplier who offers or holds out a willingness, to accept any loyalty credits or awards as consideration or in exchange for any particular goods or services, must-

(*a*) ensure that the supply of those particular goods or services available at any time is sufficient to accommodate all reasonably anticipated demands for those goods or services in exchange for loyalty credits or awards;

(*b*) not limit or restrict capacity to supply those particular goods or services in exchange for such credits or awards on any basis other than that it applies to such a supply in exchange for any other form of consideration;

(*c*) accept any tender of sufficient loyalty credits or awards as adequate consideration for the price of those particular goods or services if, at that time, it has capacity available for supply in exchange for any other form of consideration;

(*d*) not require the consumer to accept an inferior quality of those particular goods or services than those generally available to any other consumer on the same date who tenders a different form of consideration;

(*e*) not impose any monetary charge in respect of the administration, processing or handling of such a transaction if the consumer is required to pay a periodic fee to remain a member of the programme; and

(*f*) not demand that the consumer purchase any other goods or services in connection with that transaction.

(5) A sponsor of a loyalty programme, or a supplier of goods or services who accepts loyalty credits or awards as consideration for any particular goods or services, may impose a partial or complete restriction on the availability of any such goods or services in exchange for loyalty credits or awards during any specific period, if the programme sponsor has directly or indirectly given notice in writing to the members of that programme at least 20 business days before the beginning of that period, but the total of all such periods within a calendar year must not exceed 90 days.

(6) It is a defence to an alleged failure to comply with subsection (4) (*a*) if the supplier offered to supply or procure another person to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer's request, for no consideration beyond the advertised price expressed in loyalty awards, and the consumer-

(*a*) accepted the offer, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted; or

(*b*) unreasonably refused that offer.

36. Promotional competitions.-(1) In this section-

(*a*) **"participant"** means a person who enters, competes in or is otherwise eligible to win a promotional competition;

(*b*) **"prize"** includes a reward, gift, free good or service, price reduction or concession, enhancement of quantity or quality of goods or services, or other discounted or free thing;

(*c*) **"promoter"** means a person who directly or indirectly promotes, sponsors, organises or conducts a promotional competition, or for whose benefit such a competition is promoted, sponsored, organised or conducted; and

(*d*) **"promotional competition"** means any competition, game, scheme, arrangement, system, plan or device for distributing prizes by lot or chance if-

(i) it is conducted in the ordinary course of business for the purpose of promoting a producer, distributor, supplier, or association of any such persons, or the sale of any goods or services; and

(ii) any prize offered exceeds the threshold prescribed in terms of subsection (11),

irrespective of whether a participant is required to demonstrate any skill or ability before being awarded a prize.

(2) A person must not directly or indirectly inform another person that a participant has-

(*a*) won a competition, if-

(i) no competition has in fact been conducted;

(ii) the person has not in fact won the competition;

(iii) the prize for that competition is subject to a previously undisclosed condition; or

(iv) the person is required to offer further consideration for the prize, after the results of the competition have been announced; or

(*b*) a right to a prize-

(i) to which the person does not in fact have a right;

(ii) if the prize was generally available or offered to all similarly situated persons or class of persons; or

(iii) if, before becoming eligible to receive the prize, the person is required to offer further consideration for the prize or to purchase any particular goods or services.

(3) The promoter of a promotional competition-

(*a*) must not require any consideration to be paid by or on behalf of any participant in the promotional competition, other than the reasonable costs of posting or otherwise transmitting an entry form or device;

(*b*) must not award a prize in a competition to-

(i) a winner of the competition if it is unlawful to supply those goods or services to that prize winner, but this subparagraph does not preclude awarding a prize to a person merely because that person's right to possess or use the prize is or may be restricted or regulated by, or is otherwise subject to, any public regulation; or

(ii) any person who is-

(*aa*) a director, member, partner, employee or agent of, or consultant to the promoter or any other person who directly or indirectly controls or is controlled by, the promoter; or

(*bb*) a supplier of goods or services in connection with that competition; and

(*c*) must-

(i) prepare competition rules before the beginning of the competition;

(ii) make the competition rules available to the Commission and to any participant, on request and without cost; and

(iii) retain a copy of the competition rules for the prescribed period after the end of the competition.

(4) For greater certainty in applying subsection (3) (*a*), but without limiting the generality of that paragraph, a promoter must be regarded as having required or received consideration in respect of a promotional competition if-

(*a*) a participant is required to pay any consideration, directly or indirectly, for the opportunity to participate in the promotional competition, for access to the competition or for any device by which a person may participate in the competition; or

(*b*) participation in the promotional competition requires the purchase of any goods or services, and the price charged for those goods or services is more than the price, excluding discounts, ordinarily charged for those or similar goods or services without the opportunity of taking part in a promotional competition.

(5) An offer to participate in a promotional competition must clearly state-

(*a*) the benefit or competition to which the offer relates;

(*b*) the steps required by a person to accept the offer or to participate in the competition;

(*c*) the basis on which the results of the competition will be determined;

(*d*) the closing date for the competition;

(*e*) the medium through or by which the results of the competition will be made known; and

(*f*) any person from whom, any place where, and any date and time on or at which-

(i) a person may obtain a copy of the competition rules; and

(ii) a successful participant may receive any prize.

(6) The requirements of subsection (5) may be satisfied either-

(*a*) directly on any medium through which a person participates in a promotional competition;

(*b*) on a document accompanying any medium contemplated in paragraph (*a*); or

(*c*) in any advertisement that-

(i) is published during the time and throughout the area in which the promotional competition is conducted; and

(ii) draws attention to and is clearly associated with the promotional competition.

(7) The right to participate in a promotional competition is fully vested in a person immediately upon-

(*a*) complying with any conditions that are required to earn that right; and

(*b*) acquiring possession or control of the medium, if any, through which a person may participate in that promotional competition.

(8) The right to any benefit or right conferred on a person as a result of that person's participation in a promotional competition is fully vested immediately upon the determination of the results of the competition.

(9) A right contemplated in subsection (7) or (8) must not be-

(*a*) made subject to any further condition; or

(*b*) contingent upon a person-

(i) paying any consideration to the promoter for the prize; or

(ii) satisfying any further requirements other than those stipulated in terms of subsection (5).

(10) Section 35 (5), read with the changes required by the context, applies equally in respect of any prize or right to a prize conferred on a person as a result of that person's participation in a promotional competition.

(11) The Minister may prescribe-

(*a*) a monetary threshold for the purpose of excluding competitions with low-value prizes from the definition of "promotional competition";

(*b*) minimum standards and forms for keeping records associated with promotional competitions; and

(*c*) audit and reporting requirements in respect of promotional competitions.

37. Alternative work schemes.-(1) A person must not make a false representation with respect to the availability, or extent of availability, actual or potential profitability, risk or other material aspect of the work, business or activity involved in any arrangement of an activity for gain in terms of which one person-

(*a*) invites, solicits or requires other persons to conduct the work, business or activity from their homes;

(*b*) represents to others as being practicable, to a considerable extent, to conduct the work, business or activity from their homes; or

(*c*) invites, solicits or requires other persons to perform any work, business or activity, invest money, or perform any work, business or activity in association with the investment of money.

(2) An advertisement promoting any matter contemplated in subsection (1) must-

(*a*) be accompanied by a cautionary statement in the prescribed wording and form, disclosing the uncertainty of the extent of-

(i) work, business or activity available; and

(ii) income or other benefit to be derived;

(*b*) disclose at least the following information:

(i) The full name, or registered business name, of the person promoting the matter, and the address and contact numbers of that person's primary place of conducting the business; and

(ii) the nature of the work, business, activity or investment.

(3) A person must not place an advertisement contemplated in subsection (2) otherwise than in accordance with the requirements of this section.

(4) A person who does anything contemplated in subsection (1) (*a*) to (*c*) must not charge any person a fee in respect of the promotion or conduct of any such work, business, activity or investment, except to the extent that the person charged has been assigned and performed the contemplated work, business, activity, or made or received the contemplated investment.

38. Referral selling.-(1) A person must not promote, offer, supply, agree to supply, or induce a consumer to accept any goods or services on the representation that the consumer will receive a rebate, commission or other benefit if-

(*a*) the consumer subsequently-

(i) gives the supplier the names of consumers; or

(ii) otherwise assists the supplier to supply goods or services to other consumers; and

(*b*) that rebate, commission or other benefit is contingent upon an event occurring after the consumer agrees to the transaction.

(2) A statement by a consumer, whether in an agreement or otherwise, to the effect that the consumer was motivated to enter into a transaction contemplated in subsection (1) predominately for the value of the goods or services, rather than for the rebate, commission or benefit, is not a defence to an allegation that a person has contravened subsection (1).

(3) This section does not apply to a franchise agreement.

39. Agreements with persons lacking legal capacity.-(1) An agreement to enter into a transaction, or for the supply of any goods or services, to or at the direction of a consumer-

(*a*) is void if the consumer is subject to an order of a competent court holding that person to be mentally unfit and the supplier knew, or could reasonably have determined, that the consumer was the subject of such an order; or

(*b*) is voidable at the option of the consumer, if-

(i) at the time the agreement was made the consumer was an unemancipated minor;

(ii) the agreement was made without the consent of an adult responsible for that minor; and

(iii) the agreement has not been ratified by either-

(*aa*) an adult responsible for that minor; or

(*bb*) the consumer after being emancipated or becoming an adult.

(2) Subsection (1) does not apply to an agreement if the consumer, or any person acting on behalf of the consumer, directly or indirectly, by act or omission-

(*a*) induced the supplier to believe that the consumer had an unfettered legal capacity to contract; or

(*b*) attempted to obscure or suppress the fact that the consumer did not have an unfettered legal capacity to contract.

Part F
Right to fair and honest dealing

40. Unconscionable conduct.-(1) A supplier or an agent of the supplier must not use physical force against a consumer, coercion, undue influence, pressure, duress or harassment, unfair tactics or any other similar conduct, in connection with any-

(*a*) marketing of any goods or services;

(*b*) supply of goods or services to a consumer;

(*c*) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;

(*d*) demand for, or collection of, payment for goods or services by a consumer; or

(*e*) recovery of goods from a consumer.

(2) In addition to any conduct contemplated in subsection (1), it is unconscionable for a supplier knowingly to take advantage of the fact that a consumer was substantially unable to protect the consumer's own interests because of physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.

(3) Section 51 applies to any court proceedings concerning this section.

41. False, misleading or deceptive representations.-(1) In relation to the marketing of any goods or services, the supplier must not, by words or conduct-

(*a*) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;

(*b*) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or

(*c*) fail to correct an apparent misapprehension on the part of a consumer, amounting to a false, misleading or deceptive representation,

or permit or require any other person to do so on behalf of the supplier.

(2) A person acting on behalf of a supplier of any goods or services must not-

(*a*) falsely represent that the person has any sponsorship, approval or affiliation; or

(*b*) engage in any conduct that the supplier is prohibited from engaging in under subsection (1).

(3) Without limiting the generality of subsections (1) and (2), it is a false, misleading or deceptive representation to falsely state or imply, or fail to correct an apparent misapprehension on the part of a consumer to the effect, that-

(*a*) the supplier of any goods or services has any particular status, affiliation, connection, sponsorship or approval that they do not have;

(*b*) any goods or services-

(i) have ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval that they do not have;

(ii) are of a particular standard, quality, grade, style or model;

(iii) are new or unused, if they are not or if they are reconditioned or reclaimed, subject to subsection

(4);

(iv) have been used for a period to an extent or in a manner that is materially different from the facts;

(v) have been supplied in accordance with a previous representation; or

(vi) are available or can be delivered or performed within a specified time;

(*c*) any land or other immovable property-

(i) has characteristics that it does not have;

(ii) may lawfully be used, or is capable of being used, for a purpose that is in fact unlawful or impracticable; or

(iii) has or is proximate to any facilities, amenities or natural features that it does not have, or that are not available or proximate to it;

(*d*) the necessary service, maintenance or repair facilities or parts are readily available for or within a reasonable period;

(*e*) any service, part, replacement, maintenance or repair is needed or advisable;

(*f*) a specific price advantage exists;

(*g*) a charge or proposed charge is for a specific purpose;

(*h*) an employee, salesperson, representative or agent has the necessary authority to negotiate the terms of, or conclude, an agreement;

(*i*) the transaction affects, or does not affect, any rights, remedies or obligations of a consumer;

(*j*) a particular solicitation of, or communication with, the consumer is for a particular purpose; or

(*k*) the consumer will derive a particular benefit if they assist the supplier in obtaining a new or potential customer.

(4) A representation contemplated in subsection (3) (*b*) (iii) to the effect that any goods are new is not false, misleading or deceptive if those goods have been used only-

(*a*) by or on behalf of the producer, importer, distributor or retailer; and

(*b*) for the purposes of reasonable testing, service, preparation or delivery.

(5) Section 51 applies to any court proceedings concerning this section.

42. Fraudulent schemes and offers.-(1) A person must not initiate, sponsor, promote or knowingly participate in the distribution of any communication that-

(*a*) offers to supply, or enter into an agreement to supply, any goods or services, or offers to enter into a transaction, or invites offers to enter into a transaction; and

(*b*) falsely states, implies or represents that-

(i) the communication is authorised by another person; or

(ii) the author of the communication represents another person.

(2) A person must not directly or indirectly promote, or knowingly join, enter or participate in-

(*a*) a fraudulent currency scheme, as described in subsection (3);

(*b*) a fraudulent financial transaction, as described in subsection (4);

(*c*) a fraudulent transfer of property or legal rights, as described in subsection (5); or

(*d*) any other scheme declared by the Minister in terms of subsection (8),

or cause another person to do so.

(3) An arrangement, agreement, practice or scheme is a fraudulent currency scheme if it involves a person-

(*a*) with the intent to defraud another person, representing that the first person is capable of-

(i) producing currency by washing, dipping or otherwise treating any substance that is not currency with a chemical substance, or exposing it to an electrical charge, or to radiation of any kind; or

(ii) producing currency, or increasing a sum of money, through scientific means, invocation of any juju or use of other invisible medium; or

(*b*) making or issuing any currency, or making representations as being capable of doing so, unless the person is an authorised producer of that currency.

(4) An arrangement, agreement, practice or scheme is a fraudulent financial transaction if it involves any proceeds of a specified unlawful activity-

(*a*) with intent to promote the carrying on of a specified unlawful activity; and

(*b*) is designed in whole or in part to-

(i) conceal or disguise the nature, location, source of ownership or control of the proceeds of a specified unlawful activity; or

(ii) avoid a lawful transaction.

(5) An arrangement, agreement, practice or scheme is a fraudulent transfer of property or legal rights if it involves a person, by false pretence and with the intent to defraud another person-

(*a*) obtaining any property from that person or any third person, as the case may be; or

(*b*) inducing that person or any third person to-

(i) deliver property at the direction of the first person; or

(ii) confer a benefit of any kind on any person at the direction of the first person on the understanding that the benefit has or will be paid for.

(6) A person must not directly or indirectly represent, by false pretence or with the intent to defraud, another person to the effect that the first person is in possession of-

(*a*) any property;

(*b*) information relating to the whereabouts of any property or relating to any legal rights or potential legal claims; or

(*c*) has the ability to effect the transfer of any property or to locate or determine the whereabouts of an individual.

(7) A person must not-

(*a*) invite another person to participate for a fee in assisting to effect a transfer of any property that the first person is not authorised to transfer; or

(*b*) seek, demand or accept any consideration from another person in connection with any unlawful activity contemplated in this section.

(8) The Minister, by regulation made in accordance with section 120, may declare any arrangement, agreement, practice or scheme to be a scheme contemplated in subsection (2) (*d*), if it is similar in purpose or effect to a scheme contemplated in that subsection.

43. Pyramid and related schemes.-(1) In this section-

(*a*) **"consideration"** has the meaning set out in section 1, except that it does not include-

(i) the purchase of any goods at cost to be used in making sales, or not for resale;

(ii) the purchase of any goods in exchange for which the seller of those goods offers to repurchase the participant's products under reasonable commercial terms; or

(iii) the participant's time and effort in pursuit of sales or recruiting activities; and

(*b*) **"participant"** means a person who is admitted to a scheme for consideration.

(2) A person must not directly or indirectly promote, or knowingly join, enter or participate in-

(*a*) a multiplication scheme, as described in subsection (3);

(*b*) a pyramid scheme, as described in subsection (4);

(*c*) a chain letter scheme, as described in subsection (5); or

(*d*) any other scheme declared by the Minister in terms of subsection (6),

or cause any other person to do so.

(3) A multiplication scheme exists when a person offers, promises or guarantees to any consumer, investor or participant an effective annual interest rate, as calculated in the prescribed manner, that is at least 20 per cent above the REPO Rate determined by the South African Reserve Bank as at the date of investment or commencement of participation, irrespective of whether the consumer, investor or participant becomes a member of the lending party.

(4) An arrangement, agreement, practice or scheme is a pyramid scheme if-

(*a*) participants in the scheme receive compensation derived primarily from their respective recruitment of other persons as participants, rather than from the sale of any goods or services; or

(*b*) the emphasis in the promotion of the scheme indicates an arrangement or practice contemplated in paragraph (*a*).

(5) An arrangement, agreement, practice or scheme is a chain letter scheme if-

(*a*) it has various levels of participation;

(*b*) existing participants canvass and recruit new participants; or

(*c*) each successive newly recruited participant-

(i) upon joining-

(*aa*) is required to pay certain consideration, which is distributed to one, some or all of the previously existing participants, irrespective of whether the new participant receives any goods or services in exchange for that consideration; and

(*bb*) is assigned to the lowest level of participation in the scheme; and

(ii) upon recruiting further new participants, or upon those new participants recruiting further new participants, and so on in continual succession-

(*aa*) may participate in the distribution of the consideration paid by any such new recruit; and

(*bb*) moves to a higher level within the scheme, until being removed from the scheme after reaching the highest level.

(6) The Minister, by regulation made in accordance with section 120, may declare any arrangement, agreement, practice or scheme to be a scheme contemplated in subsection (2) (*d*), if it is similar in purpose or effect to a scheme contemplated in that subsection.

44. Consumer's right to assume supplier is entitled to sell goods.-(1) Subject to subsection (2), every consumer has a right to assume, and it is an implied provision of every transaction or agreement, that-

(*a*) in the case of a supply of goods, the supplier has the legal right, or the authority of the legal owner, to supply those goods;

(*b*) in the case of an agreement to supply goods, the supplier will have a legal right, or the authority of the legal owner, to-

(i) sell the goods at the time the title to those goods is to pass to the consumer; or

(ii) lease the goods at the time the lessee is to take possession of the leased goods;

(*c*) as between the supplier and the consumer, the supplier is fully liable for any charge or encumbrance pertaining to the goods in favour of any third party unless-

(i) such a charge or encumbrance is disclosed in writing to the consumer before the transaction or agreement is concluded; or

(ii) the supplier and consumer have colluded to defraud the third party; and

(*d*) the supplier guarantees that the consumer is to have and enjoy quiet possession of the goods, subject to any charge or encumbrance disclosed as contemplated in paragraph (*c*) (i).

(2) If, as a result of any transaction or agreement in which goods are supplied to a consumer, a right or claim of a third party pertaining to those goods is infringed or compromised the supplier is liable to the third party to the extent of the infringement or compromise of that person's rights pertaining to those goods, except to the extent of a charge or encumbrance disclosed as contemplated in subsection (1) (*c*) (i).

45. Auctions.-(1) In this section, "auction" includes a sale in execution of or pursuant to a court order, to the extent that the order contemplates that the sale is to be conducted by an auction.

(2) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.

(3) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in any other customary manner, and until that announcement is made, a bid may be retracted.

(4) Notice must be given in advance that a sale by auction is subject to-

(*a*) a reserved or upset price; or

(*b*) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction.

(5) Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer-

(*a*) the owner or auctioneer must not bid or employ any person to bid at the sale;

(*b*) the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (*a*); and

(*c*) the consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.

(6) The Minister may prescribe requirements to be complied with by an auctioneer, or different categories of auctioneer, in respect of-

(*a*) the conduct of an auction;

(*b*) the records to be maintained with respect to property placed for auction; and

(*c*) the sale of any such property by auction.

46. Changes, deferrals and waivers, and substitution of goods.-(1) The supply of goods or services as a result of a change to an existing agreement, or a deferral or waiver of a right under an existing agreement, is not to be treated as creating a new agreement for the purposes of this Act, if the change, deferral or waiver is made in accordance with this Act or the agreement.

(2) If, after delivery to the consumer of goods that are the subject of a transaction, the consumer and the supplier agree to substitute other goods for all or part of the goods sold-

(*a*) from the date of delivery of the substituted goods, the transaction applies to the substituted goods rather than the goods originally described; and

(*b*) if the transaction was the subject of a written agreement, or the sales record identified any specific goods, the supplier must prepare and deliver to the consumer an amended agreement or sales record, describing the substituted goods, but without making any other changes to the original document.

47. Over-selling and over-booking.-(1) This section does not apply to-

(*a*) a franchise agreement; or

(*b*) a consumer agreement pertaining to the supply of any special-order goods.

(2) A supplier must not accept payment or other consideration for any goods or services if the supplier-

(*a*) has no reasonable basis to assert an intention to supply those goods or provide those services; or

(*b*) intends to supply goods or services that are materially different from the goods or services in respect of which the payment or consideration was accepted.

(3) If a supplier makes a commitment or accepts a reservation to supply goods or services on a specified date or at a specified time and, on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods or services, or similar or comparable goods or services of the same or better quality, class or nature, the supplier must-

(*a*) refund to the consumer the amount, if any, paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of reimbursement; and

(*b*) in addition, compensate the consumer for costs directly incidental to the supplier's breach of the contract, except to the extent that subsection (5) provides otherwise.

(4) It is a defence to an alleged failure to supply any goods or services, as contemplated in subsection (3), if-

(*a*) the supplier offered to supply or procure another person to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer's request; and

(*b*) the consumer-

(i) accepted the offer, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted; or

(ii) unreasonably refused that offer.

(5) Subsection (3) (*b*) does not apply if-

(*a*) the shortage of stock or capacity is due to circumstances beyond the supplier's control, subject to subsection (6); and

(*b*) the supplier took reasonable steps to inform the consumer of the shortage of stock or capacity as soon as it was practicable to do so in the circumstances.

(6) Without limiting the generality of subsection (5) (*a*), a shortage of stock or capacity is not "due to circumstances beyond the supplier's control" if the shortage results partially, completely, directly or indirectly from a failure on the part of the supplier to adequately and diligently carry out any ordinary or routine matter pertaining to the supplier's business.

Part G
Right to fair, just and reasonable terms and conditions

48. Unfair, unreasonable or unjust contract terms.-(1) A supplier must not-

(*a*) offer to supply, supply, or enter into an agreement to supply, any goods or services-

(i) at a price that is unfair, unreasonable or unjust; or

(ii) on terms that are unfair, unreasonable or unjust;

(*b*) market any goods or services, or negotiate, enter into or administer a transaction or an agreement for the supply of any goods or services, in a manner that is unfair, unreasonable or unjust; or

(*c*) require a consumer, or other person to whom any goods or services are supplied at the direction of the consumer-

(i) to waive any rights;

(ii) assume any obligation; or

(iii) waive any liability of the supplier,

on terms that are unfair, unreasonable or unjust, or impose any such terms as a condition of entering into a transaction.

(2) Without limiting the generality of subsection (1), a transaction or agreement, a term or condition of a transaction or agreement, or a notice to which a term or condition is purportedly subject, is unfair, unreasonable or unjust if-

(*a*) it is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied;

(*b*) the terms of the transaction or agreement are so adverse to the consumer as to be inequitable;

(*c*) the consumer relied upon a false, misleading or deceptive representation, as contemplated in section 41 or a statement of opinion provided by or on behalf of the supplier, to the detriment of the consumer; or

(*d*) the transaction or agreement was subject to a term or condition, or a notice to a consumer contemplated in section 49 (1), and-

(i) the term, condition or notice is unfair, unreasonable, unjust or unconscionable; or

(ii) the fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer in a manner that satisfied the applicable requirements of section 49.

49. Notice required for certain terms and conditions.-(1) Any notice to consumers or provision of a consumer agreement that purports to-

(*a*) limit in any way the risk or liability of the supplier or any other person;

(*b*) constitute an assumption of risk or liability by the consumer;

(*c*) impose an obligation on the consumer to indemnify the supplier or any other person for any cause; or

(*d*) be an acknowledgement of any fact by the consumer,

must be drawn to the attention of the consumer in a manner and form that satisfies the formal requirements of subsections (3) to (5).

(2) In addition to subsection (1), if a provision or notice concerns any activity or facility that is subject to any risk-

(*a*) of an unusual character or nature;

(*b*) the presence of which the consumer could not reasonably be expected to be aware or notice, or which an ordinarily alert consumer could not reasonably be expected to notice or contemplate in the circumstances; or

(*c*) that could result in serious injury or death, the supplier must specifically draw the fact, nature and potential effect of that risk to the attention of the consumer in a manner and form that satisfies the requirements of subsections (3) to (5), and the consumer must have assented to that provision or notice by signing or initialling the provision or otherwise acting in a manner consistent with acknowledgement of the notice, awareness of the risk and acceptance of the provision.

(3) A provision, condition or notice contemplated in subsection (1) or (2) must be written in plain language, as described in section 22.

(4) The fact, nature and effect of the provision or notice contemplated in subsection (1) must be drawn to the attention of the consumer-

(*a*) in a conspicuous manner and form that is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances; and

(*b*) before the earlier of the time at which the consumer-

(i) enters into the transaction or agreement, begins to engage in the activity, or enters or gains access to the facility; or

(ii) is required or expected to offer consideration for the transaction or agreement.

(5) The consumer must be given an adequate opportunity in the circumstances to receive and comprehend the provision or notice as contemplated in subsection (1).

50. Written consumer agreements.-(1) The Minister may prescribe categories of consumer agreements that are required to be in writing.

(2) If a consumer agreement between a supplier and a consumer is in writing, whether as required by this Act or voluntarily-

(*a*) it applies irrespective of whether or not the consumer signs the agreement; and

(*b*) the supplier must provide the consumer with a free copy, or free electronic access to a copy, of the terms and conditions of that agreement, which must-

(i) satisfy the requirements of section 22; and

(ii) set out an itemised break-down of the consumer's financial obligations under such agreement.

(3) If a consumer agreement between a supplier and a consumer is not in writing, a supplier must keep a record of transactions entered into over the telephone or any other recordable form as prescribed.

51. Prohibited transactions, agreements, terms or conditions.-(1) A supplier must not make a transaction or agreement subject to any term or condition if-

(*a*) its general purpose or effect is to-

(i) defeat the purposes and policy of this Act;

(ii) mislead or deceive the consumer; or

(iii) subject the consumer to fraudulent conduct;

(*b*) it directly or indirectly purports to-

(i) waive or deprive a consumer of a right in terms of this Act;

(ii) avoid a supplier's obligation or duty in terms of this Act;

(iii) set aside or override the effect of any provision of this Act; or

(iv) authorise the supplier to-

(*aa*) do anything that is unlawful in terms of this Act; or

(*bb*) fail to do anything that is required in terms of this Act;

(*c*) it purports to-

(i) limit or exempt a supplier of goods or services from liability for any loss directly or indirectly attributable to the gross negligence of the supplier or any person acting for or controlled by the supplier;

(ii) constitute an assumption of risk or liability by the consumer for a loss contemplated in subparagraph (i); or

(iii) impose an obligation on a consumer to pay for damage to, or otherwise assume the risk of handling, any goods displayed by the supplier, except to the extent contemplated in section

18 (1);

(*d*) it results from an offer prohibited in terms of section 31;

(*e*) it requires the consumer to enter into a supplementary agreement, or sign a document, prohibited by subsection (2) (*a*);

(*f*) it purports to cede to any person, charge, set off against a debt, or alienate in any manner, a right of the consumer to any claim against the Guardian's Fund;

(*g*) it falsely expresses an acknowledgement by the consumer that-

(i) before the agreement was made, no representations or warranties were made in connection with the agreement by the supplier or a person on behalf of the supplier; or

(ii) the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer;

(*h*) it requires the consumer to forfeit any money to the supplier-

(i) if the consumer exercises any right in terms of this Act; or

(ii) to which the supplier is not entitled in terms of this Act or any other law;

(*i*) it expresses, on behalf of the consumer-

(i) an authorisation for any person acting on behalf of the supplier to enter any premises for the purposes of taking possession of goods to which the agreement relates;

(ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed; or

(iii) a consent to a predetermined value of costs relating to enforcement of the agreement, except to the extent that is consistent with this Act; or

(*j*) it expresses an agreement by the consumer to-

(i) deposit with the supplier, or with any other person at the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device; or

(ii) provide a personal identification code or number to be used to access an account.

(2) A supplier may not-

(*a*) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision contemplated in subsection (1);

(*b*) request or demand a consumer to-

(i) give the supplier temporary or permanent possession of an instrument referred to in subsection (1) (*j*) (i) other than for the purpose of identification, or to make a copy of such instrument; or

(ii) reveal any personal identification code or number contemplated in subsection (1) (*j*) (ii); or

(*c*) direct, or knowingly permit, any other person to do anything referred to in this section on behalf or for the benefit of the supplier.

(3) A purported transaction or agreement, provision, term or condition of a transaction or agreement, or notice to which a transaction or agreement is purported to be subject, is void to the extent that it contravenes this section.

(4) This section does not preclude a supplier to require a personal identification code or number in order to facilitate a transaction that in the normal course of business necessitates the provision of such code or number.

52. Powers of court to ensure fair and just conduct, **terms and conditions.**-(1) If, in any proceedings before a court concerning a transaction or agreement between a supplier and consumer, a person alleges that-

(*a*) the supplier contravened section 40, 41 or 48; and

(*b*) this Act does not otherwise provide a remedy sufficient to correct the relevant prohibited conduct, unfairness, injustice or unconscionability,

the court, after considering the principles, purposes and provisions of this Act, and the matters set out in subsection (2), may make an order contemplated in subsection (3).

(2) In any matter contemplated in subsection (1), the court must consider-

(*a*) the fair value of the goods or services in question;

(*b*) the nature of the parties to that transaction or agreement, their relationship to each other and their relative capacity, education, experience, sophistication and bargaining position;

(*c*) those circumstances of the transaction or agreement that existed or were reasonably foreseeable at the time that the conduct or transaction occurred or agreement was made, irrespective of whether this Act was in force at that time;

(*d*) the conduct of the supplier and the consumer, respectively;

(*e*) whether there was any negotiation between the supplier and the consumer, and if so, the extent of that negotiation;

(*f*) whether, as a result of conduct engaged in by the supplier, the consumer was required to do anything that was not reasonably necessary for the legitimate interests of the supplier;

(*g*) the extent to which any documents relating to the transaction or agreement satisfied the requirements of section 22;

(*h*) whether the consumer knew or ought reasonably to have known of the existence and extent of any particular provision of the agreement that is alleged to have been unfair, unreasonable or unjust, having regard to any-

(i) custom of trade; and

(ii) any previous dealings between the parties;

(*i*) the amount for which, and circumstances under which, the consumer could have acquired identical or equivalent goods or services from a different supplier; and

(*j*) in the case of supply of goods, whether the goods were manufactured, processed or adapted to the special order of the consumer.

(3) If the court determines that a transaction or agreement was, in whole or in part, unconscionable, unjust, unreasonable or unfair, the court may-

(*a*) make a declaration to that effect; and

(*b*) make any further order the court considers just and reasonable in the circumstances, including, but not limited to, an order-

(i) to restore money or property to the consumer;

(ii) to compensate the consumer for losses or expenses relating to-

(*aa*) the transaction or agreement; or

(*bb*) the proceedings of the court; and

(iii) requiring the supplier to cease any practice, or alter any practice, form or document, as required to avoid a repetition of the supplier's conduct.

(4) If, in any proceedings before a court concerning a transaction or agreement between a supplier and a consumer, a person alleges that an agreement, a term or condition of an agreement, or a notice to which a transaction or agreement is purportedly subject, is void in terms of this Act or failed to satisfy any applicable requirements set out in section 49, the court may-

(*a*) make an order-

(i) in the case of a provision or notice that is void in terms of any provision of this Act-

(*aa*) severing any part of the relevant agreement, provision or notice, or alter it to the extent required to render it lawful, if it is reasonable to do so having regard to the transaction, agreement, provision or notice as a whole; or

(*bb*) declaring the entire agreement, provision or notice void as from the date that it purportedly took effect; or

(ii) in the case of a provision or notice that fails to satisfy any provision of section 49, severing the provision or notice from the agreement, or declaring it to have no force or effect with respect to the transaction; and

(*b*) make any further order that is just and reasonable in the circumstances with respect to that agreement, provision or notice, as the case may be.

Part H
Right to fair value, good quality and safety

53. Definitions applicable to this Part.-(1) In this Part, when used with respect to any goods, component of any goods, or services-

(*a*) **"defect"** means-

(i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or

(ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;

(*b*) **"failure"** means the inability of the goods to perform in the intended manner or to the intended effect;

(*c*) **"hazard"** means a characteristic that-

(i) has been identified as, or declared to be, a hazard in terms of any other law; or

(ii) presents a significant risk of personal injury to any person, or damage to property, when the goods are utilised; and

(*d*) **"unsafe"** means that, due to a characteristic, failure, defect or hazard, particular goods present an extreme risk of personal injury or property damage to the consumer or to other persons.

54. Consumer's rights to demand quality service.-(1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to-

(*a*) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;

(*b*) the performance of the services in a manner and quality that persons are generally entitled to expect;

(*c*) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; and

(*d*) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services,

having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.

(2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either-

(*a*) remedy any defect in the quality of the services performed or goods supplied; or

(*b*) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

55. Consumer's rights to safe, good quality goods.-(1) This section does not apply to goods bought at an auction, as contemplated in section 45.

(2) Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that-

(*a*) are reasonably suitable for the purposes for which they are generally intended;

(*b*) are of good quality, in good working order and free of any defects;

(*c*) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and

(*d*) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.

(3) In addition to the right set out in subsection (2) (*a*), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier-

(*a*) ordinarily offers to supply such goods; or

(*b*) acts in a manner consistent with being knowledgeable about the use of those goods,

the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.

(4) In determining whether any particular goods satisfied the requirements of subsection (2) or (3), all of the circumstances of the supply of those goods must be considered, including but not limited to-

(*a*) the manner in which, and the purposes for which, the goods were marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods;

(*b*) the range of things that might reasonably be anticipated to be done with or in relation to the goods; and

(*c*) the time when the goods were produced and supplied.

(5) For greater certainty in applying subsection (4)-

(*a*) it is irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods; and

(*b*) a product failure or defect may not be inferred in respect of particular goods solely on the grounds that better goods have subsequently become available from the same or any other producer or supplier.

(6) Subsection (2) (*a*) and (*b*) do not apply to a transaction if the consumer-

(*a*) has been expressly informed that particular goods were offered in a specific condition; and

(*b*) has expressly agreed to accept the goods in that condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

56. Implied warranty of quality.-(1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.

(2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either-

(*a*) repair or replace the failed, unsafe or defective goods; or

(*b*) refund to the consumer the price paid by the consumer, for the goods.

(3) If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must-

(*a*) replace the goods; or

(*b*) refund to the consumer the price paid by the consumer for the goods.

(4) The implied warranty imposed by subsection (1), and the right to return goods set out in subsection (2), are each in addition to-

(*a*) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and

(*b*) any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be.

57. Warranty on repaired goods.-(1) A service provider warrants every new or reconditioned part installed during any repair or maintenance work, and the labour required to install it, for a period of three months after the date of installation or such longer period as the supplier may specify in writing.

(2) A warranty in terms of this section-

(*a*) is concurrent with any other deemed, implied or express warranty;

(*b*) is void if the consumer has subjected the part, or the goods or property in which it was installed, to misuse or abuse; and

(*c*) does not apply to ordinary wear and tear, having regard to the circumstances in which the goods are intended to ordinarily be used.

58. Warning concerning fact and nature of risks.-(1) The supplier of any activity or facility that is subject to any-

(*a*) risk of an unusual character or nature;

(*b*) risk of which a consumer could not reasonably be expected to be aware, or which an ordinarily alert consumer could not reasonably be expected to contemplate, in the circumstances; or

(*c*) risk that could result in serious injury or death,

must specifically draw the fact, nature and potential effect of that risk to the attention of consumers in a form and manner that meets the standards set out in section 49.

(2) A person who packages any hazardous or unsafe goods for supply to consumers must display on or within that packaging a notice that meets the requirements of section 22, and any other applicable standards, providing the consumer with adequate instructions for the safe handling and use of those goods.

(3) Subsection (2) does not apply to any hazardous or unsafe goods to the extent that a substantially similar label or notice has been applied in terms of any other public regulation.

(4) A person who installs any hazardous or unsafe goods contemplated in subsection (2) for a consumer, or supplies any such goods to a consumer in conjunction with the performance of any services, must give the consumer the original copy of-

(*a*) any document required in terms of that subsection; or

(*b*) any similar document applied to those goods in terms of another public regulation.

59. Recovery and safe disposal of designated products or components.-(1) If any national legislation prohibits the disposal or deposit of any particular goods, or any components, remnants, containers or packaging of any goods, into a common waste collection system-

(*a*) any person who in the ordinary course of business supplies goods of that kind to consumers, must accept the return of any such goods, components, remnants, containers or packaging from any consumer, without charge to the consumer, irrespective of whether that person supplied the particular object to that particular consumer; and

(*b*) any person who in the ordinary course of business produces, imports or distributes any such goods as part of the supply chain by which those goods reach the consumer, must in turn accept the return of any such goods, components, remnants, containers or packaging from any supplier contemplated in paragraph (*a*).

(2) If any regulation or industry waste management plan approved by any other legislation for the management of a specific waste type applies, the consumer may dispose or deposit the goods to a collection facility provided for in the regulation or industry waste management plan.

60. Safety monitoring and recall.-(1) The Commission must promote, within the framework of section 82, the development, adoption and application of industry-wide codes of practice providing for effective and efficient systems to-

(*a*) receive notice of-

(i) consumer complaints or reports of product failures, defects or hazards;

(ii) the return of any goods because of a failure, defect or hazard;

(iii) personal injury, illness or damage to property caused wholly or partially as a result of a product failure, defect or hazard; and

(iv) other indication of failure, defect or hazard, in any particular goods or in any component of them, or injury or damage resulting from the use of those goods;

(*b*) monitor the sources of information contemplated in paragraph (*a*), and analyse the information received with the object of detecting or identifying any previously undetected or unrecognised potential risk to the public from the use of or exposure to those goods;

(*c*) conduct investigations into the nature, causes, extent and degree of the risk to the public;

(*d*) notify consumers of the nature, causes, extent and degree of the risk pertaining to those goods; and

(*e*) if the goods are unsafe, recall those goods for repair, replacement or refund.

(2) If the Commission has reasonable grounds to believe that any goods may be unsafe, or that there is a potential risk to the public from the continued use of or exposure to the goods, and the producer or importer of those goods has not taken any steps required by an applicable code contemplated in subsection (1), the Commission, by written notice, may require that producer to-

(*a*) conduct an investigation contemplated in subsection (1); or

(*b*) carry out a recall programme on any terms required by the Commission.

(3) A producer or importer affected by a notice issued in terms of subsection (2) may apply to the Tribunal to set aside the notice in whole or in part.

61. Liability for damage caused by goods.-(1) Except to the extent contemplated in subsection (4), the producer or importer, distributor or retailer of any goods is liable for any harm, as described in subsection (5), caused wholly or partly as a consequence of-

(*a*) supplying any unsafe goods;

(*b*) a product failure, defect or hazard in any goods; or

(*c*) 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.

(2) A supplier of services who, in conjunction with the performance of those services, applies, supplies, installs or provides access to any goods, must be regarded as a supplier of those goods to the consumer, for the purposes of this section.

(3) If, in a particular case, more than one person is liable in terms of this section, their liability is joint and several.

(4) Liability of a particular person in terms of this section does not arise if-

(*a*) the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation;

(*b*) the alleged unsafe product characteristic, failure, defect or hazard-

(i) did not exist in the goods at the time it was supplied by that person to another person alleged to be liable; or

(ii) was wholly attributable to compliance by that person with instructions provided by the person who supplied the goods to that person, in which case subparagraph (i) does not apply;

(*c*) it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to that person's role in marketing the goods to consumers; or

(*d*) the claim for damages is brought more than three years after the-

(i) death or injury of a person contemplated in subsection (5) (*a*);

(ii) earliest time at which a person had knowledge of the material facts about an illness contemplated in subsection (5) (*b*); or

(iii) earliest time at which a person with an interest in any property had knowledge of the material facts about the loss or damage to that property contemplated in subsection (5) (*c*); or

(iv) the latest date on which a person suffered any economic loss contemplated in subsection (5) (*d*).

(5) Harm for which a person may be held liable in terms of this section includes-

(*a*) the death of, or injury to, any natural person;

(*b*) an illness of any natural person;

(*c*) any loss of, or physical damage to, any property, irrespective of whether it is movable or immovable; and

(*d*) any economic loss that results from harm contemplated in paragraph (*a*), (*b*) or (*c*).

(6) Nothing in this section limits the authority of a court to-

(*a*) assess whether any harm has been proven and adequately mitigated;

(*b*) determine the extent and monetary value of any damages, including economic loss; or

(*c*) apportion liability among persons who are found to be jointly and severally liable.

Part I
Supplier's accountability to consumers

62. Lay-bys.-(1) If a supplier agrees to sell particular goods to a consumer, to accept payment for those goods in periodic instalments, and to hold those goods until the consumer has paid the full price for the goods-

(*a*) each amount paid by the consumer to the supplier remains the property of the consumer, and is subject to section 65, until the goods have been delivered to the consumer; and (*b*) the particular goods remain at the risk of the supplier until the goods have been delivered to the consumer.

(2) If a supplier is unable to deliver any goods contemplated in subsection (1) when the consumer has paid the full price for those goods, the supplier must either, at the option of the consumer-

(*a*) supply the consumer with an equivalent quantity of goods that are comparable or superior in description, design and quality; or

(*b*) refund to the consumer-

(i) the money paid by the consumer, with interest in accordance with the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), if the inability to supply the goods is due to circumstances beyond the supplier's control; or

(ii) double the amount paid by the consumer, as compensation for breach of contract in any circumstances not contemplated in subparagraph (i).

(3) Without limiting the generality of subsection (2) (*b*) (i), a failure to supply the goods is not "due to circumstances beyond the supplier's control" if the shortage results partially, completely, directly or indirectly from a failure on the part of the supplier to adequately and diligently carry out any ordinary or routine matter pertaining to the supplier's business.

(4) If a consumer contemplated in subsection (1) terminates the agreement before fully paying for the goods, or fails to complete the payment for the goods within 60 business days after the anticipated date of completion, the supplier-

(*a*) may charge a termination penalty in respect of those goods, subject to subsections (5) and (6); and

(*b*) after deducting any such termination penalty, must refund to the consumer any amount paid by the consumer under that agreement.

(5) A cancellation penalty contemplated in subsection (4) may not be charged-

(*a*) if the consumer's failure to complete payment was due to the death or hospitalisation of the consumer; or

(*b*) in any other case, unless the supplier informed the consumer of the fact and extent of the penalty before the consumer entered into the lay-by agreement.

(6) The Minister may prescribe a basis for calculating the maximum amount of a cancellation penalty contemplated in subsection (4).

63. Prepaid certificates, credits and vouchers.-(1) This section applies only to a transaction in which a supplier-

(*a*) accepts consideration from a person in exchange for a prepaid certificate, card, credit, voucher or similar device; and

(*b*) expressly or implicitly agrees to provide goods or services to any person who subsequently presents that certificate, card, credit, voucher or similar device, up to the value represented by it,

but does not apply with respect to such a device, or the value represented by it, after all of the value of the device has been exchanged for goods, services or future access to services.

(2) A prepaid certificate, card, credit, voucher or similar device contemplated in subsection (1) does not expire until the earlier of-

(*a*) the date on which its full value has been redeemed in exchange for goods or services or future access to services; or

(*b*) three years after the date on which it was issued, or at the end of a longer or extended period agreed by the supplier at any time.

(3) Any consideration paid by a consumer to a supplier in exchange for a prepaid certificate, card, credit, voucher or similar device contemplated in subsection (1) is the property of the bearer of that certificate, card, credit, voucher or similar device to the extent that the supplier has not redeemed it in exchange for goods or services, or future access to services.

64. Prepaid services and access to service facilities.-(1) If, in terms of any agreement, a consumer agrees or is required to pay-

(*a*) a one-time or periodic membership fee or any similar charge; or

(*b*) any amount in respect of services or access to services to be provided at a date more than 25 business days after the payment is made, other than by way of a prepayment device contemplated in section 63, the amount so paid remains the property of the consumer until the supplier makes a charge against it in accordance with subsection (2).

(2) A supplier may make a charge against the consumer's money contemplated in subsection (1) once each month in advance for the pro-rata portion of the amount so held, as required to pay the ensuing month's cost of the membership or service.

(3) If a supplier intends to close a facility to which the supplier has committed to provide future access in terms of an agreement with a consumer to provide any service, without making available a reasonably accessible alternative facility, the supplier must-

(*a*) give written notice of that intention to such consumer at least 40 business days before the intended date of closure; and

(*b*) no later than five business days after closing that facility, refund to such consumer the balance of any money belonging to that consumer in terms of this section.

(4) Subsection (3) (*b*), read with the changes required by the context, applies equally in respect of any involuntary closing of a facility contemplated in this section.

65. Supplier to hold and account for consumer's property.-(1) Subsection (2) does not apply to a supplier that is-

(*a*) a bank, as defined in the Banks Act, 1990 (Act No. 94 of 1990);

(*b*) a mutual bank, as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993); or

(*c*) any other financial institution that is similarly licensed and authorised to conduct business and take deposits from the public in terms of any national legislation.

(2) When a supplier has possession of any prepayment, deposit, membership fee, or other money, or any other property belonging to or ordinarily under the control of a consumer, the supplier-

(*a*) must not treat that property as being the property of the supplier;

(*b*) in the handling, safeguarding and utilisation of that property, must exercise the degree of care, diligence and skill that can reasonably be expected of a person responsible for managing any property belonging to another person; and

(*c*) is liable to the owner of the property for any loss resulting from a failure to comply with paragraph (*a*) or (*b*).

(3) A person who assumes control of a supplier's property as administrator, executor or liquidator of an estate-

(*a*) has a duty to the consumer-

(i) to diligently investigate the circumstances of the supplier's business to ascertain the existence of any money or other property belonging to the consumer and in the possession of the supplier; and

(ii) to ensure that any such money or property is dealt with for the consumer's benefit in accordance with this section; and

(*b*) is liable to the consumer for any loss, unless that person has acted-

(i) in good faith; and

(ii) without knowledge of the existence of the consumer's interest.

66. Deposits in respect of containers, pallets or similar objects.-(1) The Minister may, in consultation with the Minister of Environmental Affairs and Tourism, prescribe a minimum or maximum deposit that a supplier must or may require a consumer to pay in respect of the return of a bottle, container, pallet, reel or similar object used in respect of the packaging or delivery of any goods.

(2) If a person returns a bottle, container, pallet, reel or similar object contemplated in subsection (1) to any supplier of goods ordinarily sold in that bottle or container or on that pallet or in or on that reel or similar object, the supplier must pay that person the amount of the deposit-

(*a*) if any, that is required to be charged in terms of any public regulation on the date on which the object is returned to the supplier; or

(*b*) that the supplier charged for that object, or ordinarily charges for such an object,

irrespective of whether the person returning the container paid a deposit for that object to that supplier.

67. Return of parts and materials.-(1) When a supplier is authorised to perform any service to any goods or property belonging to or ordinarily under the control of the consumer, the supplier must-

(*a*) retain any parts or components removed from any goods or property in the course of any repair or maintenance work;

(*b*) keep those parts or components separate from parts removed from other goods or property; and

(*c*) return those parts or components to the consumer in a reasonably clean container,

unless the consumer declined the return of any such parts or materials.

(2) This section does not apply to any substance, parts or components that are required-

(*a*) in terms of any warranty under which the work was carried out, to be returned to, or disposed of at the direction of, the producer or distributor;

(*b*) in terms of any insurance claim under which the work was carried out, to be returned to, or disposed of at the direction of, the insurer; or

(*c*) in terms of any public regulation, to be recovered or disposed of in a safe manner in the interests of environmental safety or public health and safety.

CHAPTER 3
PROTECTION OF CONSUMER RIGHTS AND CONSUMER'S VOICE

Part A
Consumer's right to be heard and obtain redress

68. Protection of consumer rights.-(1) If a consumer has exercised, asserted or sought to uphold any right set out in this Act or in an agreement or transaction with a supplier, the supplier must not, in response-

(*a*) discriminate directly or indirectly against that consumer, compared to the supplier's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right;

(*b*) penalise the consumer;

(*c*) alter, or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or

(*d*) take any action to accelerate, enforce, suspend or terminate an agreement with the consumer.

(2) If an agreement or any provision of an agreement is, in terms of this Act, declared to be void, or is severed from the agreement in terms of section 52 (4), the supplier who is a party to that agreement must not, in response to that decision-

(*a*) directly or indirectly penalise another party to that agreement;

(*b*) alter the terms or conditions of any other transaction or agreement with another party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or

(*c*) take any action to accelerate, enforce, suspend or terminate another agreement with another party to the impugned agreement.

69. Enforcement of rights by consumer.-A person contemplated in section 4 (1) may seek to enforce any right in terms of this Act or in terms of a transaction or agreement, or otherwise resolve any dispute with a supplier, by-

(*a*) referring the matter directly to the Tribunal, if such a direct referral is permitted by this Act in the case of the particular dispute;

(*b*) referring the matter to the applicable ombud with jurisdiction, if the supplier is subject to the jurisdiction of any such ombud;

(*c*) if the matter does not concern a supplier contemplated in paragraph (*b*)-

(i) referring the matter to the applicable industry ombud, accredited in terms of section 82 (6), if the supplier is subject to any such ombud; or

(ii) applying to the consumer court of the province with jurisdiction over the matter, if there is such a consumer court, subject to the law establishing or governing that consumer court;

(iii) referring the matter to another alternative dispute resolution agent contemplated in section 70; or

(iv) filing a complaint with the Commission in accordance with section 71; or

(*d*) approaching a court with jurisdiction over the matter, if all other remedies available to that person in terms of national legislation have been exhausted.

70. Alternative dispute resolution.-(1) A consumer may seek to resolve any dispute in respect of a transaction or agreement with a supplier by referring the matter to an alternative dispute resolution agent who may be-

(*a*) an ombud with jurisdiction, if the supplier is subject to the jurisdiction of any such ombud;

(*b*) an industry ombud accredited in terms of section 82 (6), if the supplier is subject to the jurisdiction of any such ombud;

(*c*) a person or entity providing conciliation, mediation or arbitration services to assist in the resolution of consumer disputes, other than an ombud with jurisdiction, or an accredited industry ombud; or

(*d*) applying to the consumer court of the province with jurisdiction over the matter, if there is such a consumer court, subject to the law establishing or governing that consumer court.

(2) If an alternative dispute resolution agent concludes that there is no reasonable probability of the parties resolving their dispute through the process provided for, the agent may terminate the process by notice to the parties, whereafter the party who referred the matter to the agent may file a complaint with the Commission in accordance with section 71.

(3) If an alternative dispute resolution agent has resolved, or assisted parties in resolving their dispute, the agent may-

(*a*) record the resolution of that dispute in the form of an order, and

(*b*) if the parties to the dispute consent to that order, submit it to the Tribunal or the High Court to be made a consent order, in terms of its rules.

(4) With the consent of a complainant, a consent order confirmed in terms of subsection (3) (*b*) may include an award of damages to that complainant.

71. Initiating complaint to Commission.-(1) Any person may file a complaint concerning a matter contemplated in section 69 (*c*) (iv) with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with this Act.

[Sub-s. (1) substituted by s. 38 of Act No. 19 of 2014.]

Wording of Sections

(2) The Commission may directly initiate a complaint concerning any alleged prohibited conduct on its own motion, or-

(*a*) when directed to do so by the Minister in terms of section 86 (*b*); or

(*b*) on the request of-

(i) a provincial consumer protection authority;

(ii) another regulatory authority; or

(iii) an accredited consumer protection group.

Part B
Commission investigations

72. Investigation by Commission.-(1) Upon initiating or receiving a complaint in terms of this Act, the Commission may-

(*a*) issue a notice of non-referral to the complainant in the prescribed form, if the complaint-

(i) appears to be frivolous or vexatious;

(ii) does not allege any facts which, if true, would constitute grounds for a remedy under this Act; or

(iii) is prevented, in terms of section 116, from being referred to the Tribunal;

(*b*) refer the complaint to an alternative dispute resolution agent, a provincial consumer protection authority or a consumer court for the purposes of assisting the parties to attempt to resolve the dispute in terms of section 70, unless the parties have previously and unsuccessfully attempted to resolve the dispute in that manner;

(*c*) refer the complaint to another regulatory authority with jurisdiction over the matter for investigation; or

(*d*) direct an inspector to investigate the complaint as quickly as practicable, in any other case.

(2) At any time during an investigation, the Commission may designate one or more persons to assist the inspector conducting the investigation contemplated in subsection (1).

73. Outcome of investigation.-(1) After concluding an investigation into a complaint, the Commission may-

(*a*) issue a notice of non-referral to the complainant in the prescribed form;

(*b*) refer the matter to the National Prosecuting Authority, if the Commission alleges that a person has committed an offence in terms of this Act; or

(*c*) if the Commission believes that a person has engaged in prohibited conduct-

(i) refer the matter to the equality court, as contemplated in section 10, if the complaint involves a matter in terms of Part A of Chapter 2;

(ii) propose a draft consent order in terms of section 74;

(iii) make a referral in accordance with subsection (2); or

(iv) issue a compliance notice in terms of section 100.

(2) In the circumstances contemplated in subsection (1) (*c*) (iii), the Commission may refer the matter-

(*a*) to the consumer court of the province in which the supplier has its principal place of business in the Republic, if-

(i) there is a consumer court in that province; and

(ii) the Commission believes that the issues raised by the complaint can be dealt with expeditiously and fully by such a referral; or

(*b*) to the Tribunal.

(3) If the Commission refers a matter to a consumer court in terms of subsection (2) (*a*), any party to that referral may apply to the Tribunal, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to the Tribunal.

(4) If an application has been made to the Tribunal in terms of subsection (3), the Tribunal may order that the matter be referred to it instead of the consumer court if the balance of convenience or interests of justice so require.

(5) A consumer court hearing a matter referred to in this section-

(*a*) must conduct its proceedings in a manner consistent with the requirements applicable to hearings of the Tribunal; and

(*b*) may make any order that the Tribunal could have made after hearing that matter.

(6) An order of a consumer court made after hearing a matter referred to in terms of this section has the same force and effect as if it had been made by the Tribunal.

74. Consent orders.-(1) If a matter has been investigated by the Commission, and the Commission and the respondent agree to the proposed terms of an appropriate order, the Tribunal or a court, without hearing any evidence, may confirm that agreement as a consent order.

(2) After hearing a motion for a consent order, the Tribunal or a court must-

(*a*) make an order as agreed to and proposed by the Commission and the respondent;

(*b*) indicate any changes that must be made in the draft order before it will make the order; or

(*c*) refuse to make the order.

(3) With the consent of a complainant, a consent order confirmed in terms of subsection (1) may include an award of damages to the complainant.

75. Referral to Tribunal.-(1) If the Commission issues a notice of non-referral in response to a complaint, other than on the grounds contemplated in section 116, the complainant concerned may refer the matter directly to-

(*a*) the consumer court, if any, in the province within which the complainant resides, or in which the respondent has its principle place of business in the Republic, subject to the provincial legislation governing the operation of that consumer court; or (*b*) the Tribunal, with leave of the Tribunal.

(2) If a matter is referred directly to a consumer court in terms of subsection (1), the respondent may apply to the Tribunal, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to the Tribunal, and the provisions of section 73 (4) apply to such an application.

(3) A referral to the Tribunal, whether by the Commission or by a complainant in terms of subsection (1), must be in the prescribed form.

(4) The Tribunal-

(*a*) must conduct a hearing into any matter referred to it under this Chapter, in accordance with the requirements of this Act, and the applicable provisions of the National Credit Act pertaining to the proceedings of the Tribunal; and

(*b*) may make any applicable order contemplated in this Act or in section 150 or 151 of the National Credit Act, read with the changes required by the context.

(5) The Chairperson of the Tribunal may assign any of the following matters arising in terms of this Act to be heard by a single member of the Tribunal, in accordance with section 31 (1) (*a*) of the National Credit Act:

(*a*) An application in terms of section 73 (3);

(*b*) an application for leave as contemplated in subsection (1) (*b*);

(*c*) an application in terms of subsection (2);

(*d*) an application in terms of section 106; or

(*e*) an application for an extension of time, to the extent that the Tribunal has authority to grant such an extension in terms of this Act.

Part C
Redress by court

76. Powers of court to enforce consumer rights.-(1) In addition to any other order that it may make under this Act or any other law, a court considering a matter in terms of this Act may-

(*a*) order a supplier to alter or discontinue any conduct that is inconsistent with this Act;

(*b*) make any order specifically contemplated in this Act; and

(*c*) award damages against a supplier for collective injury to all or a class of consumers generally, to be paid on any terms or conditions that the court considers just and equitable and suitable to achieve the purposes of this Act.

(2) This Act does not diminish any right of the consumer or the supplier-

(*a*) to recover interest or special damages in any case where by law interest or special damages may be recoverable; or

(*b*) to recover money paid if the consideration for the payment of it has failed.

Part D
Civil society support for consumer's rights

77. Support for consumer protection groups.-The Commission may co-operate with, facilitate or otherwise support any of the following activities carried out by a consumer protection group:

(*a*) Consumer advice and education activities and consumer-related publications;

(*b*) research, market monitoring, surveillance and reporting;

(*c*) promotion of consumer rights and advocacy of consumer interests;

(*d*) representation of consumers, either specifically or generally, in court;

(*e*) alternative dispute resolution through mediation or conciliation; and

(*f*) participation in national and international associations, conferences or forums concerned with consumer protection matters.

78. Accredited consumer protection group may initiate actions.-(1) An accredited consumer protection group may-

(*a*) commence or undertake any act to protect the interests of a consumer individually, or of consumers collectively, in any matter or before any forum contemplated in this Act; and

(*b*) intervene in any matter before any forum contemplated in this Act, if the interests of consumers represented by that group are not otherwise adequately represented in that forum.

(2) In addition to any other authority set out in this Act, an accredited consumer protection group may direct a generally stated concern or complaint to the Commission in respect of any matter within the purposes of this Act.

(3) The Commission may accredit a consumer protection group if that person or association-

(*a*) functions predominantly to promote or represent the interests of all or a specific category of consumers generally;

(*b*) is committed to achieving the purposes of this Act; and

(*c*) engages in, or makes a realistic proposal to engage in, actions to promote and advance the consumer interests of persons contemplated in section 3 (1) (*b*).

(4) The Commission may impose reasonable conditions on the accreditation of a consumer protection group to further the purposes of this Act.

(5) The Commission-

(*a*) must monitor the effectiveness of any accredited consumer protection group relative to the purposes and policies of this Act; and

(*b*) may reasonably require any accredited consumer protection group to provide information necessary for the purposes of monitoring in terms of paragraph (*a*).

(6) The Minister may prescribe standards, procedures and related matters for the Commission to follow in assessing whether an applicant for accreditation meets the requirements of this section.

CHAPTER 4
BUSINESS NAMES AND INDUSTRY CODES OF CONDUCT

Part A
Business names

79. Identification of supplier.-(1) A person must not carry on business, advertise, promote, offer to supply or supply any goods or services, or enter into a transaction or agreement with a consumer under any name except-

(*a*) the person's full name as-

(i) recorded in an identity document or any other recognised identification document, in the case of an individual; or

(ii) registered in terms of a public regulation, in the case of a juristic person; or

(*b*) a business name registered to, and for the use of, that person in terms of section 80, or any other public regulation.

(Date of commencement of sub-s. (1) to be proclaimed (refer to Item 5, Schedule 2).)

(2) A person doing anything contemplated in subsection (1) must include the following particulars on any trade catalogue, trade circular, business letter, order for goods, sales record or statement of account that the person issues:

(*a*) The name, title or description under which the business is carried on;

(*b*) a statement of the primary place at which, or from which, the business is carried on; and

(*c*) if the activity is carried on under a business name, the name of the person to whom that business name is registered.

(Date of commencement of sub-s. (2) to be proclaimed (refer to Item 5, Schedule 2).)

(3) If a person-

(*a*) does anything contemplated in subsection (1) under a name that is not that person's full name, or a business name registered to that person, the Commission may issue a compliance notice to that person, in terms of section 100, requiring the person-

(i) within a reasonable time, to-

(*aa*) apply for registration of the business name in terms of section 80; or

(*bb*) discontinue that conduct under that business name; and

(ii) if the application to register that business name is unsuccessful for any reason contemplated in this Part, to discontinue that conduct under that name within 40 business days after receiving notice of the failure of the application;

(Date of commencement of para. (*a*) to be proclaimed (refer to Item 5, Schedule 2).)

(*b*) fails to comply with any requirement of subsection (2), the Commission may issue a compliance notice to the person in terms of section 100; or

(Date of commencement of para. (*b*) to be proclaimed (refer to Item 5, Schedule 2).)

(*c*) does anything contemplated in subsection (1) under a business name that is registered to another person, that other person may apply to the court for an order contemplated in subsection (4).

(4) The court hearing an application contemplated in subsection (3) (*c*) may make an order directing a person to stop using a business name within a period, and on any terms, that the court considers just, equitable and expedient in the circumstances.

80. Registration of business names.-(1) A person may file a notice with the Registrar in the prescribed manner and form, and with payment of the prescribed fee, to-

(*a*) register any number of business names being used, or to be used, by that person in carrying on the person's business;

(*b*) register the same business name translated into any number of official languages of the Republic;

(*c*) change a registered business name; or

(*d*) transfer a registered business name to another person.

(2) The Registrar must register-

(*a*) a business name, or translation or change of a business name, as filed, if it satisfies the requirements of section 81; or

(*b*) a transfer of a business name, as filed.

(3) If the Registrar believes on reasonable grounds that a person has applied to register a business name, or a translation or change of a business name, that does not satisfy the requirements of section 81-

(*a*) the Registrar must notify the applicant accordingly; and

(*b*) the procedures set out in the Companies Act, 1973 (Act No. 61 of 1973), for resolving disputed names of companies, read with the changes required by the context, apply to the resolution of the disputed business name.

(4) If, during the time that a business name is registered to a person, the Registrar, on reasonable grounds, believes that the person has not been carrying on business under that name for a period of at least six months, the Registrar-

(*a*) by notice in the prescribed form, may require the person to whom the business name is registered to show cause in the prescribed manner and form why the registration should not be cancelled; and

(*b*) may cancel the registration by notice in the prescribed form if the person to whom the business name is registered fails to respond to the notice within the prescribed time, or fails to provide-

(i) satisfactory evidence that the person is conducting business under the registered business name; or

(ii) a reasonable explanation for not conducting business under that name as noted by the Registrar.

(5) A person affected by a decision of the Registrar in terms of subsection (4) may apply to the Tribunal to review the determination.

(Date of commencement of s. 80 to be proclaimed (refer to Item 5, Schedule 2).)

81. Criteria for business names.-(1) Subject to subsection (2), a business name may comprise words in any language irrespective of whether the words are commonly used or contrived for the purpose, together with-

(*a*) any letters, numbers or punctuation marks;

(*b*) any of the following symbols: +, &, #, @, %, =;

(*c*) any other symbol permitted by the regulations made in terms of subsection (3); or

(*d*) round brackets used in pairs to isolate any part of the name, alone or in any combination.

(2) A business name-

(*a*) must not be the same as, or confusingly similar to-

(i) a name of a juristic person incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), the Close Corporations Act, 1984 (Act No. 69 of 1984), or the Co-operatives Act, 2005 (Act No. 14 of 2005);

(ii) a registered trade mark belonging to another person, or a mark in respect of which an application has been filed in the Republic for registration as a trade mark or a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act No. 194 of 1993), unless the applicant for registration of the mark as a business name either-

(*aa*) is the registered owner or applicant for registration of the mark; or

(*bb*) has been granted a licence to that mark; or

(iii) a mark, word or expression, the use of which is restricted or protected in terms of the Merchandise Marks Act, 1941 (Act No. 17 of 1941), except to the extent permitted in terms of that Act;

(*b*) must not falsely imply or suggest, or be such as would reasonably mislead, a person to believe incorrectly that the business-

(i) is part of, or associated with, any other person or entity;

(ii) is an organ of state or a court, or is operated, sponsored, supported or endorsed by the State or by any organ of state or a court;

(iii) is owned, managed or conducted by persons having any particular educational designation or who are regulated persons or entities;

(iv) is owned, operated, sponsored, supported or endorsed by, or enjoys the patronage of-

(*aa*) any foreign state, head of state, head of government, government or administration or any department of such a government or administration; or

(*bb*) any international organisation; or

(*c*) must not include any words, expression or symbol that, in isolation or in context within the name, fall into the category of expression contemplated in section 16 (2) of the Constitution.

(3) The Minister may prescribe additional commonly recognised symbols for use in business names, as contemplated in subsection (1) (*c*).

(Date of commencement of s. 81 to be proclaimed (refer to Item 5, Schedule 2).)

Part B
Industry codes of conduct

82. Industry codes.-(1) In this section-

(*a*) **"industry code"** means a code-

(i) regulating the interaction between or among persons conducting business within an industry; or

(ii) regulating the interaction, or providing for alternative dispute resolution, between a person contemplated in subparagraph (i) and consumers; and

(*b*) **"proposal"** or **"proposed industry code"** includes any existing scheme that has been voluntarily established within an industry to regulate the conduct of persons conducting business within that industry.

(2) The Minister, by regulation, may-

(*a*) prescribe an industry code on the recommendation of the Commission in terms of subsection (3); or

(*b*) withdraw all or part of a previously prescribed industry code, on the recommendation of the Commission in terms of subsection (5).

(3) The Commission, acting on its own initiative, or in response to a proposal from persons conducting business within a particular industry, may recommend a proposed industry code to the Minister after-

(*a*) publishing the proposed industry code for public comment;

(*b*) considering any submissions made during the public comment period;

(*c*) consulting with-

(i) persons conducting business within the relevant industry; and

(ii) relevant accredited consumer protection groups; and (*d*) making any revisions to the proposed industry code as published for comment.

(4) An industry code must be consistent with the purposes and policies of this Act.

(5) The Commission-

(*a*) on the request of the Minister, must review the effectiveness of any industry code relative to the purposes and policies of this Act;

(*b*) may otherwise conduct a review contemplated in paragraph (*a*) at intervals of at least five years; and

(*c*) after conducting a review contemplated in this subsection, and taking the steps required by subsection (3), may make further recommendations to the Minister, including a recommendation to amend or withdraw all or part of a previously prescribed code.

(6) If-

(*a*) a proposed industry code provides for a scheme of alternative dispute resolution; and

(*b*) the Commission considers that the scheme is adequately situated and equipped to provide alternative dispute resolution services comparable to those generally provided in terms of any public regulation,

the Commission, when recommending that code to the Minister, may also recommend that the scheme be accredited as an "accredited industry ombud".

(7) The Commission-

(*a*) must monitor the effectiveness of any industry code relative to the purposes and policies of this Act; and

(*b*) may reasonably require persons conducting business within the relevant industry to provide information necessary for the purposes of-

(i) monitoring in terms of paragraph (*a*); or

(ii) a review in terms of subsection (5).

(8) A supplier must not, in the ordinary course of business, contravene an applicable industry code.

CHAPTER 5
NATIONAL CONSUMER PROTECTION INSTITUTIONS

Part A
National and provincial co-operation

83. Co-operative exercise of concurrent jurisdiction.-(1) As contemplated in section 41 (2) of the Constitution, the Minister must consult with the responsible Member of any relevant provincial Executive Council-

(*a*) to co-ordinate and harmonise the functions to be performed by the Commission and one or more provincial consumer protection authorities; and

(*b*) when necessary, to facilitate the settlement of any dispute between the Commission and one or more provincial consumer protection authorities,

concerning the functions to be performed by them relating to consumer protection.

(2) If this Act contemplates that the respective provincial consumer protection authorities will perform a particular function within their respective provinces, and-

(*a*) within a particular province, no provincial consumer protection authority has been established; or

(*b*) the Minister concludes on reasonable grounds that the provincial consumer protection authority within a particular province is unable to perform that function effectively,

the Minister must consult with the responsible MEC of that province to determine the steps to be taken to ensure the fulfilment of that statutory obligation.

(3) At the request of the relevant MEC of a province, or a provincial consumer protection authority, the Commission-

(*a*) may engage with that provincial consumer protection authority in co-operative activities of research, publication, education, staff development and training; and

(*b*) in consultation with the Minister, may-

(i) engage with that provincial consumer protection authority in staff exchanges or secondments; or

(ii) provide technical assistance or expertise to that provincial consumer protection authority.

(4) At the request of the relevant MEC of a province, or a provincial consumer protection authority, the Commission may engage with that provincial consumer protection authority in co-operative activities to detect and suppress prohibited conduct or offences in terms of this Act, if there are reasonable grounds to believe that any such conduct or offences may be occurring within the province, or across its provincial boundaries.

(5) At the direction of the Minister, the Commission must engage with any relevant provincial consumer protection authority in co-operative activities to detect and suppress prohibited conduct or offences in terms of this Act, occurring within the province or across its provincial boundaries.

(6) The Commission may request a provincial consumer protection authority to submit any report or information related to the activities of that provincial consumer protection authority to the Commission.

(Date of commencement of s. 83: 24 April, 2010.)

84. Provincial consumer protection authorities.-A provincial consumer protection authority has jurisdiction within its province to-

(*a*) issue compliance notices in terms of this Act on behalf of the Commission to any person carrying on business exclusively within that province;

(*b*) facilitate the mediation or conciliation of a dispute arising in terms of this Act between or among persons resident, or carrying on business exclusively within that province;

(*c*) refer a dispute contemplated in paragraph (*b*) to the provincial consumer court within that province, if there is one; and

(*d*) request the Commission to initiate a complaint in respect of any apparent prohibited conduct or offence in terms of this Act arising within that province.

(Date of commencement of s. 84: 24 April, 2010.)

Part B
Establishment of National Consumer Commission

85. Establishment of National Consumer Commission.-(1) The National Consumer Commission is hereby established as an organ of state within the public administration, but as an institution outside the public service.

(2) The Commission-

(*a*) has jurisdiction throughout the Republic;

(*b*) is a juristic person;

(*c*) must exercise the functions assigned to it in terms of this Act or any other law, or by the Minister, in-

(i) the most cost-efficient and effective manner; and

(ii) in accordance with the values and principles mentioned in section 195 of the Constitution.

(Date of commencement of s. 85: 24 April, 2010.)

86. Minister may direct policy and require investigation.-The Minister may-

(*a*) by notice in the *Gazette*, issue policy directives to the Commission with respect to the application, administration and enforcement of this Act, but any such directives must be consistent with this Act; and

(*b*) at any time direct the Commission to investigate-

(i) an alleged contravention of this Act; or

(ii) any matter or circumstances with respect to the purposes of this Act, whether or not those circumstances appear at the time of the direction to amount to a possible contravention of this Act.

(Date of commencement of s. 86: 24 April, 2010.)

87. Appointment of Commissioner.-(1) The Minister must appoint a person with suitable qualifications and experience in economics, law, commerce, industry or public affairs as Commissioner of the Commission, who-

(*a*) is responsible for all matters pertaining to the functions of the Commission under this Act; and (*b*) holds office for an agreed term not exceeding five years.

(2) Before the Minister makes an appointment in terms of subsection (1) the relevant Parliamentary Committee must be consulted with respect to such appointment.

(3) A person may be reappointed as Commissioner on the expiry of an agreed term of office.

(4) The Commissioner is the accounting authority for the Commission, and as such is responsible for-

(*a*) all income and expenditure of the Commission;

(*b*) all revenue collected by the Commission;

(*c*) all assets, and the discharge of all liabilities of the Commission; and

(*d*) the proper and diligent implementation of the Public Finance Management Act, 1999 (Act No. 1 of 1999), with respect to the Commission.

(5) The Commissioner may-

(*a*) assign management or other duties to employees with appropriate skills to assist the Commission in the management, or control over the functioning, of the Commission; and

(*b*) delegate, with or without conditions, any of the powers or functions of the Commissioner to any suitably qualified employee of the Commission, but any such delegation does not divest the Commissioner of responsibility for the exercise of any power or performance of any duty.

(6) (*a*) The Minister must appoint at least one person, and may appoint other persons with suitable qualifications and experience in economics, law, commerce, industry or public affairs as Deputy Commissioner to assist the Commissioner in carrying out the functions of the Commission.

(*b*) The Minister must designate a Deputy Commissioner to perform the functions of the Commission whenever-

(i) the Commissioner is unable for any reason to perform the functions of the Commissioner; or

(ii) the office of the Commissioner is vacant.

(7) The Minister must, in consultation with the Minister of Finance, determine the Commissioner's and Deputy Commissioner's remuneration, allowances, benefits and other terms and conditions of employment.

(Date of commencement of s. 87: 24 April, 2010.)

88. Appointment of inspectors and investigators.-(1) The Commissioner-

(*a*) may appoint any suitable employee of the Commission or any other suitable person employed by the State, as an inspector; and

(*b*) must issue each inspector with a certificate in the prescribed form stating that the person has been appointed as an inspector in terms of this Act.

(2) When an inspector performs any function of an inspector in terms of this Act, the inspector-

(*a*) must be in possession of a certificate of appointment issued to that inspector in terms of subsection (1);

(*b*) must show that certificate to any person who-

(i) is affected by the inspector's actions in terms of this Act; and

(ii) requests to see the certificate; and

(*c*) has the powers of a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law.

(3) The Commissioner may appoint or contract with any suitably qualified person as an investigator to conduct research, audits, inquiries or other investigations on behalf of the Commission.

(4) A person appointed in terms of subsection (3) is not an inspector within the meaning of this Act.

(Date of commencement of s. 88: 24 April, 2010.)

89. Conflicting interests.-The Commissioner, and any other employee of the Commission, or person appointed by the Commission to be an inspector or investigator, may not-

(*a*) engage in any activity that may undermine the integrity of the Commission;

(*b*) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;

(*c*) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the Commission; or

(*d*) divulge any information referred to in paragraph (*c*) to any third party, except as required as part of that person's official functions within the Commission.

(Date of commencement of s. 89: 24 April, 2010.)

90. Finances.-(1) The Commission is financed from-

(*a*) money appropriated by Parliament;

(*b*) any fees payable to the Commission in terms of this Act;

(*c*) income derived from its investment and deposit of surplus money in terms of subsection (2); and

(*d*) money accruing from any other source.

(2) The Commission may invest or deposit money of the Commission that is not immediately required for contingencies or to meet current expenditures-

(*a*) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or

(*b*) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).

(3) The financial year of each of the Commission is the period of 12 months beginning 1 April each year, and ending on the following 31 March, except that the first financial year-

(*a*) begins on the early effective date, as defined in item 1 of Schedule 2; and

(*b*) ends on the next following 31 March.

(Date of commencement of s. 90: 24 April, 2010.)

91. Reviews and reports to Minister.-(1) At least once every five years, the Minister must conduct an audit review of the exercise of the functions and powers of the Commission.

(2) In addition to any other reporting requirement set out in this Act, the Commission must report to the Minister at least once every year on its activities, as required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(Date of commencement of s. 91: 24 April, 2010.)

Part C
Functions of Commission

92. General provisions concerning Commission functions.-(1) The Commission is responsible to carry out the functions and exercise the powers assigned to it by or in terms of this Act or any other national legislation.

(2) In carrying out its functions, the Commission may-

(*a*) have regard to international developments in the field of consumer protection; or

(*b*) consult any person, organisation or institution with regard to any matter relating to consumer protection.

(3) In respect to a particular matter within its jurisdiction or responsibility, the Commission may exercise its responsibility by way of an agreement contemplated in section 97 (1) (*b*).

(4) The Minister must prescribe at least two official languages to be used by the Commission in any documents it is required to deliver in terms of this Act, for all or any part of the Republic, to give maximum effect to the requirements set out in section 6 (3) and (4) of the Constitution.

(Date of commencement of s. 92: 24 April, 2010.)

93. Development of codes of practice relating to Act.-(1) The Commission may develop, and promote the voluntary use of, codes of practice in respect of-

(*a*) use of plain language in documents;

(*b*) a standardised or uniform means of presenting and communicating the information contemplated in sections 23 to 28;

(*c*) alternative dispute resolution in terms of section 70; or

(*d*) any other matter to better achieve the purposes of this Act.

(2) Codes developed by the Commission in terms of subsection (1) must be published for public comment before finalisation.

(Date of commencement of s. 93: 24 April, 2010.)

94. Promotion of legislative reform.-In order to better achieve the purposes of this Act in relation to laws that govern matters affecting consumers, the Commission must-

(*a*) identify any national or provincial legislation, or other public regulation, that-

(i) affects the welfare of consumers; and

(ii) is inconsistent with the purposes of this Act;

(*b*) consult with-

(i) relevant provincial consumer protection authorities;

(ii) organs of state within the national sphere of government; and

(iii) consumer protection groups, alternative dispute resolution agents and suppliers,

with respect to legislation identified in terms of paragraph (*a*) with the object of developing proposals for reform of that legislation; and

(*c*) report from time to time to the Minister with recommendations for achieving the progressive transformation and reform of law contemplated in this section.

(Date of commencement of s. 94: 24 April, 2010.)

95. Promotion of consumer protection within organs of state.-(1) In order to better achieve the purposes of this Act in relation to goods and services supplied to consumers by or through any organs of state, the Commission must-

(*a*) consult with relevant provincial consumer protection authorities, organs of state within the national sphere of government, regulatory authorities, consumer protection groups, and ombuds with respect to the delivery of any such goods or services, with the object of-

(i) identifying any practices that are inconsistent with the purposes and policies of this Act; and

(ii) developing proposals for reform of any such practices; and

(*b*) report from time to time to the Minister with recommendations for achieving the progressive transformation and reform of practices contemplated in this section.

(2) The Commission-

(*a*) must monitor the effectiveness of entities contemplated in subsection (1) relative to the purposes and policies of this Act in relation to goods and services supplied to consumers through organs of state; and

(*b*) may reasonably require entities contemplated in subsection (1) to provide information necessary for the purposes of-

(i) monitoring in terms of paragraph (*a*); or

(ii) a report prepared in terms of subsection (1) (*b*).

(Date of commencement of s. 95: 24 April, 2010.)

96. Research and public information.-The Commission is responsible to increase knowledge of the nature and dynamics of the consumer market, and to promote public awareness of consumer protection matters, by-

(*a*) implementing education and information measures to develop public awareness of the provisions of this Act; and

(*b*) providing guidance to the public by-

(i) issuing explanatory notices outlining its procedures, or its non-binding opinion on the interpretation of any provision of this Act;

(ii) applying to a court for a declaratory order on the interpretation or application of any provision of this Act; or

(iii) publishing any orders and findings of the Tribunal or a court in respect of a breach of the Act.

(Date of commencement of s. 96: 24 April, 2010.)

97. Relations with other regulatory authorities.-(1) The Commission may-

(*a*) liaise with any provincial consumer protection authority or other regulatory authority on matters of common interest and, without limiting the generality of this power, may monitor, require necessary information from, exchange information with, and receive information from, any such authority pertaining to-

(i) matters of common interest; or

(ii) a specific complaint or investigation;

(*b*) negotiate agreements with any regulatory authority-

(i) to co-ordinate and harmonise the exercise of jurisdiction over consumer matters within the relevant industry or sector; and

(ii) to ensure the consistent application of the principles of this Act;

(*c*) participate in the proceedings of any regulatory authority; and

(*d*) advise, or receive advice from, any regulatory authority.

(2) A regulatory authority that, in terms of any public regulation, exercises jurisdiction over consumer matters within a particular industry or sector may-

(*a*) negotiate agreements with the Commission, as anticipated in subsection (1) (*b*); and

(*b*) exercise its jurisdiction by way of such an agreement in respect of a particular matter within its jurisdiction.

(3) The President may assign to the Commission any duty of the Republic to exchange information with a similar foreign agency in terms of an international agreement relating to the purposes of this Act.

(4) The Commission may liaise with any foreign or international authorities having any objects similar to the functions and powers of the Commission.

(Date of commencement of s. 97: 24 April, 2010.)

98. Advice and recommendations to Minister.-In addition to any other advice or reporting requirements set out in this Part, the Commission is responsible to-

(*a*) advise the Minister on matters relating to consumer protection and on the determination of national norms and standards regarding consumer protection in terms of this Act that should apply generally throughout the Republic;

(*b*) recommend to the Minister changes to bring about uniformity in the legislation in the various provinces in relation to consumer protection in terms of this Act;

(*c*) report annually on market practices and the implications for consumer choice and competition in the consumer market;

(*d*) enquire into and report to the Minister on any matter concerning the purposes of this Act; and

(*e*) advise the Minister in respect of any matter referred to it by the Minister.

(Date of commencement of s. 98: 24 April, 2010.)

CHAPTER 6
ENFORCEMENT OF ACT

Part A
Enforcement by Commission

99. Enforcement functions of Commission.-The Commission is responsible to enforce this Act by-

(*a*) promoting informal resolution of any dispute arising in terms of this Act between a consumer and a supplier, but is not responsible to intervene in or directly adjudicate any such dispute;

(*b*) receiving complaints concerning alleged prohibited conduct or offences, and dealing with those complaints in accordance with Part B of Chapter 3;

(*c*) monitoring-

(i) the consumer market to ensure that prohibited conduct and offences are prevented, or detected and prosecuted; and

(ii) the effectiveness of accredited consumer groups, industry codes and alternative dispute resolution schemes, service delivery to consumers by organs of state, and any regulatory authority exercising jurisdiction over consumer matters within a particular industry or sector;

(*d*) investigating and evaluating alleged prohibited conduct and offences;

(*e*) issuing and enforcing compliance notices;

(*f*) negotiating and concluding undertakings and consent orders contemplated in section 74;

(*g*) referring to the Competition Commission any concerns regarding market share, anti-competitive behaviour or conduct that may be prohibited in terms of the Competition Act, 1998 (Act No. 89 of 1998);

(*h*) referring matters to the Tribunal, and appearing before the Tribunal, as permitted or required by this Act; and

(*i*) referring alleged offences in terms of this Act to the National Prosecuting Authority.

100. Compliance notices.-(1) Subject to subsection (2), the Commission may issue a compliance notice in the prescribed form to a person or association of persons whom the Commission on reasonable grounds believes has engaged in prohibited conduct.

(2) Before issuing a notice in terms of subsection (1) to a regulated entity, the Commission must consult with the regulatory authority that issued a licence to that regulated entity.

(3) A compliance notice contemplated in subsection (1) must set out-

(*a*) the person or association to whom the notice applies;

(*b*) the provision of this Act that has not been complied with;

(*c*) details of the nature and extent of the non-compliance;

(*d*) any steps that are required to be taken and the period within which those steps must be taken; and

(*e*) any penalty that may be imposed in terms of this Act if those steps are not taken.

(4) A compliance notice issued in terms of this section remains in force until-

(*a*) it is set aside by the Tribunal, or a court upon a review of a Tribunal decision concerning the notice; or

(*b*) the Commission issues a compliance certificate contemplated in subsection (5).

(5) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the Commission must issue a compliance certificate.

(6) If a person to whom a compliance notice has been issued fails to comply with the notice, the Commission may either-

(*a*) apply to the Tribunal for the imposition of an administrative fine; or

(*b*) refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of section 110 (2),

but may not do both in respect of any particular compliance notice.

101. Objection to notices.-(1) Any person issued with a notice in terms of section 100 may apply to the Tribunal in the prescribed manner and form to review that notice within-

(*a*) 15 business days after receiving that notice; or

(*b*) such longer period as may be allowed by the Tribunal on good cause shown.

(2) After considering any representations by the applicant and any other relevant information, the Tribunal may confirm, modify or cancel all or part of a notice.

(3) If the Tribunal confirms or modifies all or part of a notice, the applicant must comply with that notice as confirmed or modified, within the time period specified in it.

Part B

102. Summons.-(1) At any time during an investigation being conducted in terms of section 72 (1) (*d*), the Commissioner may issue a summons to any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject-

(*a*) to appear before the Commission, or before an inspector or independent investigator, to be questioned at a time and place specified in the summons; or

(*b*) to deliver or produce to the Commission, or to an inspector or independent investigator, any book, document or other object referred to in paragraph (*a*) at a time and place specified in the summons.

(2) A summons contemplated in subsection (1)-

(*a*) must be signed by the Commissioner, or by an employee of the Commission designated by the Commissioner; and

(*b*) may be served in the same manner as a subpoena in a criminal case issued by the magistrate's court.

(3) An inspector or investigator before whom a person is summoned to appear, or to whom a person is required to deliver any book, document or other object, may -

(*a*) interrogate and administer an oath to, or accept an affirmation from, the person named in the summons; and

(*b*) retain any such book, document or other object for examination, for a period not exceeding two months, or such longer period as the Tribunal, on application and good cause shown, may allow.

(4) A person questioned by the Commission or by an inspector or investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but-

(*a*) a person is not obliged to answer any question if the answer is self-incriminating; and

(*b*) the person asking the questions must inform that person of the right set out in paragraph (*a*).

(5) No self-incriminating answer given or statement made by any person to the Commission, or an inspector or investigator exercising powers in terms of this Act, will be admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 108 (3) or 109 (2) (*d*), and then only to the extent that the answer or statement is relevant to prove the offence charged.

103. Authority to enter and search under warrant.-(1) A judge of the High Court or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate if, from information on oath or affirmation, there are reasonable grounds to believe that-

(*a*) a contravention of this Act has taken place, is taking place, or is likely to take place on or in those premises; or

(*b*) anything connected with an investigation in terms of this Act is in the possession of, or under the control of, a person who is on or in those premises.

(2) A warrant to enter and search may be issued at any time and must specifically-

(*a*) identify the premises that may be entered and searched; and

(*b*) authorise an inspector or a police officer to enter and search the premises and to do anything listed in section 104.

(3) A warrant to enter and search is valid until one of the following events occurs:

(*a*) The warrant is executed;

(*b*) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;

(*c*) the purpose for issuing it has lapsed; or

(*d*) the expiry of one month after the date it was issued.

(4) A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.

(5) A person authorised by warrant issued in terms of subsection (2) may enter and search premises named in that warrant.

(6) Immediately before commencing with the execution of a warrant, a person executing that warrant must

either-

(*a*) if the owner, or person in control, of the premises to be searched is present-

(i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and

(ii) hand a copy of the warrant to that person or to the person named in it; or

(*b*) if none of those persons is present, affix a copy of the warrant to the premises in a prominent and visible place.

104. Powers to enter and search.-(1) A person who is authorised under section 103 to enter and search premises may-

(*a*) enter upon or into those premises;

(*b*) search those premises;

(*c*) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;

(*d*) examine any article or document that is on or in those premises that has a bearing on the investigation;

(*e*) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;

(*f*) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;

(*g*) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to-

(i) search any data contained in or available to that computer system;

(ii) reproduce any record from that data;

(*h*) seize any output from that computer for examination and copying; and

(*i*) attach and if necessary remove from the premises for examination and safekeeping anything that has a bearing on the investigation.

(2) Section 102 (5) applies equally to an answer given or statement made to an inspector or police officer in terms of this section.

(3) An inspector authorised to conduct an entry and search in terms of section 103 may be accompanied and assisted by a police officer.

105. Conduct of entry and search.-(1) A person who enters and searches any premises under section 104 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

(2) During any search under section 104(1) (c), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.

(3) A person who enters and searches premises under section 104, before questioning anyone, must-

(*a*) advise that person of the right to be assisted at the time by an advocate or attorney; and

(*b*) allow that person to exercise that right.

(4) A person who removes anything from premises being searched must-

(*a*) issue a receipt for it to the owner of, or person in control of, the premises; and

(*b*) return it as soon as practicable after achieving the purpose for which it was removed.

(5) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information.

(6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.

(7) A police officer who is authorised to enter and search premises under section 103, or who is assisting an inspector who is authorised to enter and search premises under section 104, may overcome resistance to the entry

and search by using as much force as is reasonably required, including breaking a door or window of the premises.

(8) Before using force in terms of subsection (6), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.

(9) The Commission may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the premises was present.

106. Claims that information is confidential.-(1) When submitting information to the Commission, the Tribunal, or an inspector or investigator appointed in terms of this Act, a person may claim that all or part of that information is confidential.

(2) Any claim contemplated in subsection (1) must be supported by a written statement explaining why the information is confidential.

(3) The Commission, Tribunal, inspector or investigator, as the case may be, must-

(*a*) consider any claim made in terms of subsection (1); and

(*b*) notify the claimant whether or not the information contemplated in subsection (1) will be treated as if it had been determined to be confidential.

(4) When making any ruling, decision or order in terms of this Act, the Commission or Tribunal may take into account any information that has been the subject of a claim in terms of subsection (1).

(5) If any reasons for a decision in terms of this Act would reveal any information that has been the subject of a claim in terms of subsection (1), the Commission or Tribunal, as the case may be, must provide a copy of the proposed reasons to the party claiming confidentiality at least five business days before publishing those reasons.

(6) Within five business days after receiving a notice in terms of subsection (3) (*b*), or a copy of proposed reasons in terms of subsection (5), a party may apply to a court for an appropriate order to protect the confidentiality of the relevant information.

Part C
Offences and penalties

107. Breach of confidence.-(1) It is an offence to disclose any personal or confidential information concerning the affairs of any person obtained-

(*a*) in carrying out any function in terms of this Act; or

(*b*) as a result of initiating a complaint or participating in any proceedings in terms of this Act.

(2) Subsection (1) does not apply to information disclosed-

(*a*) for the purpose of the proper administration or enforcement of this Act;

(*b*) for the purpose of the administration of justice; or

(*c*) at the request of an inspector, regulatory authority or Tribunal member entitled to receive the information.

108. Hindering administration of Act.-(1) It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by this Act.

(2) A person commits an offence if that person, having been summoned-

(*a*) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or

(*b*) attends as required, but-

(i) refuses to be sworn in or to make an affirmation; or

(ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person.

(3) A person commits an offence if that person, having been sworn in or having made an affirmation-

(*a*) fails to answer any question fully and to the best of his or her ability, subject to section 102 (5); or

(*b*) gives false evidence, knowing or believing it to be false.

109. Offences relating to Commission and Tribunal.-(1) A person commits an offence if that person contravenes or fails to comply with an order of the Tribunal.

(2) A person commits an offence if that person-

(*a*) does anything calculated to improperly influence the Tribunal or a regulator concerning any matter connected with an investigation;

(*b*) anticipates any findings of the Tribunal or a regulator concerning an investigation in a way that is calculated to influence the proceedings or findings;

(*c*) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;

(*d*) knowingly provides false information to a regulator;

(*e*) defames the Tribunal, or a member the Tribunal, in their respective official capacities;

(*f*) wilfully interrupts the proceedings of a hearing or misbehaves in the place where a hearing is being conducted;

(*g*) acts contrary to a warrant to enter and search; or

(*h*) without authority, but claiming to have authority in terms of section 103-

(i) enters or searches premises; or

(ii) attaches or removes an article or document.

110. Offences relating to prohibited conduct.-(1) It is an offence for any person to alter, obscure, falsify, remove or omit a displayed price, labelling or trade description without authority.

(2) It is an offence to fail to act in accordance with a compliance notice, but no person may be prosecuted for such an offence in respect of the compliance notice if, as a result of the failure of that person to comply with that notice, the Commission has applied to the Tribunal for the imposition of an administrative fine.

111. Penalties.-(1) Any person convicted of an offence in terms of this Act is liable-

(*a*) in the case of a contravention of section 107 (1), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or

(*b*) in any other case, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

(2) Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in subsection (1).

112. Administrative fines.-(1) The Tribunal may impose an administrative fine in respect of prohibited or required conduct.

(2) An administrative fine imposed in terms of this Act may not exceed the greater of-

(*a*) 10 per cent of the respondent's annual turnover during the preceding financial year; or

(*b*) R1 000 000.

(3) When determining an appropriate administrative fine, the Tribunal must consider the following factors:

(*a*) The nature, duration, gravity and extent of the contravention;

(*b*) any loss or damage suffered as a result of the contravention;

(*c*) the behaviour of the respondent;

(*d*) the market circumstances in which the contravention took place;

(*e*) the level of profit derived from the contravention;

(*f*) the degree to which the respondent has co-operated with the Commission and the Tribunal; and

(*g*) whether the respondent has previously been found in contravention of this Act.

(4) For the purpose of this section, the annual turnover of a supplier at the time when an administrative fine is assessed, is the total income of that supplier during the immediately preceding year, as determined in the prescribed manner.

(5) A fine payable in terms of this section must be paid into the National Revenue Fund referred to in section

213 of the Constitution.

113. Vicarious liability.-(1) If an employee or agent of a person is liable in terms of this Act for anything done or omitted in the course of that person's employment or activities on behalf of their principal, the employer or principal is jointly and severally liable with that person.

(2) This section does not apply in respect of criminal liability.

Part D
Miscellaneous matters

114. Interim relief.-(1) A person who has applied for relief to a court, or the complainant in a complaint that has been referred to the Tribunal, may apply to a court subject to its rules, or to the Tribunal, as the case may be, for an interim order in respect of that application or complaint, and the court or Tribunal may grant such an order if-

(*a*) there is evidence that the allegations may be true;

(*b*) an interim order is reasonably necessary to-

(i) prevent serious, irreparable damage to that person; or

(ii) to prevent the purposes of this Act being frustrated;

(*c*) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and

(*d*) the balance of convenience favours the granting of the order.

(2) An interim order in terms of this section must not extend beyond the earlier of-

(*a*) the conclusion of a hearing into an application or a complaint; or

(*b*) the date that is six months after the date of issue of the interim order.

(3) If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the court or Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.

115. Civil actions and jurisdiction.-(1) If an agreement, provision of an agreement, or a notice to which a transaction or agreement is purported to be subject, has been declared by a provision of this Act to be void, that agreement, provision or notice must be regarded as having been of no force or effect at any time, unless a court has declared that the relevant provision of this Act does not apply to the impugned agreement, provision or notice.

(2) A person who has suffered loss or damage as a result of prohibited conduct, or dereliction of required conduct-

(*a*) may not institute a claim in a civil court for the assessment of the amount or awarding of damages if that person has consented to an award of damages in a consent order; or

(*b*) if entitled to commence an action referred to in paragraph (*a*), when instituting proceedings, must file with the registrar or clerk of the court a notice from the Chairperson of the Tribunal in the prescribed form-

(i) certifying whether the conduct constituting the basis for the action has been found to be a prohibited or required conduct in terms of this Act;

(ii) stating the date of the Tribunal's finding, if any; and

(iii) setting out the section of this Act in terms of which the Tribunal made its finding, if any.

(3) A certificate referred to in subsection (2) (*b*) is sufficient proof of its contents.

(4) An appeal or application for review against an order made by the Tribunal in terms of this Act suspends any right to commence an action in a civil court with respect to the same matter, unless the court orders otherwise.

116. Limitations of bringing action.-(1) A complaint in terms of this Act may not be referred or made to the Tribunal or to a consumer court more than three years after-

(*a*) the act or omission that is the cause of the complaint; or

(*b*) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.

(2) A complaint in terms of this Act may not be referred to the Tribunal or to a consumer court in terms of this

Act, against any person that is, or has been, a respondent in proceedings under another section of this Act relating substantially to the same conduct.

117. Standard of proof.-In any proceedings before the Tribunal, or before a consumer court in terms of this Act, the standard of proof is on a balance of probabilities.

118. Serving documents.-Unless otherwise provided in this Act, a notice, order or other document that, in terms of this Act, must be served on a person, will have been properly served when it has been either-

(*a*) delivered to that person; or

(*b*) sent by registered mail to that person's last known address.

119. Proof of facts.-(1) In any criminal proceedings in terms of this Act-

(*a*) if it is proved that a false statement, entry or record or false information appears in or on a book, document, plan, drawing or computer storage medium, the person who kept that item may be presumed to have made the statement, entry, record or information; and

(*b*) an order certified by the Chairperson of the Tribunal is *prima facie* proof of the contents of the order.

(2) A statement, entry, record or information in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it.

CHAPTER 7
GENERAL PROVISIONS

120. Regulations.-(1) The Minister may-

(*a*) make any regulations expressly authorised or contemplated elsewhere in this Act, in accordance with subsection (2);

(*b*) in consultation with the Commission, and by notice in the *Gazette*, make regulations for matters relating to the functions of the Commission, including-

(i) forms;

(ii) time periods;

(iii) information required;

(iv) additional definitions applicable to those regulations;

(v) filing fees;

(vi) access to confidential information; and

(vii) manner and form of participation in Commission procedures;

(*c*) in consultation with the Chairperson of the Tribunal, and by notice in the *Gazette*, make regulations for matters relating to the functions of the Tribunal, and rules for the conduct of matters before the Tribunal in terms of this Act;

(*d*) make regulations relating to unfair, unreasonable or unjust contract terms; and

(*e*) make regulations regarding-

(i) any forms required to be used for the purposes of this Act; and

(ii) in general, any ancillary or incidental matter that is necessary for the proper implementation and administration of this Act.

(2) Before making any regulations in terms of subsection (1) (*a*), the Minister-

(*a*) must publish the proposed regulations for public comment;

(*b*) may consult with accredited consumer protection groups; and

(*c*) must consult the Commission and provincial regulatory authorities.

(3) A regulation in terms of this Act must be made by notice in the *Gazette.*

(Date of commencement of s. 120: 24 April, 2010.)

121. Consequential amendments, repeal of laws and transitional arrangements.-(1) The laws referred to in Schedule 1 are hereby amended in the manner set out in that Schedule.

(2) Subject to subsection (3) and the provisions of Schedule 2, the following Acts are hereby repealed:

(*a*) Sections 2 to 13 and sections 16 to 17 of the Merchandise Marks Act, 1941 (Act No. 17 of 1941);

(*b*) Business Names Act, 1960 (Act No. 27 of 1960);

(*c*) Price Control Act, 1964 (Act No. 25 of 1964);

(Editorial Note: This Act title has been changed to the Sale and service Matters Act, No. 25 of 1964.)

(*d*) Sale and Service Matters Act, 1964 (Act No. 25 of 1964);

(*e*) Trade Practices Act, 1976 (Act No. 76 of 1976); and

(*f*) Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988).

(3) The repeal of the laws specified in this section does not affect the transitional arrangements, which are set out in Schedule 2.

122. Short title and commencement.-This Act is called the Consumer Protection Act, 2008, and comes into operation in accordance with item 2 of Schedule 2.

COMMENCEMENT OF THIS ACT

Date of commencement	*The whole Act/ Sections*	*Proclamation No.*	*Government Gazette*	*Date of Government Gazette*
24 April, 2010	Ch. 1, 5, s. 120 and, any provision authorising the Minister to make regulations ito sch. 2 (1).	467	32186	29 April, 2009
24 October, 2010	The whole Act: ito sch. 2 (2), except any provision contemplated in sch. 2 (1).	467	32186	29 April, 2009
31 March, 2011	The whole Act: except any provision contemplated in sch. 2 (1).	917	33581	23 September, 2010
This Act was published in *Government Gazette* 32186 dated 29 April, 2009.				

Schedule 1
AMENDMENT OF LAWS

(Section 121 (1))

A: National Credit Act, 2005

1. *Amends section 27 (1) of the National Credit Act, No. 34 of 2005, by amending the words preceding paragraph (a).*

2. *Amends section 31 of the National Credit Act, No. 34 of 2005, by substituting subsection (1).*

3. *Inserts section 126A in the National Credit Act, No. 34 of 2005.*

4. *Inserts section 141A in the National Credit Act, No. 34 of 2005.*

5. *Amends section 142 of the National Credit Act, No. 34 of 2005, as follows:-paragraph (a) substitutes subsection*

(3) (b); and paragraph (b) substitutes subsection (4).

6. *Amends section 143 of the National Credit Act, No. 34 of 2005, by substituting paragraph (a).*

7. *Amends section 147 (2) of the National Credit Act, No. 34 of 2005, as follows:-paragraph (a) amends paragraph (a); and paragraph (b) amends paragraph (b).*

8. *Amends section 148 (2) of the National Credit Act, No. 34 of 2005, by amending paragraph (b).*

9. *Amends section 150 of the National Credit Act, No. 34 of 2005, as follows:-paragraph (a) amends the words preceding paragraph (a); paragraph (b) amends paragraph (d); and paragraph (c) amends paragraph (i).*

10. *Amends section 151 of the National Credit Act, No. 34 of 2005, as follows:-paragraph (a) substitutes subsection (1); paragraph (b) amends the words preceding subsection (2) (a); paragraph (c) amends subsection (3) (f); and paragraph (d) amends subsection (3) (g).*

11. *Amends section 152 of the National Credit Act, No. 34 of 2005, as follows:-paragraph (a) amends subsection (1) (a); paragraph (b) amends subsection (1) (b); paragraph (c) amends subsection (1) (d); and paragraph (d) amends subsection (2).*

B: Electronic Communications and Transactions Act, 2002

1. *Amends section 1 of the Electronic Communications and Transactions Act, No. 25 of 2005, as follows:-paragraph (a) deletes the definition of "Consumer Affairs Committee"; and paragraph (b) inserts the definition of "Commission".*

2. *Substitutes section 49 of the Electronic Communications and Transactions Act, No. 25 of 2005.*

3. *Amends the Electronic Communications and Transactions Act, No. 25 of 2005, by substituting the expression "Consumer Affairs Committee" for the expression "Commission", wherever it occurs in the Act.*

C: Lotteries Act, 1997

1. *Amends section 1 of the Lotteries Act, No. 57 of 1997, by substituting the definition of "promotional competition".*

2. *Repeals section 54 of the Lotteries Act, No. 57 of 1997.*

Schedule 2
TRANSITIONAL PROVISIONS

(Section 121(3))

(Date of commencement of Sch. 2: 24 April, 2010.)

1. Definitions.-(1) In this Schedule-

"early effective date" means the date on which the provisions mentioned in item 2 (1) took effect;

"general effective date" means the date on which the provisions mentioned in item 2 (2) took effect;

"pre-existing agreement" means an agreement that was made before the general effective date; and

"pre-existing loyalty programme" means a loyalty programme that had any participating consumers immediately before the general effective date.

(2) A reference in this Schedule-

(*a*) to a section by number is a reference to the corresponding section of this Act; or

(*b*) to an item or a subitem by number is a reference to the corresponding item or subitem of this Schedule.

2. Incremental effect of Act.-(1) Chapters 1 and 5 of this Act, section 120 and any other provision authorising the Minister to make regulations, and this Schedule, take effect on the date that is one year after the date on which this Act was signed by the President.

(2) Subject to subitem (3), and items 4 and 5, any provision of this Act not contemplated in subitem (1) takes effect on the date that is 18 months after the date on which this Act was signed by the President.

(3) The Minister, by notice published in the *Gazette* at least 20 business days before the date contemplated in subitem (2), may-

(*a*) defer the effective date of any provision contemplated in that subitem for a period of not more than six additional months, on the grounds that additional time is required for adequate preparation of the administrative systems necessary to ensure the efficient and effective implementation of that provision; or

(*b*) on request from the member of the Cabinet responsible for local government matters, defer until further notice the application of this Act to-

(i) any particular municipality other than a high capacity municipality as defined in terms of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003); or

(ii) any organ of state that is responsible to a municipal authority,

in its capacity as a supplier of any goods or services to consumers, on the grounds that additional time is required for adequate preparation of the administrative systems necessary to ensure that the municipality or organ of state can meet its obligations in terms of this Act efficiently and effectively.

3. Application of Act to pre-existing transactions and agreements.-(1) Except to the extent expressly set out in this item, this Act does not apply to-

(*a*) the marketing of any goods or services before the general effective date;

(*b*) any transaction concluded, or agreement entered into, before the general effective date; or

(*c*) any goods supplied, or services provided, to a consumer before the general effective date.

(2) The sections of this Act listed in the first column of the following table apply, to the extent indicated in the second column, to a pre-existing agreement between a supplier and a consumer, if that pre-existing agreement-

(*a*) would have been subject to this Act if this Act had been in effect at the time the agreement was made; and

(*b*) contemplates that the parties to it will be bound for a fixed term until a date that is on or after the second anniversary of the general effective date:

Section of Act	*Extent of application to pre-existing agreement*
14	Only subsections (1) (*b*) to (*d*) and (2) apply with respect to the expiry and possible renewal of the agreement, on or after the general effective date.
18 to 21	Apply only with respect to goods that are deliverable or delivered to the consumer in terms of the agreement, on or after the general effective date.
22	Applies only to a notice, document or visual representation that is required to be produced, provided or displayed to the consumer, on or after the general effective date.
25	Applies only with respect to any goods supplied to the consumer in terms of the agreement, on or after the general effective date.
26	Applies only with respect to any transactions occurring in terms of the agreement, on or after the general effective date.
31	Applies only to any purported amendment to the agreement made, on or after the general effective date
44	Applies only with respect to any goods supplied to the consumer in terms of the agreement, on or after the general effective date.
53 to 58	Apply only with respect to any goods or services supplied to the consumer in terms of the agreement, on or after the general effective date.
64 (1) and (2)	Apply only to an amount paid or payable by the consumer in terms of the agreement, on or after the general effective date.
64 (3) and (4)	Apply only with respect to any closure of a facility contemplated in those provisions, if it will occur on or after the effective date.
65	Applies only with respect to an amount paid or payable by the consumer, or to property that comes into the possession of the supplier, on or after the general effective date.

(3) Section 35 applies to any pre-existing loyalty programme, but only with respect to any-

(*a*) offer to participate in that programme, or document setting out such an offer, that is made or published on or after the general effective date;

(*b*) tender by a consumer, on or after the general effective date, of any loyalty credit or award in that programme as consideration for any supply of goods or services; and

(*c*) any supply of goods or services if, on or after the general effective date, the consumer tendered any loyalty credit or award in the programme as consideration for those goods or services.

(4) Section 61 applies to any goods that were first supplied to a consumer on or after the early effective date.

(5) Any provision of this Act not otherwise contemplated in subitems (2) to (4) applies to any pre-existing

conduct, circumstance, transaction or agreement only to the extent required to ensure proper interpretation of, or compliance with and enforcement of, the provisions that are mentioned in subitems (2) to (4).

4. Delayed operation of section 11 (4) (*b*) (ii).-Despite section 11, the provisions of section 11 (4) (*b*) (ii) remain inoperative until a date declared by the Minister by notice in the *Gazette* after-

(*a*) the Commission has established or recognised a register as contemplated in section 11 (3); and

(*b*) in the case of a register established by the Commission, the Minister has received advice from an independent auditor that the Commission has established reasonable and effective means to receive, compile and utilise information in the manner contemplated in section 11.

5. Relief from requirement to register business names.-(1) Section 79 (1), (2) and (3) (*a*) and (*b*), and sections 80 and 81, do not take effect until a date determined by the Minister by notice in the *Gazette*, which date must be at least one year following the general effective date.

(2) The Minister must publish a notice contemplated in subitem (1) at least six months before the date on which that notice is to take effect.

(3) The Commission may not take any action to enforce-

(*a*) section 79 (1) at any time against a person for the use of a business name, if that person-

(i) had registered that business name before the general effective date in terms of any public regulation other than a repealed law; or

(ii) was actively conducting business under that business name for a period of at least one year before the date on which section 79 took effect.

(4) Any business name that, as of the general effective date, was registered in terms of any repealed law, must be regarded as having been registered in terms of this Act, as of the effective date.

(5) The register of business names, as maintained by the Companies and Intellectual Property Registration Office in terms of any of the repealed laws, is continued as the register of business names contemplated in this Act.

6. General preservation of regulations, rights, duties, notices and other instruments.-(1) Any right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of a repealed law that had not been spent or fulfilled immediately before the general effective date, must be considered to be a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act.

(2) A notice given by any person to another person in terms of any provision of a repealed law must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the repealed law.

(3) A document that, before the general effective date, had been served in accordance with a repealed law, must be regarded as having been satisfactorily served for any comparable purpose of this Act.

(4) An order given by an inspector in terms of any provision of a repealed law and in effect immediately before the general effective date, continues in effect, subject to the provisions of this Act.

7. Provincial regulatory capacity.-Until provincial legislation has been enacted in a province establishing for that province a provincial consumer protection authority as contemplated in this Act, the Minister, by notice in the *Gazette*, may delegate to the relevant MEC of that province any or all of the functions of the Commission to be exercised within that province and in accordance with this Act.

8. Continued application of repealed laws.-(1) Despite the repeal of the repealed laws, for a period of three years after the general effective date the Commission may exercise any power in terms of any such repealed law to investigate any breach of that law that occurred during the period of three years immediately before the general effective date.

(2) In exercising authority under subitem (1), the Commission must conduct the investigation as if it were proceeding with a complaint in terms of this Act.

9. State employees enforcing previous Acts.-(1) An individual who, immediately before the early effective date, was employed by the State, assigned to the Department of Trade and Industry and tasked with administration or enforcement of any of the repealed laws, is an employee of Commission, as of the effective date, subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(2) The transfer of departmental employees to the Commission must be effected in accordance with-

(*a*) section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995); and

(*b*) any collective agreement reached between the State and the trade union parties of the Departmental Chamber of the Public Service Bargaining Council before the effective date.

(3) A person mentioned in subitem (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the early effective date, and any proceedings against such a person that were pending immediately before the early effective date, must be disposed of as if this Act had not been enacted.

(4) Any person transferred in terms of subitem (1)-

(*a*) remains a member of the Government Employees' Pension Fund mentioned in section 2 of the Government Employees' Pension Law, 1996 (Act No. 21 of 1996); and

(*b*) is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service mentioned in section 8 (1) (*a*) (i) of the Public Service Act, 1994.

10. Exclusion of certain laws.-The exclusion of the Short Term Insurance Act, 1998 (Act No. 53 of 1998), and the Long Term Insurance Act, 1998 (Act No. 52 of 1998), is subject to those sector laws being aligned with the consumer protection measures provided for in this Act within a period of 18 months from the commencement of this Act, failing which, the provisions of this Act will apply.

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GN 69 of 7 February 2014
Draft South African Automotive Industry Code of Conduct: Invitation for public comments
(*Government Gazette* No. 37301)

GN 850 of 3 October 2014
Draft Consumer Goods and Services Sector Code of Conduct: For public comments
(*Government Gazette* No. 38058)

GN 33 of 29 January 2016
Industry Code for the Franchise Industry of South Africa
(*Government Gazette* No. 39631)

GN 402 of 11 July 2016
Best Practices applicable to the Motor Industry: For comments
(*Government Gazette* No. 40134)

GN 449 of 26 July 2016
National Consumer Commission
(*Government Gazette* No. 40159)

GN 534 of 2 September 2016
National Consumer Commission: Funeral Industry Code of Conduct
(*Government Gazette* No. 40243)

REGULATIONS

GNR.293 of 1 April 2011
Regulations
(*Government Gazette* No. 34180)

NOTICES

GN 917 of 23 September 2010

Notice to defer the general effective date of the Act
(*Government Gazette* No. 33581)

GN 221 of 14 March 2011
Notice to defer the application of the Act to municipalities
(*Government Gazette* No. 34116)

GN 294 of 1 April 2011
Determination of threshold in terms of the Act
(*Government Gazette* No. 34181)

GN 532 of 27 June 2011
Notice to exempt banks from the provisions of section 14 of the Act
(*Government Gazette* No. 34399)

GN 533 of 27 June 2011
Notice to exempt the Pension Fund Industry, the Collective Investment Schemes Industry and the Security Services Industry
(*Government Gazette* No. 34400)

GN 898 of 31 October 2011
Notice to revoke the application of the Consumer Protection Act to municipalities
(*Government Gazette* No. 34724)

GN 492 of 25 July 2011
National Consumer Commission: Final enforcement guidelines, relating to the internal enforcement functions of the Commission in order to give effect to the Act
(*Government Gazette* No. 34484)

GN 490 of 13 June 2012
National Consumer Commission: Consumer Product Safety Recall Guidelines
(*Government Gazette* No. 35434)

GN 380 of 12 April 2013
Labelling of goods originating from East Jerusalem, Gaza or West Bank wrongly labelled as originating from Israel
(*Government Gazette* No. 36364)

GN 825 of 25 October 2013
Categories of goods that are required to have a trade description applied to them in terms of the Act
(*Government Gazette* No. 36968)

GN 817 of 17 October 2014
Prescription of the South African Automotive Industry Code and Accreditation of the Alternative Dispute Resolution Scheme Administered by the Motor Industry Ombud of South Africa as an accredited Industry Ombud
(*Government Gazette* No. 38107)

GNR.271 of 30 March 2015
Prescription of the Consumer Goods and Services Industry Code and accreditation of the alternative Dispute Resolution Scheme administered by Consumer Goods and Industry Ombud as an accredited Industry Ombud in terms of section 82 of the Act
(*Government Gazette* No. 38637)

GN 701 of 10 July 2015
Memorandum of agreement entered into between the National Consumer Commission and the Independent Communications Authority of South Africa
(*Government Gazette* No. 38986)

RULES

GN 489 of 3 June 2011
National Consumer Commission Rules
(*Government Gazette* No. 34348)

PROPOSED REGULATIONS

GN 898 of 11 October 2010: Determination of threshold in terms of the Act
(*Government Gazette* No. 33621)

GN 1099 of 29 November 2010: Proposed Consumer Protection Regulations, 2010: For public comment
(*Government Gazette* No. 33818)

GN 93 of 18 February 2011: National Consumer Commission: Draft enforcement guidelines: For public comments
(*Government Gazette* No. 34039)

GN 128 of 8 March 2011: National Consumer Commission: Guidelines for the Development of Industry Codes of Conduct for Accreditation under the Act
(*Government Gazette* No. 34087)

GN 174 of 25 March 2011: National Consumer Commission: Guidelines for the Accreditation of Ombud-Schemes in terms of the Act
(*Government Gazette* No. 34163)

GN 129 of 8 March 2011: National Consumer Commission: Request for Expression of Interest (EOI)
(*Government Gazette* No. 34088)

GN 438 of 1 July 2011: National Consumer Commission: Guidelines for advisory opinions and clarifications: For public comment
(*Government Gazette* No. 34426)

GN 460 of 8 July 2011: Publication of the Report on Expression of Interest (EOI): For comments or objections
(*Government Gazette* No. 34446)

GN 486 of 18 July 2011: National Consumer Commission: Draft Consumer Product Safety Recall Guidelines: For comments
(*Government Gazette* No. 34471)

GN 379 of 10 May 2012: Labelling of products originating from Occupied Palestinian Territory wrongly labelled as originating in Israel in terms of section 24 of the Act
(*Government Gazette* No. 35328)

GN 415 of 23 May 2012: National Consumer Commission: Guidelines for the development of Industry Codes of Conduct for accreditation under the Act
(*Government Gazette* No. 35375)

GN 492 of 15 June 2012: National Consumer Commission: Service Charter
(*Government Gazette* No. 35435)

GN 824 of 9 October 2012: Draft amendment regulation on the Act (Product labelling and trade descriptions: Genetically modified organisms)
(*Government Gazette* No. 35776)

GN 832 of 12 October 2012: Labelling of goods originally from Israeli Occupied Territory wrongly labelled as originating from Israel
(*Government Gazette* No. 35796)

GN 113 of 15 February 2013: National Consumer Commission: South African Automotive Industry Code of Conduct
(*Government Gazette* No. 36155)

GN 224 of 22 March 2013: National Consumer Commission: Proposed Industry Code and Ombudsman Scheme: For public comment
(*Government Gazette* No. 36253)

GN 238 of 22 March 2013: Categories of goods that are required to have a trade description applied to them
(*Government Gazette* No. 36285)

GN 451 of 9 May 2013: National Consumer Commission: Proposed Industry Code and Ombudsman Scheme: For public comment
(*Government Gazette* No. 36439)

GN 69 of 7 February 2014: Draft South African Automotive Industry Code of Conduct: Invitation for public comments
(*Government Gazette* No. 37301)

GN 850 of 3 October 2014: Draft Consumer Goods and Services Sector Code of Conduct: For public comments
(*Government Gazette* No. 38058)

GN 33 of 29 January 2016: Industry Code for the Franchise Industry of South Africa
(*Government Gazette* No. 39631)

GN 402 of 11 July 2016: Best Practices applicable to the Motor Industry: For comments
(*Government Gazette* No. 40134)

GN 449 of 26 July 2016: National Consumer Commission
(*Government Gazette* No. 40159)

GN 534 of 2 September 2016: National Consumer Commission: Funeral Industry Code of Conduct
(*Government Gazette* No. 40243)

REGULATIONS

GNR.293 of 1 April 2011: Regulations
(*Government Gazette* No. 34180)

DEPARTMENT OF TRADE AND INDUSTRY

I, Dr Rob Davies, Minister of the Department of Trade and Industry, in terms of and under section 120 (1) of the Consumer Protection Act, 2008 (Act 68 of 2008), read together with the respective sections indicated in the regulations below, do hereby make the regulations set out in the schedule hereto and issue the attached notices in terms of the respective sections indicated in such notices.

(**Signed**)
DR ROB DAVIES, MP
MINISTER OF TRADE AND INDUSTRY
DATE: 31/3/2011

Consumer Protection Act Regulations

I, Dr Rob Davies, Minister of Trade and Industry, in terms of and under section 120 (1) of the Consumer Protection

Act, 2008 (Act No. 68 of 2008), read together with the respective sections indicated in the regulations below, do hereby make the regulations set out in the schedule hereto.

SCHEDULE

Arrangement of Regulations

ANNEXURES

NOTICES

1. Short title and definitions.-(1) These regulations are the Consumer Protection Act Regulations.

(2) In these regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has the same meaning, and-

"Act" means the Consumer Protection Act, 2008 (Act No. 68 of 2008);

"Department" means the Department of Trade and Industry;

"in writing" includes any electronic means recognised by the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); and

"public officer" means that person defined in Chapter III (General Provisions) of Part V of the Income Tax Act, 1962 (Act 58 of 1962).

2. Franchise agreements.-(1) This regulation must be read together with sections 7 and 120 (1) (*e*) (ii) of the Act.

(2) (*a*) Every franchise agreement must contain the exact text of section 7 (2) of the Act at the top of the first page of the franchise agreement, together with a reference of the section and the Act.

(*b*) A franchise agreement must contain provisions which prevent-

(i) unreasonable or overvaluation of fees, prices or other direct or indirect consideration;

(ii) conduct which is unnecessary or unreasonable in relation to the risks to be incurred by one party; and

(iii) conduct that is not reasonably necessary for the protection of the legitimate business interests of the franchisor, franchisee or franchise system.

(*c*) A franchise agreement must contain a clause informing a franchisor that he, she or it is not entitled to any undisclosed direct or indirect benefit or compensation from suppliers to its franchisees or the franchise system, unless the fact thereof is disclosed in writing with an explanation of how it will be applied.

(*d*) Paragraph 2 of item 3 of Schedule 2 of the Act applies to any pre-existing franchise agreement.

(*e*) Any provision in a franchise agreement to which these regulations apply which is in conflict with this regulation is void to the extent of such a conflict.

(3) A franchise agreement must as a minimum contain the following specific information-

(*a*) the name and description of the types of goods or services which the franchisee is entitled to provide, produce, render or sell;

(*b*) the obligations of the franchisor;

(*c*) the obligations of the franchisee;

(*d*) a description of the applicable franchise business system;

(*e*) the direct or indirect consideration payable by the franchisee to the franchisor;

(*f*) the territorial rights, if any, granted to the franchisee in detail;

(*g*) a description of the site or premises and location from which the franchisee is to conduct the franchise;

(*h*) the conditions under which the franchisee or his, her or its estate may transfer or assign the rights and obligations under the franchise;

(*i*) a description of the trade mark or any other intellectual property owned by the franchisor, or otherwise licensed to the franchisor which is, or will be used in the franchise, and the conditions under which they may so be used;

(*j*) if the agreement is related to a master franchise, the master franchisor's identity;

(*k*) particulars of the initial training and assistance provided by the franchisor and, where the franchisor provides ongoing training for the duration of the franchise agreement, a statement that the particulars of such training and assistance will be provided to the franchisee as and when necessary;

(*l*) the duration and the terms of the renewal of the franchise agreement, provided that such terms and conditions are not inconsistent with the purpose and policy of the Act;

(*m*) if the franchise agreement provides that a franchisee must directly or indirectly contribute to an advertising, marketing or other similar fund, the franchise agreement must contain clauses informing the franchisee-

(i) of the amount, or if expressed as a percentage, the method of calculation of such contribution;

(ii) that within six months after the end of the last financial year, the franchisor will provide a franchisee with a copy of a financial statement, prepared in accordance with applicable legislation, which fairly reflects the fund's receipts and expenses for the last financial year, including amounts spent, and the method of spending on advertising and/or marketing of franchisees and the franchise system's goods and services;

(iii) that, in addition to subparagraph (ii), the franchisor must for every three months period make financial management accounts relating to the funds available to franchisees;

(iv) that moneys in the fund may not be spent on advertising and marketing of the franchisor's franchises for sale;

(v) that to the extent that an audit is carried out, a certificate of a registered auditor or accounting officer, as the case may be, confirming that the fund's account has been audited and that the statements, to the best of his or her knowledge, provide a true reflection of the matters stated in this subregulation (*m*) and where no audit is carried out, a certificate by the accountant that management accounts have been prepared and are correct to the best of the directors' knowledge;

(vi) that a franchisee can request a copy of the statement and certificate issued in terms of subregulation (v), and that the franchisor must within a reasonable period of such request provide such copies;

(vii) of any contribution to such a fund will be deposited in a separate bank account and used only for purposes of the fund;

(viii) of the franchisor's contribution to such fund, if any; and

(ix) of the fact that the franchisor and or franchisor associated franchised businesses do not enjoy any direct or indirect benefit not afforded to independent franchisees;

(*n*) the effect of the termination or expiration of the franchise;

(*o*) extension or renewal terms, or whether there is no option to renew or extend the agreement;

(*p*) a written explanation of any terms or sections not fully understood by the prospective franchisee upon the prospective franchisee's written request;

(*q*) the franchisor's legal name, trading name, registered office and franchise business office, street address, postal address, e-mail address, telephone number and fax number;

(*r*) the name, identity number, town of residence, job titles and qualifications of the franchisor's directors or equivalent officers;

(*s*) except where the franchisor is a company listed on a stock exchange, details of any proprietor, member or shareholder if they are different from the persons referred to in paragraph (*r*);

(*t*) particulars of any restrictions imposed on the franchisee;

(*u*) the nature and extent of the franchisor's involvement or approval in the process of site selection;

(*v*) the terms and conditions relating to termination, renewal, goodwill and assignment of the franchise;

(*w*) the main obligations of the franchisor in respect of initial and ongoing training to be provided;

(*x*) confirmation that any deposits paid by the prospective franchisee will be deposited into a separate bank account and a description of how these deposits will be dealt with;

(*y*) full particulars of the financial obligations of the franchisee in terms of the franchise agreement or otherwise related to the franchised business including-

(i) the initial fee payable to the franchisor on the signing of the franchise agreement, including the purpose for which it is to be applied;

(ii) the funds required to establish the franchised business including, purchase or lease of property, site conversion costs, décor and signage, equipment, furniture, hiring and training of staff, opening stock, legal and financial charges, as may be applicable;

(iii) the initial working capital, where possible, and the basis on which it is calculated;

(iv) the total investment required;

(v) a clear statement as to whether or not any expenses, any salary/wages of employees of the franchised business and the costs of servicing loans are included in the purchase price;

(vi) the amount of funding that is available from the franchisor, if any, and the applicable conditions;

(vii) the total amount that the franchisee must contribute towards the necessary funding before borrowing; and

(viii) ongoing amounts payable to the franchisor, with details as to-

(*aa*) whether the amounts are fixed or variable;

(*bb*) whether all or part of the amounts are included in the price of goods or services that must be purchased from the franchisor or other preferred suppliers;

(*cc*) the dates, or intervals, at which the amounts fall due; and

(*dd*) if any fee is payable in respect of management services provided by the franchisor, details of such services.

(4) A franchise agreement which is renewed after the general effective date is a new franchise agreement for the purposes of subregulations (2) and (3).

3. Disclosure document for prospective franchisee.-(1) Every franchisor must provide a prospective franchisee with a disclosure document, dated and signed by an authorised officer of the franchisor, at least 14 days prior to the signing of a franchise agreement, which as a minimum must contain-

(*a*) the number of individual outlets franchised by the franchisor;

(*b*) the growth of the franchisor's turnover, net profit and the number of individual outlets, if any, franchised by the franchisor for the financial year prior to the date on which the prospective franchisee receives a copy of the disclosure document;

(*c*) a statement confirming that there have been no significant or material changes in the company's or franchisor's financial position since the date of the last accounting officer, or auditor's certificate or certificate by a similar reviewer of the company or franchisor, that the company or franchisor has reasonable grounds to believe that it will be able to pay its debts as and when they fall due;

(*d*) written projections in respect of levels of potential sales, income, gross or net profits or other financial projections for the franchised business or franchises of a similar nature with particulars of the assumptions upon which these representations are made.

(2) Each page of the disclosure document contemplated in subregulation (1) above must be qualified in respect of the assumptions contained therein.

(3) The disclosure document contemplated in subregulation (1) above must be accompanied by a certificate on an official letterhead from a person eligible in law to be registered as the accounting officer of a close corporation, or the auditor of a company, as the case may be, certifying that-

(*a*) the business of the franchisor is a going concern;

(*b*) to the best of his or her knowledge the franchisor is able to meet its current and contingent liabilities;

(*c*) the franchisor is capable of meeting all of its financial commitments in the ordinary course of business as they fall due; and

(*d*) the franchisor's audited annual financial statements for the most recently expired financial year have been drawn up-

(i) in accordance with South African generally accepted accounting standards;

(ii) except to the extent stated therein, on the basis of accounting policies consistent with prior years;

(iii) in accordance with the provisions of the Companies Act (No. 61 of 1973 or any legislation which replaces this Act), and all other applicable laws; and

(iv) fairly reflecting the financial position, affairs, operations and results of the franchisor as at that date and for the period to which they relate.

(4) The disclosure document contemplated in subregulation (1) above must be accompanied by-

(*a*) a list of current franchisees, if any, and of outlets owned by the franchisor, stating, in respect of any franchisee-

(i) the name under which it carries on business;

(ii) the name of its representative;

(iii) its physical address; and

(iv) its e-mail and office telephone number, together with a clear statement that the prospective franchisee is entitled to contact any of the franchisees listed, or alternatively to visit any outlets operated by a current franchisee to assess the information disclosed by the franchisor and the franchise opportunity offered by it;

(*b*) an organogram depicting the support system in place for franchisees.

4. Mechanisms to block direct marketing communication.-(1) For purposes of section 11 (1) and 11 (2) of the Act, if a consumer has-

(*a*) informed the direct marketer; or

(*b*) placed any communication or sign on a postal box, post office box or other container for mail, indicating that he or she does not wish to receive any material related to direct marketing, then the direct marketer-

(i) may not place or attach any material primarily aimed at direct marketing, in whichever physical format, in or on or near the postal box, post office box, container, or in, on or near the fence, gate or any other part of the premises of the consumer; and

(ii) must provide the consumer with written confirmation of the receipt by the direct marketer of the notice referred in paragraph (*a*) above.

(2) Display of the phrase "no adverts" or the image or a similar reproduction thereof prescribed in Annexure A is sufficient to meet the requirements of paragraph (*b*) of subregulation (1).

(3) For purposes of section 11 (6) of the Act, the following principles are required as a minimum for the operation of a registry contemplated in section 11 (3)-

(*a*) the registry must be capable of accommodating all persons in the Republic and cover the whole geographical area of the Republic;

(*b*) the registry must at all times be accessible to all persons in the Republic for purposes of registering a pre-emptive block, without payment of any fee, but the person registering must pay the actual cost of the type of communication available for registration;

(*c*) a consumer may register-

(i) his or her name, identification number, passport number, telephone number, cell phone number, facsimile number, e-mail address, postal address, physical address, a website uniform resource locator ("URL") or any other identifier which the operator of the registry makes provision for;

(ii) the consumer's own global address for any website or web application or site on the world wide web;

(iii) if the operator of a registry so allows, a pre-emptive block for any time of the day or any day of the year; or

(iv) if the operator of a registry so allows, a comprehensive prohibition for any medium of communication, address or time whatsoever;

(*d*) any pre emptive block registered in accordance with this regulation becomes effective 30 days from the date on which it is registered;

(*e*) the administrator of the registry may not under any circumstances whatsoever provide, sell, or otherwise dispose of any information contemplated in subregulation (*c*) to anyone, including any organ of state, except with the written and express permission of the consumer concerned, by order of a court of law or the operation of law;

(*f*) the administrator of the registry may, on receipt of an application, only confirm whether or not a pre-emptive block has been registered by the consumer, and may not provide any detail to the direct marketer in respect of any identifier provided by the consumer to the registry;

(*g*) except in respect of those existing clients where the direct marketer has proof that the existing client has after the commencement of these regulations expressly consented to receiving direct marketing from the direct marketer, a direct marketer must assume that a comprehensive pre-emptive block has been registered by a consumer unless the administrator of the registry has in writing confirmed that a pre-emptive block has not been registered in respect of a particular name, identity number, fixed line telephone number, cellular telephone number, facsimile number, pager number, physical address, postal address, e-mail address, website uniform resource locator (URL) global positioning system co-ordinates or other identifier which the operator of the registry makes provision for submitted by the direct marketer for purposes of subregulation (*f*);

(*h*) the administrator of the registry must on request provide a consumer with a copy of an application contemplated in subregulation (*f*) as well as a copy of the administrator's reply, the identity and registered address of the direct marketer who has submitted that application, and the name and contact details of the responsible person contemplated in subregulation (*i*);

(*i*) upon payment of a prescribed fee, if any, every direct marketer must register with the administrator of the registry as such, and must supply his, her or its postal and physical business address, telephone number, facsimile number, e-mail address, and the name of a person who is responsible for any applications to be lodged under this regulation, and the telephone number, facsimile number, e-mail address of that responsible person;

(*j*) every direct marketer must annually on the date of registration in writing confirm the details contemplated in subregulation (*i*);

(*k*) the registry may not accept an application from a direct marketer who has not been registered by the administrator as a direct marketer as provided for in subregulation (*i*) or confirm the details as contemplated in subregulation (*j*);

(*l*) the administrator of the registry must at any time allow an employee of the Commission in the course and scope of what is required in executing their duties, and allow him or her to make excerpts or copies of such records;

(*m*) the prohibition contained in subregulation (*f*) does not apply in respect of information requested by a consumer himself or herself.

(4) The administrator of the registry must-

(*a*) pro-actively and to the satisfaction of the Commission put in place sufficient security arrangements to prevent the manipulation, theft or loss of data in the registry;

(*b*) pro-actively put in place screening and validation processes in respect of any person applying to register as a direct marketer;

(*c*) comply with any law providing for the protection of personal information or the protection of privacy; and

(*d*) from time to time in all official languages conduct a public information campaign as required and approved by the Commission.

(5) In the event that the Commission recognises a registry as authoritative as contemplated in section 11 (3) of the Act, the Commission must enter into an agreement with the administrator of that registry *inter alia* to-

(*a*) expressly agree and confirm that the Commission, despite anything to the contrary, remains the sole custodian of all information collected and that the administrator has no rights or legitimate expectations whatsoever in respect of the use, disposal, retention or publication of all information whatsoever collected by the administrator of the registry during the period of the agreement, and that the Commission at all times ultimately remains in control of the registry;

(*b*) ensure full compliance with the Act, this regulation and all other relevant law;

(*c*) ensure, with appropriate sanction, that the administrator of the registry or any of its shareholders, members, affiliates or interested parties may not financially or otherwise in any way whatsoever benefit from administering the registry other than receiving payment from the Commission for rendering that service;

(*d*) ensure the implementation of, to the satisfaction of the Commission, screening and validation processes in respect of any person-

(i) applying to register as a direct marketer;

(ii) employed or engaged by the administrator to work with information collected in the registry;

(*e*) ensure that appropriate and effective mechanisms, procedures and processes are continuously maintained by the administrator to ensure the availability, safety, retention and physical and moral integrity of all information collected and administered by the administrator, to the satisfaction of the Commission;

(*f*) provide the Commission and the Department with full and immediate access to the whole of the registry, and the premises and apparatus in or on which it is retained or backed up;

(*g*) provide that the administrator of the registry must immediately upon termination of the agreement, in respect of all information whatsoever collected by the administrator of the registry during the period of the agreement to the Commission, as directed by the Commission-

(i) surrender all information whatsoever that it has collected during the period of the agreement to the Commission in any format directed by the Commission;

(ii) fully and in the utmost good faith co-operate with the Commission to ensure the uninterrupted availability of the registry to the general public and to direct marketers;

(*h*) provide for adequate controls and oversight mechanisms;

(*i*) provide for verifiable service levels and standards;

(*j*) provide for appropriate and effective sanctions should applicable law and the agreement in any way not fully be complied with by the administrator of the registry;

(*k*) provide for effective mechanisms for the general public to report problems with the administration of the registry to the Commission;

(*l*) provide for the way in which the administrator may publish and market the recognition of its registry as authoritative; and

(*m*) provide for any other matter the Commission deems necessary or expedient.

(6) Nothing in this regulation should be interpreted as restricting the Commission's responsibility for or accountability in respect of the registry.

5. Maximum duration for fixed-term consumer agreements.-(1) For purposes of section 14 (4) (*a*) of the Act, the maximum period of a fixed-term consumer agreement is 24 months from the date of signature by the consumer-

(*a*) unless such longer period is expressly agreed with the consumer and the supplier can show a demonstrable financial benefit to the consumer;

(*b*) unless differently provided for by regulation in respect of a specific type of agreement, type of consumer, sector or industry; or

(*c*) as provided for in an industry code contemplated in section 82 of the Act in respect of specific type of agreement, type of consumer, sector or industry.

(2) For purposes of section 14 (3), a reasonable credit or charge as contemplated in section 14 (4) (*c*) may not exceed a reasonable amount, taking into account-

(*a*) the amount which the consumer is still liable for to the supplier up to the date of cancellation;

(*b*) the value of the transaction up to cancellation;

(*c*) the value of the goods which will remain in the possession of the consumer after cancellation;

(*d*) the value of the goods that are returned to the supplier;

(*e*) the duration of the consumer agreement as initially agreed;

(*f*) losses suffered or benefits accrued by consumer as a result of the consumer entering into the consumer agreement;

(*g*) the nature of the goods or services that were reserved or booked;

(*h*) the length of notice of cancellation provided by the consumer;

(*i*) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and

(*j*) the general practice of the relevant industry.

(3) Notwithstanding subregulation (2) above, the supplier may not charge a charge which would have the effect of negating the consumer's right to cancel a fixed term consumer agreement as afforded to the consumer by the Act.

6. Product labelling and trade descriptions: textiles, clothing, shoes and leather goods.-(1) In order to assist consumers in making informed decisions or choices, for purposes of subsections (4) and (5) of section 24 of the Act and subject to subregulation (2), the importation into or the sale in the Republic of the goods specified in Annexure "D", irrespective of whether such goods were manufactured or adapted in the Republic or elsewhere, is prohibited unless-

(*a*) a trade description, meeting the requirements of section 22 of the Act, is applied to such goods in a conspicuous and easily legible manner stating clearly-

(i) the country in which they were manufactured, produced or adapted;

(ii) in the event of a textile manufacturer, importer or seller operating in the Republic using imported greige fabric to produce dyed, printed or finished fabric in the Republic, that such fabric has been dyed, printed or finished in South Africa from imported fabric; and

(iii) that a locally manufactured product using imported material must state "Made in South Africa from imported materials";

(*b*) such goods conform to the South African national standards for fibre content and care labelling in accordance with the provisions of Government Notice No. 2410 of 2000, published in the *Gazette* of 30 June 2000;

(*c*) if after such goods have been reconditioned, adapted, rebuilt or remade, whether in the Republic or elsewhere, a trade description is applied to such goods in a conspicuous and easily legible manner stating clearly that such goods have so been reconditioned, adapted, rebuilt or remade, as the case may be;

(*d*) if the goods were wholly assembled or made in the Republic, a trade description is applied to such goods in a conspicuous and easily legible manner stating "Made in South Africa."; or

(*e*) goods are correctly labelled.

(2) This regulation does not apply to-

(*a*) textiles so small in size that labelling is not reasonably possible;

(*b*) second-hand clothing imported for charity purposes; or

(*c*) goods where the number of goods imported by a natural person does not exceed 1000 single items in any one calendar month; but does apply to goods imported for marketing purposes.

(3) This regulation does not amend or repeal or detract from any other regulation made under or in terms of any legislation.

7. Product labelling and trade descriptions: genetically modified organisms.-(1) In this regulation, "genetically modified organism" means a genetically modified organism as defined in section 1 of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), and "genetically modified" has a corresponding meaning.

(2) This regulation applies to goods approved for commercialisation by the Executive Council for Genetically Modified Organisms established by section 3 of the Genetically Modified Organisms Act, 1997.

(3) For purposes of section 24 (6) of the Act, and subject to subregulation (4) and (6), this regulation applies to all goods referred to in subregulation (2) which contain at least 5 percent of genetically modified organisms, irrespective of whether such making or manufacturing occurred in the Republic or elsewhere, and to marketing material in respect of such goods.

(4) Any good or ingredient or component to which subregulation (3) applies may not be produced, supplied, imported, or packaged unless a notice meeting the requirements of section 22 of the Act is applied to such good or marketing material, as the case may be, in a conspicuous and easily legible manner and size stating, without change, that the good or ingredient or component "contains Genetically Modified Organisms".

(5) If goods listed or contemplated in subregulation (2) are intentionally and directly produced using genetic modification processes, the goods or marketing material, as the case may be, must be labelled, meeting the requirements of section 22 of the Act, without change, as "Produced using genetic modification".

(6) A notice meeting the requirements of section 22 of the Act must not state that a good or ingredient or component does not contain genetically modified organisms unless such good or ingredient or component contains less than one percent genetically modified organisms.

(7) Notwithstanding the provisions of regulation 7 (6), a notice meeting the requirements of section 22 may state that the level of genetically modified organisms contained in the good or ingredient or component to which subregulation (2) applies is less than 5 percent.

(8) If it is scientifically impractical or not feasible to test goods contemplated in subregulation (2) for the presence of genetically modified organisms or ingredients, a notice meeting the requirements of section 22 of the Act must be applied to such goods or marketing material, as the case may be, in a conspicuous and easily legible manner and size, stating "May contain genetically modified ingredients".

(9) This regulation does not amend or repeal or detract from any other regulation applying to product labelling and trade descriptions of genetically modified organisms made under or in terms of any other legislation, nor do any such regulations detract from or prejudice this regulation.

(10) This regulation will come into effect six months after the commencement of the Act.

8. Disclosure of reconditioned or grey market goods.-(1) The notice contemplated in subsections (1) and (2) of section 25 of the Act and meeting the requirements of section 22 of the Act must be applied-

(*a*) in a place on the goods and the marketing material of the goods where a consumer is likely to see that notice; and

(*b*) in an easily legible size and manner, to the goods and all forms of advertising or promotion, including in-store promotions, packaging, websites and brochures, when these goods are advertised or promoted, stating clearly that they have been reconditioned, rebuilt or remade, as the case may be.

(2) The supplier must when selling the goods to the consumer-

(*a*) expressly draw his or her attention to the notice prescribed in subregulation (1);

(*b*) in plain language explain the meaning of the notice to the consumer; and

(*c*) the notice contemplated in section 25 (2) of the Act and meeting the requirements of section 22 of the Act must be applied-

(i) in a place on the goods and the marketing material of the goods where a consumer is likely to see that notice; and

(ii) in an easily legible size and manner; to the goods and all forms of advertising or promotion, including in-store promotions, packaging, websites and brochures, when these goods are advertised or promoted, stating clearly, if the goods bear a trade mark, that they have been imported without the approval or license of the registered owner of that trade mark and that no guarantee or warranty in respect of such goods will be honoured or fulfilled by any official or licensed importer of such goods.

9. Information to be disclosed by intermediary.-(1) For purposes of section 27 (3) (*a*) of the Act, an intermediary must disclose to a person contemplated in subparagraphs (i) and (ii) of paragraph (*a*) of subsection (1) of section 27, the information provided for in subregulation (2) in accordance with the provisions of subregulations (3) and (4), but this regulation does not detract from the provisions of any other applicable law.

(2) An intermediary must in the manner and form of delivery agreed to with the consumer-

(*a*) disclose his, her or its full names, physical business address, postal address, phone numbers, cellular telephone number, facsimile number, email address and any registration number assigned or issued to the intermediary by any regulatory body;

(*b*) provide his or her identity number, or if the intermediary is a juristic person, its relevant registration number;

(*c*) if the intermediary is a juristic person, the contact details of its public officers;

(*d*) specify the exact service to be rendered by the intermediary;

(*e*) at the request of the consumer, disclose the fee payable to the intermediary for services provided by the intermediary including the basis for calculating the fee;

(*f*) inform the consumer of any other costs the intermediary is entitled to recover from the consumer, and under what circumstances;

(*g*) specify the frequency with which the intermediary will in writing account to the consumer in respect of his, her or its mandate;

(*h*) at the request of the consumer, specify how, when and how often any amount owing to the consumer will be paid to the consumer;

(*i*) disclose any information, at any relevant time, which may be relevant to the consumer when deciding whether to acquire the service rendered by the intermediary, or whether to continue with an existing service;

(*j*) disclose commission, consideration fees, charges or brokerages payable to the intermediary by any other person;

(*k*) provide details of any code of conduct or other standard applicable to the intermediary or the service being rendered or to be rendered, as the case may be;

(*l*) disclose whether he or she or it has ever been-

(i) found guilty of any offence involving dishonesty which was punishable by criminal imprisonment without the option of a fine;

(ii) placed under sequestration, liquidation or judicial management;

(iii) or still is an unrehabilitated insolvent; and

(*m*) disclose any other information which may be relevant and which he or she may reasonably be expected to be aware of.

(3) Information provided to a consumer by an intermediary-

(*a*) must be provided timeously so as to afford the consumer reasonably sufficient time to make an informed decision;

(*b*) which pertains to the financial aspects of the transaction, must be in writing, and if provided electronically, in an electronic format specified by the consumer, which must be a generally available format;

(*c*) must be in a clear and readable print size, spacing and format;

(*d*) must be provided in plain language, avoid uncertainty and confusion and must not be misleading;

(*e*) must be adequate and appropriate in the circumstances, and in compliance with the provisions of section 22 (2) of the Act;

(*f*) regarding all amounts, sums, values, charges, fees or remuneration, must be reflected in specified monetary terms, but where that is not reasonably determinable, the basis of calculation must be adequately described;

(*g*) need not be duplicated to the same consumer, unless material or significant changes affecting the consumer occur or become relevant at any given time;

(*h*) must be clearly distinguishable from marketing or promotional material and set out the applicable rights and responsibilities of the consumer clearly with avoidance of unclear technical or legal language and, where the latter must necessarily be used, with proper explanations thereof.

(4) An intermediary must immediately in writing disclose to a consumer the existence of any circumstance or any personal interest in the relevant service or goods which gives rise or may give rise to an actual or potential conflict of interest, or perception of conflict of interest, in relation to the intermediary, and the intermediary must take all reasonable steps to ensure fair treatment of the consumer.

10. Records to be kept by intermediary.-(1) For purposes of section 27 (3) (*b*) of the Act, an intermediary must for a period of 3 (three) years retain a copy of-

(*a*) any information contemplated in subregulations (2) and (3) of regulation 9;

(*b*) any written instruction given or sent by a consumer to the intermediary;

(*c*) if applicable and only where a transaction results, maintain a record of advice furnished to a consumer which must reflect the basis on which the advice was given.

(2) An intermediary must take all reasonable steps to keep all records and documentation safe from destruction, and must if records are lost or destroyed, make a statement under oath or affirmation explaining the reasons for or the circumstances of the loss or the destruction.

(3) An intermediary may keep records in an appropriate electronic or recorded format, which must be easily accessible and readily reducible to written or printed form.

11. Promotional competitions.-(1) For purposes of section 36 (3) (*a*) of the Act, the reasonable cost of electronically transmitting an entry shall not exceed R1.50 (one Rand and fifty Cents).

(2) The reasonable cost stated in subregulation (1) above includes the total cost for all subsequent electronic communication to the consumer in respect of that particular entry.

(3) Any provision in the rules of a promotional competition requiring the prize winner to-

(*a*) permit the use of his or her image in marketing material; or

(*b*) participate in any marketing activity; or

(*c*) be present when the draw is taking place or the winners are announced, without affording him or her the opportunity to decline an invitation to do so or informing him or her of the right to decline such an invitation, is null and void.

(4) The monetary threshold of prizes for the purpose of excluding competitions with low-value prizes from the definition of "promotional competition" for purposes of section 36 (11) (*a*) of the Act is R 1.00 (one Rand).

(5) The promoter must ensure that an independent accountant, registered auditor, attorney or advocate oversees and certifies the conducting of the competition and must report this through the promoter's internal audit reporting or other appropriate validation or verification procedures.

(6) For purposes of section 36 (11) (*b*) of the Act and subject to subregulation (5), the person who conducts a promotional competition must, for a period of at least three years, retain-

(*a*) full details of the promoter, including identity or registration numbers, as the case may be, addresses and contact numbers;

(*b*) the rules of the promotional competition;

(*c*) a copy of the offer to participate in a promotional competition contemplated in section 36 (5);

(*d*) the names and identity numbers of the persons responsible for conducting the promotional competition;

(*e*) a full list of all the prizes offered in the promotional competition;

(*f*) a representative selection of materials marketing the promotional competition or an electronic copy thereof, but such copy must be easily accessible in a generally available format;

(*g*) a list of all instances when the promotional competition was marketed, including details on the dates, the medium used and places where the marketing took place;

(*h*) the names and identity numbers of the persons responsible for conducting the selection of prize winners in the promotional competition;

(*i*) an acknowledgment of receipt of the prize signed by the prize winner, or legal guardian where applicable, and his or her identity number, and the date of receipt of the prize, or where this is not possible, proof by the promoter that the prize was sent by post or other electronic means to the winner using his or her provided details;

(*j*) declarations by the persons contemplated in paragraph (*d*) made under oath or affirmation that the prize winners were to their best knowledge not directors, members, partners, employees, agents or consultants of or any other person who directly or indirectly controls or is controlled by the promoter or marketing service providers in respect of the promotional competition, or the spouses, life partners, business partners or immediate family members.

(*k*) the basis on which the prize winners were determined;

(*l*) the summary describing the proceedings to determine the winners, including the names of the persons participating in determining the prize winners, the date and place where that determination took place and whether those proceedings were open to the general public;

(*m*) whether an independent person oversaw the determination of the prize winners, and his or her name and identity number;

(*n*) the means by which the prize winners were announced and the frequency thereof;

(*o*) a list of the names and identity numbers of the prize winners;

(*p*) a list of the dates when the prizes were handed over or paid to the prize winners;

(*q*) in the event that a prize winner could not be contacted, the steps taken by the promoter to contact the winner or otherwise inform the winner of his or her winning a prize; and

(*r*) in the event that a prize winner did not receive or accept his or her prize, the reason for his or her not so receiving or accepting the prize, and the steps taken by the promoter to hand over or pay the prize to that prize winner.

(7) A promoter must upon request in writing by the Commission forthwith at his, her or its own expense submit a report based on documents or materials contemplated in subregulation (7) to the Commission.

12. Cautionary statement for alternative work schemes.-For purposes of section 37 (2) (*a*) of the Act, any advertisement promoting any alternative work scheme contemplated in section 37 (1) of the Act must-

(*a*) without detracting from any other provision applicable to advertising or promotion;

(*b*) in the same font as the rest of the advertisement and in a prominent place where it is likely to be seen by a consumer; and

(*c*) without change, contain the following notice: "Results, examples and testimonials promised or contained in this advertisement may be out of the ordinary and should not be taken to provide guarantees with regard to the availability of work, business or activity available, projected income or any other benefit promised or implied. There is no guarantee whatsoever that you will achieve the results or outcomes promised or implied in this advertisement. You are strongly urged to ascertain or obtain, at your own cost, assistance to ascertain the probable results or outcomes based on realistic facts and assumptions and all currently relevant and applicable circumstances."

13. Interpretation: Fraudulent Schemes and Offers.-Regulations 14 to 16 must be read together with sections 42 (8), 51 and 120 of the Act.

14. Prohibition on intermediary arranging transport contracts.-An arrangement, agreement, practice or scheme is a fraudulent transport contract if it involves a person by false pretence or with the intent to defraud another person, represents that the first person is capable of arranging a transport contract, whether of cargo or passengers, for execution by the consumer and requires the consumer to pay in advance a fee or remuneration of whatever nature, whether goodwill or any other form of consideration.

15. Public property syndication schemes.-(1) In this regulation, unless the context indicates otherwise-

"fraudulent public property syndication scheme" means a public property syndication scheme in which one person, by false pretence or with the intent to defraud another person, represents to that other person that the property he, she or it is investing in is worth more than its true market value;

"promoter" means a company and its directors, close corporation and its members, partnership and its partners, trust and its trustees and all other persons who are actively involved in the forming and establishment of a public property syndication scheme, and a reference to a company and its directors also refers to a close corporation and its members, or to a trust and its trustees, or to a partnership and its partners or to a sole proprietorship, or their representatives;

"prescribed information" means the prescribed information contemplated in subregulation (5) (*b*);

"public property syndication scheme" means the assembly of a group of investors invited, by word of mouth or through the use of electronic and print media, radio, television, telephone, newspaper and magazine advertising, brochures and direct mail, to participate in such schemes by investing in entities, which could be companies, close corporations, trusts, partnerships or individuals, whose primary asset or assets are commercial, retail, industrial or residential properties, and, where investors share in the profits and losses in these properties and or enjoy the benefits of net rental growth therefrom through proportionate share of income; and

"valuer" means a professional valuer or professional associated valuer registered in terms of section 20 (*a*) of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), with at least three years' experience in the field of attending to valuations of properties.

(2) No person may directly or indirectly promote or facilitate a fraudulent public property syndication scheme.

(3) A promoter may not-

(*a*) withhold the prescribed information, in part or otherwise, from an investor or potential investor in a public property syndication scheme; or

(*b*) include any term, condition or provision in the disclosure document that excludes, limits or purports to exclude or limit the legal liability of the syndication promoter towards the investor in respect of any malicious, intentional, fraudulent, reckless or a grossly negligent act of the syndication promoter, his or her employee, representative, contractor or subcontractor or any other person used by the syndication promoter or recommended by him or her to the investor or prospective investor.

(4) A promoter must make available the prescribed information to an investor or potential investor who invests in or intends to invest in public property syndication schemes, and the prescribed information must be made available to investors or potential investors in a disclosure document, the details of which are set out in subregulation (5) (*b*).

(5) (*a*) A statement, presentation or description must not convey false or misleading information about public property syndication schemes or omit material information during the public offer of shares.

(*b*) An investor and or potential investor must be informed in writing that-

(i) public property syndication is a long-term investment, usually not less than five years;

(ii) there is a substantial risk, in that the investor or potential investor may not be able to sell his or her shares should he wish to do so in the future; and

(iii) it is not the function of the promoter to find a buyer should the investor or potential investor wish to sell his shares and that it is the investor's or potential investor's responsibility to find his or her own buyer.

(6) (*a*) Investors must be informed in writing that all funds received from them prior to transfer or finalisation must be deposited into the trust account of a registered estate agent, a firm of an attorney or attorneys or a certified chartered accountant, provided that such trust account is protected by legislation. Individual investors are to be given written confirmation thereof, and it must be clearly stated who controls the withdrawal of funds from that account. Such an account must be designated "XYZ Attorneys/auditors/estate agents Trust Account - the XYZ syndication". In the event of investors paying by cheque, promoters must ensure that the name of the payee is printed in bold on the application forms.

(*b*) Funds must only be withdrawn from the trust account in the event of registration of transfer of the property into the syndication vehicle; or underwriting by a disclosed underwriter with details of the underwriter; or repayment to an investor in the event of the syndication not proceeding.

(*c*) It must be disclosed whether the property has been bought conditionally or by option, and in either or both cases full details of any condition and or option on which the property was purchased must be disclosed together with the effective date of commencement of the syndication.

(*d*) Any direct or indirect interest, which a promoter and or any of his or her family member or any other person who is actively involved in the promotion of that syndication has in the property to be purchased, must be disclosed.

(*e*) It must be disclosed how any capital shortfall will be dealt with.

(*f*) The method of raising the necessary capital to fund the acquisition of the property and the syndication and how any disbursements will be dealt with prior to transfer, must be disclosed.

(*g*) Provision must be made for interest earned to be paid on investors' funds deposited as provided for in paragraph (*a*) prior to the effective date of the transfer of the property.

(7) (*a*) Full details of the promoter of the syndication scheme, such as name, registered company or close corporation numbers, directors, addresses, telephone and fax numbers and e-mail address must be given.

(*b*) Full disclosure must be made as to whether the promoter is acting as a principal in the scheme or as an agent for someone else. If the promoter is acting as an agent, he or she or it must provide full details of the principal.

(*c*) The disclosure document, which is to be dated and signed by the promoter, must contain a statement of proper due diligence (commercially and legally) with regard to the property and its tenants prior to the unconditional purchase thereof and he or she or it must state that this was done and that he or she is satisfied with the results thereof.

(8) (*a*) Full details of the syndication vehicle must be disclosed, including the names and addresses, telephone and fax numbers and the e-mail addresses of the property manager, the company secretary, the board

of directors, the auditor, the attorney and the valuer.

(*b*) In addition full disclosure must be made of the fee structure of the management company or manager(s) and any appointments or contracts relating to the syndication.

(9) (*a*) Full disclosure must be made of the type of company structure to be used for the syndication scheme and reference must be made to the legislation governing the company structure chosen. Reference must be made to the company registration number, or advising that the company is still to be formed, the memorandum of incorporation, the articles of association, the shareholder's agreement, and where applicable, the partnership agreement, a deed of trust and the founding statement. The disclosure must state whether a shareholders' agreement exists or not, and if such an agreement exists then it must be attached as an annexure to the disclosure document.

(*b*) Full details must be given of the financial year end, the shares to be issued, the shares to be issued in future, control over unissued shares, shareholders' loans and debentures, a pro-forma balance sheet on acquisition (or in the case of new developments, on completion), the income distribution plan, minimum and maximum shareholders or participation quota, any special voting rights, existing and planned gearing, borrowing powers and how they are to be exercised, external borrowing facilities available to investors to finance the acquisition of shares in the investment company and the amount provided in the syndication structure for working capital and reserves.

(10) (*a*) Details must be given of-

(i) the title deed and its number;

(ii) material servitudes or encumbrances if further development is considered with regard to the property;

(iii) zoning and the relevant town planning regulations insofar as further development is intended with regard to the property;

(iv) additional development potential;

(v) the buildings erected or dates of original erection with dates of improvements (including lifts, air conditioning and roof structure) thereto, if available;

(vi) the physical address, locality and site area, including a map of the area; and

(vii) insurance cover, name of insurer, types of risks covered, amounts covered, policy due date and policy number.

(*b*) In addition there must be a statement which sets out-

(i) the cost of the property to the promoter or the syndication company including acquisition price, cost of renovations, conversion or enhancement including details of any new leases or lease renegotiations which enhance value, marketing and promotional cost fees and the promoter's entrepreneurial mark up, giving rise to the shareholding offer price in the company as at the offer date; and

(ii) the valuation of the property as at a date, which must be not more than three calendar months before date of the offer, undertaken by a valuer, in accordance with subregulation (14).

(*c*) If the land is to be encumbered by a mortgage bond after the closing date of the offer, the promoter must disclose-

(i) the outstanding balance owing by the mortgagor in terms of the mortgage bond including the rate of interest, the loan repayment period and whether the bond is first ranking or otherwise;

(ii) the maximum amount secured by the mortgage bond;

(iii) the terms of the mortgage bond;

(iv) the identity of the mortgagee; and

(v) a statement to the effect that the taking up of such a loan will not be in contravention of: the memorandum or articles of association of the company, the association agreement of the close corporation, trust deed of the trust, partnership agreement of a partnership or the constitution of the public property syndication vehicle.

(11) Full details must be given of-

(*a*) any head lease agreement and subleases together with the quantum and location of any vacant space covered by such head lease and subleases, where "quantum" refers to the square meterage and the value involved;

(*b*) any gross or net rental guarantees supplied by the vendor of the property; and

(*c*) actual leases concluded with full details of space let, duration of leases, rentals, escalation rates for the leases, tenant names and security for leases, expenses recovered from tenants, lease renewal options, rental review periods and vacant space.

(12) The income and expenditure statement must provide-

(*a*) a detailed pro-forma income statement which must detail all projected expenses, contractual expenses and fees payable, gross rentals, recoveries, and projected net income for the syndicating company;

(*b*) a statement as to the long-term vacancy rate with full motivation thereof, but a nil rate is unacceptable; and

(*c*) a statement as to the extent of provision for future maintenance, with full details where applicable.

(13) (*a*) Full details must be provided of-

(i) the basis used to calculate projections with regard to net income growth, to be based upon rental income derived from leases and or market rental growth, less specified and disclosed, as well as reasonably expected expense projections;

(ii) the basis used to calculate projections on capital value, to be stated in Rand currency as estimates, provided they are accompanied by stated, specific assumptions showing how those values are determined, but specific projections as to capital growth are not permissible, taking into account the many variables influencing property values; and

(iii) whether the validity of the assumptions used in determining projections is based on fact or opinion; and

(*b*) should a specific return be projected, it should be calculated with reference to the syndication value.

(14) (*a*) The name of the valuer and his or her qualifications and experience must be disclosed.

(*b*) The valuer must take cognisance of the state of repair and condition of buildings and improvements.

(*c*) The valuer must take cognisance of a recent municipal valuation of the property concerned, which municipal valuation must not be older than three months.

(*d*) For purposes of subregulation (*e*)-

(i) **"open market value"** contemplated in subregulation (*e*) (ii) means the best price at which the property might reasonably be expected to have been sold unconditionally for a cash consideration on the date of valuation assuming-

(*aa*) a willing and informed seller and a willing and informed buyer who are not connected persons as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991); and

(*bb*) that, prior to the date of valuation, there has been a reasonable period, having regard to the nature of the property and the state of the market, for the proper marketing of the interest, for the agreement on price and terms and for the completion of the sale; and

(*cc*) that no account is taken of any additional bid by a purchaser with a special interest.

(ii) **"syndication value"** contemplated in subregulation (*e*) (ii) is the aggregate sum of the shareholders' total interest in the syndication vehicle in terms of the disclosure document, recognising that this sum includes an appropriate premium over and above the open market value of the property asset, and the quantum of the premium must be stated.

(*e*) A report from a valuer for purposes of subregulation (5) must incorporate-

(i) an introduction, stating that the valuer has been instructed by the promoter or whoever instructed the valuer;

(ii) the valuation undertaken by the valuer, which must be either an open market value or syndication value;

(iii) the title deed description;

(iv) municipal information such as town planning regulations and the municipal valuation of the land and improvements;

(v) the location of the property;

(vi) a brief description of the building, such as the method of construction, materials, type, grade and size;

(vii) the insurance replacement cost of the building in accordance with the following definition: The estimated cost of replacing the asset, as it exists, as if new, at prices applicable on the valuation date, inclusive of professional fees, but exclusive of any finance charges, demolition costs or emergency services costs;

(viii) tenancy details, including names of tenants, rentable areas occupied and or vacant, rental escalations, and lease expiry dates;

(ix) expenses such as the level of anticipated initial annual operating expenses and the rate of collection/commission;

(x) the net income, the anticipated net rental income in the first year and comments on any unusual growth or anticipated vacancies in the next three years, and what assumptions are made as to the re-letting of space over which leases are expiring or are vacant, including anticipated re-letting commission and tenant installation costs;

(xi) the capitalisation rate, meaning the appropriate rate at which the market net income is capitalised, and evidence to this effect;

(xii) two valuations, signed by the respective valuers, must be undertaken of the property as at a date, which must be not more than three calendar months before the date of the offer, stating whether the open market value or syndication value has been used;

(xiii) full details about previous transactions regarding the property, including-

(*aa*) in the case of a new development, the total cost thereof, including the market value of the land. The contractor or contractors are to confirm in an affidavit the total costs, including the costs of any improvements;

(*bb*) the sales history of the property for the past ten years, including details of-

(A) the various legal entities who owned the property according to the title deeds and the selling price of the property with each change of ownership and the relevant dates; and

(B) if one or more legal entities owned the property according to the title deeds, any changes in the ownership of the legal entities, the selling price of the property with each change of ownership and the relevant dates.

(*f*) The fees for valuations must not be dependent upon the amount of the valuation.

16. Prohibition on feasibility studies promising funding.-No person may by false pretence and with the intention to defraud offer, conduct, sell or otherwise provide an agreement for a feasibility study or a feasibility study itself which states, promises or otherwise intimates that the purchase or use of the feasibility study guarantees funding, financing, sponsorship or any other backing, whether from within the Republic or elsewhere.

17. Calculation of interest for multiplication scheme.-For purposes of section 120 (1) (*e*) read with section 43 (3) of the Act, the REPO rate is the rate which applied at the date of the investment or commencement of participation. The effective annual interest rate will be-

$$r = \frac{R \times 1200}{C \times T},$$

where-

r	=	the effective interest rate,
R	=	the interest in Rand, which is the difference between the amount paid out to the investor or participant and the amount invested,
C	=	the amount invested by the investor or any amount paid by a person to become a member of a scheme, and
T	=	the period of the investment in months.

18. Definitions, interpretation and application: auctions.-(1) In regulations 19 to 30, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has the same meaning, and-

"auction house" means a company or other juristic person which from time to time conducts auctions as part of its business;

"auction without reserve" means an auction at which-

(*a*) goods are sold to the highest bidder without reserve;

(*b*) the auction does not require a minimum bid;

(*c*) the auction does not allow competing bids of any type by the seller or an agent of the seller; and

(*d*) the seller of the goods cannot withdraw the goods from auction after the auction is opened and there is public solicitation or calling for bids;

"auctioneer" means the person conducting an auction, irrespective of whether he or she is doing so for his or her own account or as employee of or agent for an auction house or other person;

"bidders' record" means the document contemplated in regulation 26;

"closed auction" means an auction where the auctioneer or the owner, as the case may be, issues an invitation to take part in an auction only to a finite list of consumers;

"game" means game as defined in section 1 of the Game Theft Act, 1991 (Act No. 105 of 1991;

"goods" includes, where appropriate, services;

"livestock" means cattle, sheep, goats, pigs, horses, mules and donkeys;

"lot" means any group of goods sold or offered for sale as a unit and identified as such;

"vendor's roll" means the document contemplated in regulation 28 (4); and

"URL" means an operational uniform resource locator, providing access to information on the internet.

(2) Regulations 19 to 30 must be read together with section 45 (6) of the Act.

(3) Subject to subregulation (4), these regulations apply to all auctions, irrespective of the nature of the goods offered on auction, the value of the property or the reason for conducting the auction.

(4) These regulations do not apply to-

(*a*) transactions concluded under the auspices of a registered or licensed stock exchange or similar institution; or

(*b*) an auction where the goods for sale have been donated for sale at an auction and the proceeds of the auction are paid to a *bona fide* religious, educational, cultural, welfare, social or sports organisation or body which does not as its primary activity undertake commercial or business operations,

but an auction conducted as a sale in execution or ordered by a court of law does not constitute an auction contemplated in paragraph (*a*).

(5) Any provision in any agreement relating to goods sold or bought at an auction or advertised or offered for sale at an auction, or any agreement providing for conducting the auction itself, in conflict with these regulations, does not from the moment of its conception or conclusion, as the case may be, have any force or effect, but this subregulation must not be interpreted so as to prevent holding a person liable for any relevant contravention.

(6) These regulations do not detract from any law providing for or related to the advertising, sale, purchase, delivery, rendering or financing of goods.

(7) An auctioneer selling immovable property by way of auction must comply with any other applicable law in respect thereof, including legislation regulating the activities of estate agents.

(8) An auctioneer must comply with all general provisions of these regulations as well as those applicable to the category of auction or auctioneer provided for in regulations 32 and 33.

19. Mandatory advertising of auctions.-(1) Subject to regulations 33, no goods may under any circumstance whatsoever be sold by auction unless the inclusion of such a particular item or lot or service in that auction has been advertised in compliance with these regulations in such a manner that the general public has had a reasonable opportunity to become aware of the auction, the goods on offer and of the rules governing the auction.

(2) The onus to prove that an auction was advertised as contemplated in subregulation (1) rests on the auctioneer.

(3) An auctioneer must for purposes of subregulation (1) advertise the auction of a particular item or lot at least 24 hours prior to the commencement of the auction, but-

(*a*) any goods may be withdrawn at any time prior to the commencement of the auction;

(*b*) in the event of an auction where goods offered for sale include immovable property, this period must exceed five business days.

(4) If an auction or part thereof relates to goods sold in execution or by order of court, the advertisement must clearly state that fact.

20. General rules on advertising of auctions.-(1) Despite the rules and rulings of any advertising standards body, all advertising of auctions must-

(*a*) be accurate; and

(*b*) provide sufficient information for a reasonable consumer to-

(i) understand that it relates to an auction; and

(ii) be able to find the place where the auction is to be held.

(2) Advertising relating to an auction must subject to subregulation (3)-

(*a*) be in a legible format and size;

(*b*) contain a reference to these regulations, together with the URL of an operational internet site where a copy of these regulations can be obtained;

(*c*) state the date, place and time of the auction;

(*d*) state the name of the auctioneer and the auction house, if any, and if registration or licensing of auctioneers or auction houses after the commencement of these regulations becomes mandatory, such registration or licensing number;

(*e*) state where the rules of auction can be obtained;

(*f*) state the particulars of the goods offered on auction;

(*g*) if applicable, state that the auction will be held over a number of days;

(*h*) state, if applicable as contemplated in section 45 (4) of the Act, that a sale by auction is subject to-

(i) a reserved or upset price; or

(ii) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction; and

(iii) contain a reminder that all prospective bidders must register as such prior to making bids during the auction and that such registration requires proof of identity and of residence as contemplated in regulation 26;

(*i*) disclose as accurately as possible the total costs of advertising and conducting the auction.

(3) The requirements of subregulation (2) do not apply to roadside advertising or classified advertising in printed newspapers, but such advertising must-

(*a*) at the top of the advertising prominently display the word "auction";

(*b*) indicate where a full advertisement as contemplated in subregulation (2) (*b*) can be obtained; and

(*c*) state the date, place and time of the auction.

(4) A consumer may at any time during ordinary business hours request an auctioneer to provide him or her with access to an advertisement contemplated in subregulation (2), and the auctioneer must forthwith without charging any fee whatsoever comply with such a request, but-

(*a*) a consumer is entitled to only one free copy;

(*b*) the auctioneer may provide a URL of an operational website which will provide a copy of the full advertisement in a format generally used.

(5) Any material or publication not meeting all of the requirements of this regulation does not constitute advertising for purposes of regulation 19 and this regulation.

(6) An auction may not be advertised as a "sale in execution" or use similar wording implying court action unless-

(*a*) at least 75 percent of the items or lots in the auction are being offered pursuant to a court order;

(*b*) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and

(*c*) the advertising contains an explanation of the court order including identification of the court.

(7) Unless all items or lots being offered at auction are pursuant to a court order, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.

(8) Subregulations (6) and (7) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and were clearly not purchased or attained for the purpose of resale at auction.

(9) An auction may not be advertised as an "insolvency auction" or use similar wording implying insolvency unless-

(*a*) at least 75 percent of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;

(*b*) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and

(*c*) the advertising contains the order number of the Master of the High Court.

(10) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.

(11) Subregulations (9) and (10) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and were clearly not purchased or attained for the purpose of resale at auction.

(12) An auction may not be advertised as "deceased auction" or use similar wording implying insolvency unless-

(*a*) at least 75 percent of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;

(*b*) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and

(*c*) the advertising contains the order number of the Master of the High Court.

(13) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.

(14) Subregulations (12) and (13) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and were clearly not purchased or attained for the purpose of resale at auction.

(15) An auction shall not be advertised as "divorce auction" or use similar wording implying court action unless-

(*a*) at least 75 percent of the items or lots in the auction are being offered pursuant to a court order;

(*b*) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and

(*c*) the advertising contains an explanation of the court order including identification of the court.

(16) Unless all items or lots being offered at the auction are pursuant to a court order, then the advertising shall clearly indicate that the auction is "with additions", "supplemented" or use similar wording.

(17) Subregulations (15) and (16) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and were clearly not purchased or attained for the purpose of resale at auction.

(18) No auction may be advertised as "absolute" or "without reserve", no advertising may contain the words "auction without reserve", "absolute auction" or "without reserve", or the word "absolute" or words with similar meaning and no auctioneer may offer or sell any goods at auction without reserve unless-

(*a*) there are no liens or encumbrances on the goods, except property tax obligations, easements, or restrictions on record, in favour of any person other than the seller, or unless each and every holder of each and every lien and encumbrance has in writing agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder, or that a financially responsible person in writing absolutely guarantees the immediate and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and

(*b*) there is the *bona fide* intention at the time of the advertising and at the time of the auction to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the highest bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the goods will not be transferred to the highest bidder; and

(*c*) the rules of auction contain a binding requirement that the auction be conducted without reserve.

(19) Subregulation (18) does not prohibit-

(*a*) a secured party or other lien holder who is not the seller from bidding at an auction without reserve, but such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer;

(*b*) any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to that dissolution;

(*c*) any individual party or heir of a deceased person's estate from bidding as an individual entity, apart from the selling entity, on goods being offered at auction pursuant to that estate being settled; or

(*d*) the inclusion of non-misleading advertising of certain goods to be sold at "auction without reserve" and the non-misleading advertising of certain goods to be offered at auction with reserve, within the same advertisement, or for sale at the same date and place, but that advertisement must make clear, through appropriate emphasis, which goods are being offered by each method.

21. Rules of auction.-(1) An auctioneer must-

(*a*) in writing compile the rules of auction; and

(*b*) except in the case of a livestock or game auction or a closed auction, make the document available to the general public at least 24 hours prior to the commencement of the auction.

(2) The rules of auction must, as a minimum-

(*a*) on the first page of the document in large letters display the words "rules of auction", and immediately beneath that the date, place and time of the auction;

(*b*) contain the full names, physical address and contact details of the auctioneer, and where applicable, of the auction house;

(*c*) contain all mandatory information required by these regulations, and if applicable, the information contemplated in section 45 (4) or (5) of the Act;

(*d*) contain a statement to the effect that the rules of auction comply with section 45 of the Act and with these regulations;

(*e*) contain the text of subsection (2) of section 45 of the Act;

(*f*) provide that an auction will commence at the published time and that it will not be delayed to enable any specific person or more persons in general to take part in the auction;

(*g*) provide that a person who attends at the auction to bid on behalf of another person must produce a letter of authority meeting the requirements of regulation 26 (3) in order to so bid on behalf of that person;

(*h*) unless the auctioneer is also the owner or rightful holder (who has the right to sell) of the goods to be auctioned, contain a statement to the effect that the auctioneer has a trust account into which all moneys will be paid for the benefit of the seller, minus the agreed commission;

(*i*) contain a statement to the effect that the auctioneer will during the auction announce the reason for the auction unless that reason is the normal and voluntary disposal of goods by the owner;

(*j*) provide that a person who intends to bid at the auction must register prior to the commencement as contemplated in regulation 26 (2) together with a description of the requirements for registration;

(*k*) provide that the bidders' record contemplated in regulation 26 and the vendor roll contemplated in regulation 28 (4) are available for inspection during normal hours without the charge of a fee; and

(*l*) contain a breakdown of the total cost of advertising and conducting an auction and a statement indicating whether additional costs may be added and if so, how such additional costs will be computed.

(3) The rules of auction may not-

(*a*) exclude liability in respect of inaccurate information provided in the advertising of the auction;

(*b*) exclude liability in respect of the rules of auction not meeting the requirements of these regulations; or

(*c*) contain any qualification, reservation or diminution of the requirements of these regulations unless expressly provided for.

(4) In the event that the rules of auction are amended after their initial publication, the auctioneer must expressly indicate that the new version is an amended version.

(5) The rules of auction must be signed by the auctioneer who is going to conduct the auction and he or she must certify that the rules of auction to the best of his or her knowledge meets the requirements of this regulation 21.

(6) If on the day of the auction the auctioneer who signed the rules of auction as contemplated in subregulation (5) is unavailable to conduct the auction, the auctioneer who then conducts the auction will be deemed to have so certified the rules of auction.

(7) An auctioneer is personally accountable and liable for the contents of the rules of auction applicable to a specific auction.

(8) The rules of auction need not be read out at an auction to be valid, but only if-

(*a*) the rules of auction were, where applicable, available to the general public at least 24 hours prior to the commencement of the auction;

(*b*) in the case of a livestock or game auction contemplated in regulation 33 are the same as for previous auctions and are generally available on the auction house or the auctioneer's website or at the auction house or the auctioneer's business premises during normal business hours;

(*c*) in the case of a closed auction, were made available to all persons to whom an invitation to take part in that auction was issued; or

(*d*) at an auction other than an internet auction, the auctioneer invites any person present to object to the rules of auction not being read upon, and nobody does.

(9) The rules of auction may not exclude the right of inspection as contemplated in regulation 28 (5).

22. Auctioneer and auction house to hold and account for consumer's property.-(1) An auctioneer and auction house must at all times strictly comply with section 65 (2) of the Act.

(2) Unless the auctioneer is also the owner or rightful holder (who has the right to sell) of the goods to be auctioned, no auctioneer may sell goods on auction until he or she has first entered into a written agreement with the owner or rightful holder (who has the right to sell) of such goods to be sold, whether for a specific auction or auctions on general, which agreement contains the terms and conditions upon which that auctioneer accepts the goods for sale.

(3) An agreement contemplated in subregulation (2) must as a minimum contain-

(*a*) the name and physical address of owner of the goods to be sold or the owner's agent or the rightful holder (who has the right to sell) thereof;

(*b*) if the goods are to be sold at a specific auction, the date of the auction or if the goods are to be sold at a number of auctions, a termination date of the agreement;

(*c*) the address of the premises where the auction is to be held;

(*d*) the rules of auction;

(*e*) a description of all of the fees to be charged by the auctioneer or the auction house, which must include commissions, storage, advertising and labour, or a method by which such fees will be determined;

(*f*) an explanation of the settlement of the auction that includes the disbursement of interest money, if applicable;

(*g*) a statement indicating whether the auction is an auction without reserve or not;

(*h*) a brief description of the goods to be sold;

(*i*) if the sale is of goods at auction without reserve, a statement affirming that the seller of the goods has a *bona fide* intention to transfer ownership of the property to the highest bidder;

(*j*) an exact copy of section 65 (2) of the Act;

(*k*) an exact copy of subsections (1) to (5) of section 45 of the Act.

(4) An auctioneer must retain a copy of every agreement contemplated in subregulation (2) signed by the owner or rightful holder of the goods to be auctioned for a period of at least three years from the date of the auction.

(5) In performing the duties of an auctioneer, every auctioneer-

(*a*) is the agent of the owner or rightful holder (who has the right to sell) of the goods for all aspects of an auction;

(*b*) must follow all lawful and reasonable requests of the owner or rightful holder of the goods or immovable property sold at auction;

(*c*) must perform his or her duties so that the highest or most favourable offer made by a bidder is accepted; and

(*d*) must otherwise perform his or her duties in accordance with the highest standards applicable to auctions.

(6) An auctioneer must keep abreast of current market conditions of goods at all times in order to be in a position to advise and perform services for his or her clients to the best of his or her ability.

(7) An auctioneer-

(*a*) owes a duty of care towards his or her client;

(*b*) must protect and secure the goods whilst under his or her control or in his or her possession;

(*c*) must at all times preserve a professional, confidential relationship with his or her client;

(*d*) must timeously reveal estimated costs and services for conducting the auction; and

(*e*) if he or she is aware or ought reasonably to be aware of any risks associated with the auction of particular goods, must forthwith disclose such risks to the client.

(8) All unsold property must be returned to the owner or rightful holder immediately upon the completion of an auction unless otherwise agreed.

(9) The owner or rightful holder (who has the right to sell) must be provided with an itemised account of all goods sold immediately upon completion of the auction unless otherwise agreed, which as a minimum must contain-

(*a*) the item or lot sold,

(*b*) amount received for the sold item or lot; and

(*c*) the name of the buyers of every item or lot.

23. Disqualification to conduct auction.-A person who-

(*a*) has been found guilty by a court of law, whether in the Republic or elsewhere, of an offence of which fraud or dishonesty is an element, or of any other offence for which such person has been sentenced to imprisonment exceeding five years without the option of a fine;

(*b*) is of unsound mind; or

(*c*) is an unrehabilitated insolvent,

may not conduct an auction or in any other way act as an auctioneer or hold him or herself out as an auctioneer.

24. Prohibited behaviour.-An auctioneer may not-

(*a*) charge or receive any fee or commission in respect of the sale of movable goods unless such goods have been delivered to the purchaser;

(*b*) charge or receive any fee or commission in respect of the sale of immovable property until the purchaser and the seller have signed a written agreement in respect of the sale of such immovable property;

(*c*) charge or receive any fee or commission from the purchaser if the seller defaults or where such fee or commission has already been paid by the purchaser to the auctioneer, the auctioneer shall immediately refund the purchaser the amount paid, including deposit;

(*d*) charge or receive any fee or commission from the purchaser, if the purchaser defaults, exceeding ten percent of the purchase price or the total cost of advertising and conducting an auction and such additional costs as may have been reasonably incurred in accordance with regulation 21 (2) (1), whichever is the lesser;

(*e*) charge or receive any fee or commission from the seller, unless agreed otherwise in writing, if the buyer defaults or where such fee or commission has already been paid by the seller to the auctioneer, the auctioneer shall immediately refund the seller the amount paid;

(*f*) charge or receive any fee or commission from the seller if the seller defaults, unless agreed otherwise, exceeding ten percent of the purchase price or the total cost of advertising and conducting an auction and such additional costs as may have been reasonably incurred in accordance with regulation 21 (2) (1), whichever is the lesser;

(*g*) enter into any agreement or arrangement with the seller to sell any goods unless the auctioneer has first provided the seller with an estimate of the total cost of the auction;

(*h*) accept a bid from a person unless he or she is registered in the Bidders' Record as contemplated in regulation 26;

(*i*) set a minimum or reserve price without the express written permission of the seller;

(*j*) remove an item or lot from an auction without the express written permission of the seller;

(*k*) allow bidding on an item or a lot if the auction thereof has not been advertised as contemplated in regulations 19 and 20;

(*l*) during an auction deviate from the sequence of goods as advertised;

(*m*) knowingly misrepresent, or cause or permit to be misrepresented the value, composition, structure, character or quality or manufacture of the goods put up for sale at an auction;

(*n*) hinder the access of any person to any advertisement contemplated in these regulations, rules of auction or vendor's roll; or

(*o*) pay any other person in order to be appointed as auctioneer, whether in general or for a particular auction or in respect of any specific goods.

25. False entry in auction record.-Without detracting from any other applicable law, an auctioneer, including an employee of the auctioneer or the auction house, may not knowingly enter in any record kept or required to be kept by the auctioneer under or in terms of these regulations or any other applicable law, any name or other details other than the real name and details of the actual successful bidder.

26. Bidder's record.-(1) An auctioneer must for every auction have a bidders' record to record the identity of all bidders at an auction.

(2) Subject to regulation 30 (2), the auctioneer must ensure that every prospective bidder must prior to the commencement of an auction register his or her identity in the bidder's record, and such registration must with the necessary changes meet the requirements of Chapter 1 of the regulations in terms of the Financial Intelligence Centre Act, 2001, published in Notice No. R.1595 in *Gazette* No. 24176 of 20 December 2002, in respect of establishment and verification of identity, and sign that entry.

(3) The auctioneer must ensure that a person who intends to bid on behalf of another, produces a letter of authority expressly authorising him or her to bid on behalf of that person, and both that person and the person bidding on his or her behalf must meet the requirements of subregulation (2).

(4) The auctioneer must ensure that if a person will be bidding on behalf of a company, the letter of authority contemplated in subregulation (3) must appear on the letterhead of the company and must be accompanied by a certified copy of the resolution authorising him or her to do so.

(5) The bidders' record is available for public inspection in respect of the names of bidders and the bidders numbers referred to in subregulation (6) only, at any time, free of charge-

(*a*) during an auction, at the premises where the auction is being held; and

(*b*) before or after an auction, at the auction house or auctioneer's place of business and during normal business hours.

(6) An auctioneer must record the bidder number contemplated in regulation 28 (1) in the bidders' record.

27. Ownership.-The auctioneer must ensure that a person who wishes to dispose of his or her property by way of an auction signs a declaration stating that he or she is the owner or rightful holder of the goods (who has the right to sell) and submits that declaration to the auctioneer.

28. Bidding.-(1) An auctioneer must provide a prospective bidder whose name appears in the bidders' record with a bidder number before he or she may bid, as well as a paddle or other device to which that number is attached in such a way that it is clearly visible to the persons present at the auction.

(2) A bid taken from an unregistered person is invalid.

(3) The place where an auction is held must be open and accessible to any member of the public, subject to the auctioneer's right to refuse a person the right to remain on the auction's premises in the event that that person repeatedly behaves in such a way so as to disrupt the auction.

(4) An auctioneer must have a vendor's roll in which all details of the auction are recorded, which must, as a minimum, include-

(*a*) the advertising of the auction;

(*b*) the rules of auction;

(*c*) the bidders' record;

(*d*) the declarations contemplated in regulation 21 (2) (*h*) and 27;

(*e*) a list of all goods on auction, including goods which were withdrawn from auction;

(*f*) the names of the successful bidders, the goods or lots bought and the prices paid in respect thereof;

(*g*) the details of any challenges to the validity of the auction or the conduct thereof, and the particulars of the persons making such challenges, if available;

(*h*) any items or lots not sold;

(*i*) the details of any reserved price or any matter contemplated in subsections (4) and (5) of section 45 of the Act.

(5) The auctioneer must afford consumers a reasonable period of time and opportunity to inspect the goods on offer prior to the commencement of an auction, and no fee may be charged for such opportunity, but an auctioneer may-

(*a*) refuse or restrict access to such goods if the consumer after gaining access in any way acts unlawful or in contravention of the applicable rules of auction;

(*b*) require the consumer to adhere to or submit to any security measures reasonably applicable in the circumstances.

(6) Subject to any reserved price and acceptance of the highest bid by the seller, the highest bidder, when the auctioneer announces the completion of a sale by the fall of the hammer, or in any other customary manner, is the purchaser of the goods or lots on auction.

(7) No fee may be charged for participation in an auction, but this does not apply to refundable deposits.

(8) The auctioneer must upon concluding the proceedings of an auction-

(*a*) announce that the auction has come to an end;

(*b*) sign the vendor's roll; and

(*c*) certify that the proceedings of the auction were to the best of his or her knowledge conducted in accordance with these regulations, any other applicable law and the rules of auction.

29. Mock auction.-(1) A mock auction is an auction in which-

(*a*) goods are sold for less than the highest bid, or part of the purchase price is repaid or credited to the purchaser;

(*b*) the right to bid for goods is restricted to persons who have bought or have agreed to buy other goods; or

(*c*) any goods are given away as gifts.

(2) No person may promote, facilitate, conduct or take part in a mock auction.

(3) If it can be proved that the reduction in the purchase price or the repayment credit was due to a defect which the auctioneer only became aware of after the highest bid was made, or because of damage sustained after the highest bid was made, the auction will not be considered to be a mock auction.

(4) No person may promote, organize, participate in or benefit from any kind of conspiracy between an auctioneer, any participants in an auction or any other persons who agree not to bid against each other at an auction or who otherwise conspire to decrease or increase the number or amounts of bids offered at auction.

30. Internet or electronic auctions.-(1) An auction may be conducted via the internet or other electronic medium or platform, irrespective of where the server or other electronic medium or platform is situated, only if-

(*a*) it meets all requirements in respect of an auction provided for in these regulations or other applicable law, but with the necessary changes, if any, to suit an electronic medium or platform;

(*b*) the relevant internet website or electronic medium or platform is generally available to anyone over the age of 18 years at any time of the day;

(*c*) the relevant internet website or electronic medium or platform provides high standards of security for electronic transactions;

(*d*) the relevant internet website or electronic medium or platform provides for easy access to all records prescribed in these regulations in a generally used or accepted medium or format;

(*e*) the internet auction provider keeps the information contemplated in regulation 28 (4).

(2) For purposes of regulation 26 (2), a prospective bidder in an auction to be held via the internet or other electronic medium or platform must register by providing-

(*a*) his or her full names, identification or passport number, age, physical address, internet protocol address, and where applicable, login code or name, and password; and

(*b*) the details of the means by which payment will be effected.

(3) An auctioneer conducting an auction via the internet or other electronic medium or platform may not exclude liability if any goods purchased by auction are not delivered to the purchaser thereof.

31. Records.-(1) Irrespective of any other provision to the contrary in these regulations, all records prescribed in regulations 18 to 33 must be kept for a period of at least three years.

(2) (*a*) Any person in possession of any record contemplated in regulations 18 to 33 must forthwith upon receipt of a written request at his or her own cost provide the Commission or any forum empowered to administer the Act or an owner or rightful holder (whose goods were on auction at the auction in question) or a registered bidder (at the auction in question) with true copies of the record so requested or which may be relevant to any record so requested, but if the original record is expressly requested, that original record must be made available for inspection.

(*b*) The Commission may not provide copies of any documents which have come into its possession pursuant to paragraph (*a*) of this subregulation to anyone, unless by order of court, or where it is the interests of justice to do so.

32. Motor vehicle auctions.-In addition to any other requirement in these regulations, an auctioneer may not conduct an auction unless a notice containing the particulars and statements required in this subregulation relating to the vehicle, being a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), is attached to the vehicle and has been attached to the vehicle at all times when the vehicle was available for inspection by prospective bidders, which must include-

(*a*) the name and business address of the auctioneer;

(*b*) if the auctioneer or auction house is conducting the sale on his, her or its own behalf, whether the auctioneer or auction house is liable to discharge the duty of repair, or not;

(*c*) if the auctioneer or auction house is conducting the sale on behalf of-

(i) a motor vehicle dealer or bank or other financing entity, the name in which that dealer, bank or entity is licensed and the business address of the dealer, bank or entity and whether the dealer, bank or entity is liable to discharge the duty of repair, or not; or

(ii) another person, a statement on whether there is a duty to repair, who is liable to discharge that duty to repair and the details of the repair, and if applicable, the name and address of the last owner of the vehicle who was not a dealer, bank or entity, or alternatively a statement that the last owner's name and address are available on request from the auctioneer or auction house;

(*d*) if the owner let the vehicle on hire to another person under a vehicle leasing agreement, the name and address of such other person, alternatively a statement that such person's name and address are available on request from the auctioneer;

(*e*) the vehicle's year of manufacture, if known;

(*f*) the vehicle's year of first registration;

(*g*) the vehicle's manufacturer and model designation;

(*h*) the vehicle's registration number;

(*i*) the vehicle's engine number;

(*j*) the vehicle's identification number (VIN);

(*k*) a statement whether or not the reading of the odometer of that vehicle is guaranteed; and

(*l*) a statement contemplated in regulation 21 (2) (*i*).

33. Livestock, game and closed auctions.-The provisions of regulation 19 (1) does not apply to-

(*a*) a closed auction; or

(*b*) a livestock or game auction, if such is conducted regularly on a weekly or monthly basis-

(i) at the same time, the same place and by the same auctioneer or auction house;

(ii) subject to the same rules of auction; and

(iii) nothing but livestock or game is on offer.

34. Maximum amount of cancellation penalty for lay-by's.-(1) For purposes of section 62 (6) of the Act, a penalty shall be reasonable but may not exceed one percent of the full purchase price of the good.

(2) On cancellation, the supplier must upon request by a consumer immediately provide the consumer with written details on how the penalty was calculated, unless the consumer waives this right in writing.

(3) Any notices exchanged in respect of the cancellation of lay-by's may be transmitted or stored electronically if the requirements of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) are met.

35. Initiating complaint to Commission.-(1) For purposes of section 71 (1) of the Act, any person may submit-

(*a*) information concerning an alleged contravention or instance of non-compliance in terms of or under these regulations to the Commission, in any manner or form; or

(*b*) a complaint against an alleged contravention or instance of non-compliance in terms of or under these regulations to the Commission, in the form contained in Annexure "E" to this Schedule,

together with certified copies of any documents the Commission should consider, by mailing it to (Postal Address), delivering it by hand to
(Physical Address), by filing it electronically at
(Website) or by e-mailing it to (e-mail address).

(2) Nothing in this regulation prevents the Commission from initiating its own investigation.

(3) Upon initiating or receiving a complaint in terms of this regulation, the Commissioner must direct an inspector to investigate the complaint as quickly as practicable.

(4) At any time during an investigation, the Commissioner may designate one or more persons to assist the inspector.

(5) The Commission must-

(*a*) as often as may be reasonable inform the complainant of progress or other developments in an investigation; and

(*b*) upon completion of its investigation in writing inform the complainant of the outcome thereof, and if it is not taking the matter further, the reasons for its decision to not do so.

36. Investigation by Commission.-For purposes of section 72 (1) (*a*) of the Act, the Commission may issue a notice of non-referral in the form contained in Annexure "F" to this Schedule.

37. Outcome of investigation.-For purposes of section 73 (1) (*a*) of the Act, the Commission may issue a notice of non-referral in the form contained in Annexure "G" to this Schedule.

38. Standards, procedures and related matters for Commission to follow in assessing applicant for accreditation as consumer protection group.-(1) For purposes of this regulation, "applicant" means any consumer protection group that wishes to be accredited by the Commission in terms of section 78 of the Act for the purposes contemplated in that section or elsewhere in the Act, and "instrument establishing and governing the applicant" means in the case of a-

(*a*) juristic person, certified copies of the memorandum and articles of association, certificate of incorporation or founding statement, as the case may be;

(*b*) partnership, the partnership agreement; or

(*c*) trust, the applicable trust deed.

(2) For purposes of section 78 (6) of the Act, the Commission must in its sole discretion consider the aspects relevant to the applicant and the application in assessing whether that applicant for accreditation meets the applicable requirements of section 78 from-

(*a*) the objectives or purpose of the applicant;

(*b*) whether the applicant engages in, or makes a realistic proposal to engage in, actions to promote and advance the consumer interests of persons contemplated in section 3 (1) (*b*) of the Act;

(*c*) the applicant's ability to sustainably provide a service to historically disadvantaged, low-income consumers in rural or peri-urban areas;

(*d*) the efficiency and effectiveness of the applicant in promoting the interests of consumers;

(*e*) whether the applicant's infrastructure and support mechanisms are adequate and appropriate for the function it intends to fulfil;

(*f*) the procedures and processes required by the applicant to determine whether to pursue a matter on behalf of consumers;

(*g*) whether the applicant has a strict policy on conflicts of interest;

(*h*) whether the applicant has or holds any interest of whatever nature, whether directly or indirectly, in any company operating in the industry within which the applicant operates or plans to operate;

(*i*) any other factor which may be relevant.

(3) The Commission must on its website publish all relevant information to inform a prospective applicant of the requirements in respect of an application for accreditation in terms of section 78 of the Act, including criteria it will utilise to assess the factors contemplated in subregulation (2).

(4) Any applicant must submit an application providing all information contemplated in subregulations (2) and (5), as well as a statement by its chairperson, chief executive or other person in charge of its operations, supported by a resolution taken at a meeting of its members or stakeholders, that the applicant is committed to achieving the purposes of the Act.

(5) The Commission must upon receipt of an application publish a notice in the *Gazette* and any newspaper distributed in the geographical area in respect of which the application has been submitted, and on its own website, stating-

(*a*) the name of the applicant;

(*b*) the applicant's registered address;

(*c*) the industry and the geographical area in respect of which the application has been submitted;

(*d*) the time period within which and the address where objections to the possible accreditation of the applicant may be submitted.

(6) The Commission may upon receipt of an application request the provision of any additional information it may deem relevant.

(7) The Commission may in its sole discretion invite the applicant and other interested persons to make oral submissions in support of or opposition to the application.

(8) The Commission must within a reasonable period of receipt of an application consider the application and any objection to the application submitted timeously, and must then take a decision on the accreditation of the applicant in terms of section 78 (3) of the Act.

(9) The Commission must forthwith after deciding on the application in writing inform the applicant and any person who lodged an objection of-

(*a*) the outcome of the matter; and

(*b*) their rights in terms of or under the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(10) An accreditation is valid for a period of five years, after which such accreditation expires, and a previously accredited consumer protection group must re-apply for accreditation.

(11) The Commission may provisionally accredit an applicant, and the applicant must within a time period determined in writing by the Commission meet any additional requirements set by the Commission, which, if the applicant fails to timeously and fully meet such conditions, expires on the date on which such time period ends.

(12) The Commission must in the case of a successful application-

(*a*) issue a certificate of accreditation with a unique number, signed by a Commissioner, to the applicant, who must display the certificate in a prominent place at his, her or its main office; and

(*b*) on its website add the name of the applicant in a list of all accredited consumer protection groups.

(13) The Commission may at any time after accreditation-

(*a*) request the accredited consumer protection group to provide it with any additional information the Commission may require;

(*b*) in its sole discretion and when it deems it necessary in the interest of consumers to do so, suspend or withdraw such accreditation of the accredited consumer protection group, but the Commission must in such instances inform the applicant of and apply all his, her or its rights provided for in the Promotion of Administrative Justice Act, 2000, and amend its data bases and website accordingly.

(14) An accredited consumer protection group must annually, within 30 business days of completing each year of accreditation, submit a full report, to the Commission on its activities during the preceding year unless the Commission has agreed otherwise in writing.

(15) An accredited consumer protection group may not charge a consumer any fee other than out of pocket expenses.

39. Form, manner and fee to register business names.-(1) For purposes of section 80 (1) of the Act, a person may file a notice with the Registrar in the form contained in Annexure "H" to this Schedule, by mailing it to (Postal Address), delivering it by hand to (Physical Address), by filing it electronically at (Website) or by e-mailing it to (e-mail address).

(2) A person filing a notice with the Registrar as contemplated in subregulation (1) must pay an application fee of R 50.00 (Fifty Rand).

(3) Payment of the application fee contemplated in subregulation (2) may be effected by payment in cash at (Physical Address), by electronic funds transfer or payment into the account of the Registrar at Bank with branch code and account number .

(4) The Registrar may not accept a notice contemplated in subregulation (1) unless the notice is accompanied by an original receipt for the payment of the application fee.

(5) The Registrar may in his or her sole discretion require additional proof of payment of the application fee before accepting a notice contemplated in subregulation (1).

40. Notice to cancel registration.-(1) For purposes of section 80 (4) (*a*) of the Act, the Registrar may give notice to the person concerned in the form contained in Annexure "I" to this Schedule, together with any documents he or she wishes to attach.

(2) For purposes of section 80 (4) (*b*) of the Act, the Registrar may cancel the registration of a business name in accordance with the provisions of section 80 (4) (*b*) in the form contained in Annexure "J".

(3) The person to whom the business name is registered must within 30 days of receipt of the notice contemplated in subregulation (1) by registered mail or by hand submit his or her reply at the address stated in that notice.

41. Official languages to be used by Commission in documents.-For purposes of section 92 (4) of the Act, the official languages to be used by the Commission in any documents it is required to deliver in terms of this Act are English and isiZulu.

42. Compliance notice.-For purposes of section 100 (1) of the Act, the Commission may issue a compliance notice in the form contained in Annexure "L".

43. Confidential information.-(1) Confidential information includes any information containing or consisting of-

(*a*) trade secrets;

(*b*) financial, commercial, scientific or technical information, if disclosure of the information is likely to cause harm to the commercial or financial interests of a person; or

(*c*) information supplied in confidence by a person, if the disclosure of the information could reasonably be expected to-

(i) put that person at a disadvantage in contractual or other negotiations; or

(ii) prejudice that person in commercial competition.

(2) Any alleged confidential information forming part of an application, response or other written submission to the Tribunal must be contained in a separate annexure and clearly marked 'confidential'.

(3) Subject to an eventual finding that information is not confidential, information marked as confidential may be excluded from documents required to be served on parties.

(4) When submitting any information claimed to be confidential, such person must simultaneously submit the form in Annexure "M" to this Schedule which will include a written statement setting out the grounds for the claim of confidentiality.

(5) Within ten business days of submission of the Form in Annexure "M", the Commission, Tribunal, inspector or investigator must notify such person as to whether or not the Commission, Tribunal, inspector or investigator will treat the information submitted as confidential.

(6) If the Commission, Tribunal, inspector or investigator has notified such a person that the information will not be treated as confidential, it, he or she may not make the information available to any other party at a time earlier than five days after having notified such person in terms of subregulation (5).

44. List of contract terms which are presumed not to be fair and reasonable.-(1) For purposes of section 120 (*d*) of the Act, a term of a consumer agreement between a supplier operating on a for-profit basis and acting wholly or mainly for purposes related to his or her business or profession and an individual consumer or individual consumers who entered into it for purposes wholly or mainly unrelated to his or her business or profession is presumed to be unfair if it-

(*a*) has the purpose or effect of a term listed in subregulation (3), and

(*b*) does not fall within the ambit of subregulation (4).

(2) (*a*) The list in subregulation (3) is indicative only, so that a term listed therein may be fair in view of the particular circumstances of the case.

(*b*) the list in subregulation (3) is non-exhaustive, so that other terms may also be unfair for purposes of section 48 of the Act.

(*c*) a term which falls within the ambit of subregulation (4) remains subject to sections 48 to 52 of the Act.

(*d*) this regulation does not derogate from provisions in the Act or other law in terms of or in respect of which a term of an agreement is prohibited.

(3) A term of a consumer agreement subject to the provisions of subregulation (1) is presumed to be unfair if

it has the purpose or effect of-

(*a*) excluding or limiting the liability of the supplier for death or personal injury caused to the consumer through an act or omission of that supplier subject to section 61 (1) of the Act;

(*b*) excluding or restricting the legal rights or remedies of the consumer against the supplier or another party in the event of total or partial breach by the supplier of any of the obligations provided for in the agreement, including the right of the consumer to set off a debt owed to the supplier against any claim which the consumer may have against the supplier;

(*c*) limiting the supplier's obligation to respect commitments undertaken by his or her agents or making his or her commitments subject to compliance with a particular condition which depends exclusively on the supplier;

(*d*) limiting, or having the effect of limiting, the supplier's vicarious liability for its agents;

(*e*) forcing the consumer to indemnify the supplier against liability incurred by it to third parties;

(*f*) excluding or restricting the consumer's right to rely on the statutory defence of prescription;

(*g*) modifying the normal rules regarding the distribution of risk to the detriment of the consumer;

(*h*) allowing the supplier to increase the price agreed with the consumer when the agreement was concluded without giving the consumer the right to terminate the agreement;

(*i*) enabling the supplier to unilaterally alter the terms of the agreement including the characteristics of the product or service;

(*j*) giving the supplier the right to determine whether the goods or services supplied are in conformity with the agreement or giving the supplier the exclusive right to interpret any term of the agreement;

(*k*) allowing the supplier to terminate the agreement at will where the same right is not granted to the consumer;

(*l*) enabling the supplier to terminate an open-ended agreement without reasonable notice except where the consumer has committed a material breach of contract;

(*m*) obliging the consumer to fulfil all his or her obligations where the supplier has failed to fulfil all his or her obligations;

(*n*) permitting the supplier, but not the consumer, to avoid or limit performance of the agreement;

(*o*) permitting the supplier, but not the consumer, to renew or not renew the agreement;

(*p*) allowing the supplier an unreasonably long time to perform;

(*q*) allowing the supplier to retain a payment by the consumer where the latter fails to conclude or perform the agreement, without giving the consumer the right to be compensated in the same amount if the supplier fails to conclude or perform the agreement (without depriving the consumer of the right to claim damages as an alternative);

(*r*) requiring any consumer who fails to fulfil his or her obligation to pay damages which significantly exceed the harm suffered by the supplier;

(*s*) permitting the supplier, upon termination of the agreement by either party, to demand unreasonably high remuneration for the use of a thing or right, or for performance made, or to demand unreasonably high reimbursement of expenditure;

(*t*) giving the supplier the possibility of transferring his or her obligations under the agreement to the detriment of the consumer, without the consumer's agreement;

(*u*) restricting the consumer's right to re-sell the goods by limiting the transferability of any commercial guarantee provided by the supplier;

(*v*) providing that the consumer must be deemed to have made or not made a statement or acknowledgment to his or her detriment, unless-

(i) a suitable period of time is granted to him or her for the making of an express declaration in respect thereof; and

(ii) at the commencement of the period the supplier draws the attention of the consumer to the meaning that will be attached to his or her conduct;

(*w*) providing that a statement made by the supplier which is of particular interest to the consumer is deemed to have reached the consumer, unless such statement has been sent by prepaid registered post to the chosen address of the consumer;

(*x*) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, including by requiring the consumer to take disputes exclusively to arbitration not covered by the Act or other legislation;

(*y*) restricting the evidence available to the consumer or imposing on him or her a burden of proof which, according to the applicable law, should lie with the supplier;

(*z*) imposing a limitation period that is shorter than otherwise applicable under the common law or legislation for legal steps to be taken by the consumer (including for the making of a written demand and the institution of legal proceedings);

(*aa*) entitling the supplier to claim legal or other costs on a higher scale than usual, where there is not also a term entitling the consumer to claim such costs on the same scale;

(*bb*) providing that a law other than that of the Republic applies to a consumer agreement concluded and implemented in the Republic, where the consumer was residing in the Republic at the time when the agreement was concluded.

(4) (*a*) Paragraph (*k*) of subregulation (3) does not apply to a term in terms of which a supplier of financial services reserves the right to unilaterally terminate an open-ended agreement without notice, but the supplier is required to immediately inform the consumer thereof.

(*b*) Paragraph (*h*) of subregulation (3) does not apply to-

(i) a transaction in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;

(ii) an agreement for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;

(iii) a price-indexation clause, where lawful, but the method by which prices, vary must be explicitly described.

(*c*) Paragraph (*i*) of subregulation (3) does not apply to-

(i) a term under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, but-

(*aa*) the supplier must immediately inform the consumer thereof; and

(*bb*) the consumer is free to dissolve the agreement at the earliest opportunity;

(ii) a transaction in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;

(iii) an agreement for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;

(iv) a term under which the supplier reserves the right to unilaterally alter the conditions of an open-ended agreement, but-

(*aa*) the supplier must forthwith inform the consumer thereof; and

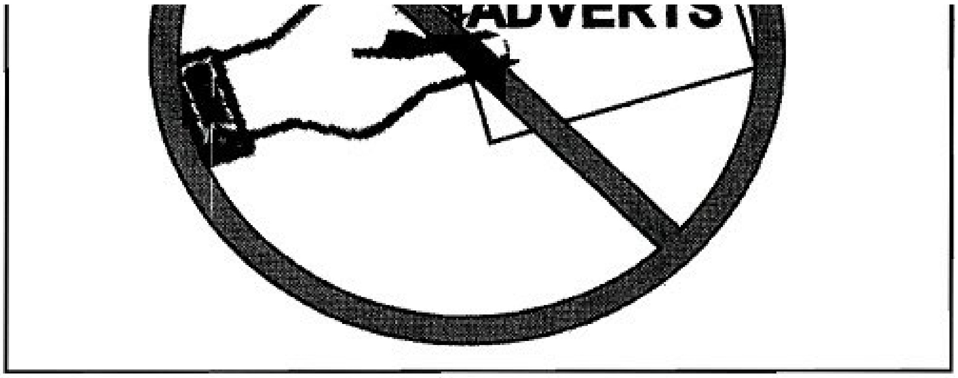
(*bb*) the consumer is free to dissolve the agreement immediately;

(*d*) Paragraphs (*r*) and (*s*) of subregulation (3) do not apply to any penalty, fee or compensation which the supplier is entitled to charge under the provisions of this Act or any other law.

ANNEXURES

Annexure A

Regulation 4 **(**2**)**



Annexure B

Section 14 **(**4**)** **(***c***)**

<u>**Notice of expiry date: fixed term agreement**</u>

Section 14 (2) (*c*) of the Consumer Protection Act 68 of 2008

I, the supplier in a fixed term agreement with ....
.... (name of consumer)
in respect of an agreement to provide ....
.............................(description of services),
entered into on .... (day) .... (month) 20 ....

hereby **give notice** to the said consumer that-

. the expiry date of that agreement is the ...... day of .... (month) 20....., and

. that the changes that would apply <u>**if**</u> the agreement were to be renewed or might otherwise continue beyond the expiry date are attached to this notice marked Annexure "A", and

. on the expiry of the fixed term of the agreement, it will be automatically continued on a month-to-month basis, subject to any material changes of which the supplier has given notice in Annexure "A",

UNLESS the consumer <u>**expressly**</u>-

(i) directs the supplier to **terminate** the agreement on the expiry date; or

(ii) agrees to a renewal of the agreement for a further fixed term.

<u>**Note to consumer**</u>**:** Despite any provision of the agreement to the contrary or whatever anyone, including the supplier, may say to you, you have the **right,** should you wish to do so, to **cancel** the agreement upon the expiry of its fixed term, **without penalty or charge,** <u>**but**</u> subject to-

. your remaining liable to the supplier for any amounts owed to the supplier in terms of the agreement up to the date of cancellation, **if any**; and

. the supplier having the right to impose a **reasonable** cancellation penalty with respect to any goods supplied, services provided, or discounts granted, to the consumer in contemplation of the agreement enduring for its intended fixed term, **if any**; and

. the supplier having the duty to credit you with any amount that remains your property as of the date of cancellation.

Signed this ...... day of .... (month) 20.......

....

For the Supplier, who warrants that he or she is authorised to do so

Name: ....

Contact details: ....

....

Annexure C

Section 16

Rescission of agreement

(*Section 16 of the Consumer Protection Act 68 of 2008*)

(To be completed in duplicate, with the one copy signed retained by the consumer and one by the supplier.)

(This does not apply if a consumer is entitled to cancel without reason and without penalty any transaction and any related credit agreement for the supply of goods within seven days after the date of the receipt of the goods or of services within seven days after the date of the conclusion of the agreement, in terms of section 44 of the Electronic Communications and Transactions Act 25 of 2002.)

I, ... (name of consumer) hereby may rescind

the transaction resulting from any direct marketing conducted by or on behalf of ....

.... (name of supplier),

for the provision of ....

....

Note to consumer: This notice must be submitted to the supplier **within five business days** after the date on which the transaction or agreement was concluded or the goods that were the subject of the transaction were delivered to the consumer, **whichever is the later date.**

Note to supplier: A supplier must without condition or reservation return any payment received from the consumer in terms of the transaction **within 15 business days** after-

. receiving notice of the rescission, if no goods had been delivered to the consumer in terms of the transaction; or

. receiving from the consumer any goods supplied in terms of the transaction.

The supplier may under no circumstances attempt to collect any payment in terms of a rescinded transaction, except as permitted in terms of section 20 (6) of the Consumer Protection Act, 2008.

Signed this ...... day of .... (month) 20.....

....

Consumer

Note to consumer: This notice may be delivered to the supplier by hand, by fax, by email or by ordinary mail to the supplier, bearing in mind the period within which it must be delivered. If the supplier refuses to accept or to acknowledge receipt of this notice, record the details of your attempt to submit the notice to the supplier and retain this document. In such an event, contact the Consumer Commission or other responsible body or person to assist you in this matter. If the supplier confirms receipt of this notice, keep one copy of this notice and let the supplier retain the other.

Acknowledgement of receipt of notice by supplier:

Signed this ..... day of .... (month) 20.....

....

(who hereby warrants that he or she is authorised to do so on behalf of the supplier)

Name of person signing: ....

Contact details: ....

....
....

Annexure D

Regulation 6 (1)

1. Textiles as listed in Chapter 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 63 of the Harmonized Customs Tariff.
2. Clothing as listed in Chapter 61, 62 and 65 of the Harmonized Customs Tariff.
3. Shoes and leather goods as listed in Chapter 42, 43 and 64 of the Harmonized Customs Tariff.

Annexure E

Regulation 35

National Consumer Commission	
Form - Complaint - section 71 (1)	
Full names of complainant	
ID/Registration number of complainant	
Postal Address	
Physical Address	
Cell phone number	
Landline number	
Fax number	
E-mail address	
When is the best time to contact you, should this be necessary?	
Has the complainant previously filed a complaint with the NCC?	
If so, please provide the reference number	
Nature of complaint	
Provision of Consumer Protection Act or regulations promulgated under it or Code contravened (if known)	
Name of company or person against whom complaint is made	
Address of company or person against whom complaint is made	
Short description of complaint	
Details of steps taken to resolve the complaint	

List of documents relevant to complaint attached to this form	
What outcome do you propose for this complaint?	
Date	
Place	
Signature	
Office use only	
Reference number	

Annexure F

Regulation 36

National Consumer Commission	
Form - section 72 (1) (*a*) **Notice of non-referral**	
Reference Number	
Date	
Name of complainant	
ID/Registration Number	
Postal Address	
Fax number	
E-mail address	

Dear ....

Complaint: ....

Date: ....

I regret to inform you that the Commission will not refer your complaint, as the complaint-

	appears to be frivolous or vexatious.
	does not allege any facts which, if true, would constitute grounds for a remedy under the Consumer Protection Act, 2008.
	is prevented, in terms of section 116 of the Consumer Protection Act, 2008, from being referred to the National Consumer Tribunal, because more than three years have passed since- (*a*) the act or omission that is the cause of the complaint; or (*b*) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.

Yours faithfully

Commissioner/Deputy Commissioner

Annexure G

Regulation 37

National Consumer Commission	
Form - section 73 (1) (*a*) **Notice of non-referral**	
Reference Number	
Date	
Name of complainant	
ID/Registration Number	
Postal Address	
Fax number	
E-mail address	

Dear ....

Complaint: ....

Date: ....

I regret to inform you that the Commission will not refer your complaint.

Yours faithfully

Commissioner/Deputy Commissioner

Annexure H

Regulation 39

Registrar of Companies	
Form: section 80 (1) CPA	
Full names of applicant	
ID or registration number of applicant	
Postal Address	
Physical Address	
Cell phone number	
Landline number	
Fax number	
E-mail address	
When is the best time to contact you, should this be necessary?	
Purpose of application (mark with X)	
	To register any number of business names being used, or to be used, by that person in carrying on the person's business.
	To register the same business name translated into any number of official languages of the Republic.
	To change a registered business name.
	To transfer a registered business name to another person.
Registration number of business	

Details of envisaged business name (if applicable)	
Details of translations of business name (if applicable)	
Details of change of business name (if applicable)	
Details of transfer of business name to another person (if applicable)	
Name of transferee	
ID or registration number of transferee	
Postal Address	
Physical Address	
Cell phone number	
Landline number	
Fax number	
E-mail address	
Type of business	
Date of transfer	
Date	
Place	
Signature	
Signature of transferee (if applicable)	
Office use only	
Registration effected	
Date	

Annexure I

Regulation 40 (1)

Registrar of Companies	
Form - section 80 (4) *(a)* CPA **Notice to show cause why registration of business name should not be cancelled**	
Reference Number	
Date	
Name of person to whom the business name is registered	
Postal Address	

Fax number	
E-mail address	

Dear ....

Notice to show cause why registration of business name should not be cancelled:

....

Date: ....

I believe that you have not been carrying on business under the above-mentioned name for a period of at least six months.

I therefore in terms of section 80 (4) (*a*) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) call on you to show cause, within 30 days of receipt of this notice, why your registration should not be cancelled, failing which your registration will be cancelled and you will be prohibited from carrying on business under the above-mentioned name. The address where you may submit your response are in the case of submission by hand, at ....

....

....

or in the case of submission by registered mail, at ....

....

....

Yours faithfully

Registrar

Annexure J

Regulation 40 (2)

Registrar of Companies	
Form - section 80 (4) (*b*) CPA **Cancellation of registration of business name**	
Reference Number	
Date	
Name of person to whom the business name is registered	
Postal Address	
Fax number	
E-mail address	
Dear	

Cancellation of registration of business name:

....

Date: ....

You were given a notice in terms of section 80 (4) (*a*) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) to show cause, within 30 days of receipt of that notice as to why your registration should not be cancelled. You have failed to respond within the time period permitted and accordingly, the registration of the above-mentioned business name is hereby cancelled and you will be prohibited from carrying on business under such name.

Yours faithfully

Registrar

Annexure K

Section 88

Inspector Certificate

Section 88 (1) (*b*) of the Consumer Protection Act 68 of 2008

I, ... Commissioner/Deputy
Commissioner of the National Consumer Commission, hereby certify that ....
....
has been appointed as an inspector in terms of the Consumer Protection Act 68 of 2008.

Given under my hand this .... day of .... 20....

Commissioner/Deputy Commissioner

Annexure L

Regulation 42

National Consumer Commission	
Form - Section 100 (1) of the Consumer Protection Act, 2008 (Act No. 68 of 2008)	
Compliance Notice	
Name of person or entity to whom notice applies	
Address	
Reference number	
Date	
Provision of Act not complied with	
The details of the nature and extent of the non-compliance are as follows:	

Details of any steps that are required to be taken and the period within which those steps must be taken:
Penalty that may be imposed in terms of this Act if those steps are not taken:
Enquiries may be made to:

Name	
Contact details	
Hours of business	
Address to which objections to this notice may be submitted in the prescribed form	
For office use only	
Details of response	
Recommendation	
Signed	
Date:	

Annexure M

Regulation 43

National Consumer Commission
Form - Section 106 (1) of the Consumer Protection Act, 2008 (**Act No. 68 of 2008**)
Confidentiality Claim
TO: The National Consumer Commission, the National Consumer Tribunal, an inspector or investigator appointed in terms of the Consumer Protection Act.

Name of person claiming confidentiality	
Address	
Reference number	

Date	
On a separate sheet of paper, list the following information, and explain why the information is confidential. Column 1 - name of the document that contains the confidential information Column 2 - the page and line number at which the confidential information begins and ends Column 3 - the name of the person that owns the particular information Column 4 - the nature of the economic value, if any, of the information Column 5 - the existing restrictions, if any, on access to the information	
Statement of Confidentiality: I .... compiled, or supervised the persons who compiled, the attached list. I believe that the information identified in that list is confidential information. Name and Title of Person authorised to sign: .... Authorised signature .... Date	

NOTICES

NOTICE

PROHIBITED TIME FOR CONTACTING CONSUMERS

1. For purposes of section 12 (2) of the Act, the following are days, dates, public holidays or times of days when a supplier may not engage in any direct marketing directed to a consumer at home-

(*a*) Sundays or public holidays contemplated in the Public Holidays Act, 1994 (Act No. 36 of 1994);

(*b*) Saturdays before 09h00 and after 13h00; and

(*c*) all other days between the hours of 20h00 and 08h00 the following day,

except to the extent that the consumer has expressly or implicitly requested or agreed otherwise.

2. Direct marketing may not be timed to be delivered to the consumer during the prohibited times referred to in item 1 above unless expressly, in writing, agreed to by the consumer.

3. A direct marketer is not in breach of item 1 if it has sent out the direct marketing within the period provided for in item 1, even if the consumer received the direct marketing outside of the aforementioned period, but the onus to prove that the direct marketing was dispatched during the allowed period rests fully on the direct marketer.

NOTICE

THRESHOLD FOR PRE-AUTHORISATION OF REPAIR OR MAINTENANCE SERVICES

1. For purposes of section 15 (1) (*a*) and (5) of the Act, the threshold for pre-authorisation of repair or maintenance services generally is R 1.00 (One Rand) excluding value-added tax, unless differently provided for by regulation or industry code contemplated in section 82 of the Act.

2. An estimate must specify-

(*a*) a breakdown and the total of the amount to be charged if the repair or maintenance is effected;

(*b*) the nature and extent of the repair or maintenance;

(*c*) the period of validity of the quote; and

(*d*) the period within which the consumer must collect the goods and the consequence if he or she or it does not do so.

NOTICE

EXEMPTION FOR CERTAIN CATEGORIES OF GOODS OR SERVICES, OR CIRCUMSTANCES OF TRADE FROM PROVIDING SALES RECORD

1. In this notice, "hawker" means a natural person lawfully engaged, solely for his or her own benefit, in the selling of goods on the street or in public places or spaces in respect of which all members of the public enjoy unrestricted and unconditional access subject only to law.

2. For purposes of section 26 (4) of the Act, any person trading as a hawker is hereby exempted from the application of subsections (2) and (3) of section 26 of the Act.

3. Without detracting from any other law, a supplier is exempted from the application of subsections (2) and (3) of section 26 of the Act where the consumer expressly does not require a sales record.

NOTICES

GN 917 of 23 September 2010: Notice to defer the general effective date of the Act (*Government Gazette* No. 33581)

DEPARTMENT OF TRADE AND INDUSTRY

In terms of item 2 (3) (*b*) (*a*) of the Consumer Protection Act, 2008 (No. 68 of 2008) ("the Act"), the Minister of Trade and Industry may, by notice published in the *Gazette* at least 20 business days before the 24th of October 2010 defer the general effective date of the Act for a period of not more than six additional months, on the ground that additional time is required for adequate preparation of the administrative systems necessary to ensure the efficient and effective implementation of that provision.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the words "item 2 (3) (*b*) (*a*)" is intended to be "item 2 (3) (*b*) and (*a*)".)

I, Rob Davies, the Minister of Trade and Industry hereby defer the general effective date of the Act until 31 March 2011.

(Signed)
Issued by:
The Department of Trade and Industry
Private Bag X84
Pretoria
0001

GN 221 of 14 March 2011: Notice to defer the application of the Act to municipalities (*Government Gazette* No. 34116)

DEPARTMENT OF TRADE AND INDUSTRY

In terms of item 2 (3) (*b*) (i) of the Consumer Protection Act, 2008 (No. 68 of 2008) ("the Act"), the Minister of Trade and Industry on request from the Minister responsible for local government matters may defer the application of the Act to any particular municipality other than a high capacity municipality as defined in terms of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) until further notice.

The Minister for Co-operative Governance has requested the Minister of Trade and Industry to defer the application of the Consumer Protection Act to all municipalities.

Notice is hereby given that the Minister of Trade and Industry hereby defers the application of the Act to all municipalities other than high capacity municipalities as defined in terms of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) until further notice.

Issued by:

The Department of Trade and Industry

Private Bag X84

Pretoria

0001

GN 294 of 1 April 2011: Determination of threshold in terms of the Act (*Government Gazette* No. 34181)

DEPARTMENT OF TRADE AND INDUSTRY

In terms of section 6 (1) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) ("the Act"), the Minister of the Department of Trade and Industry, by notice in the *Gazette*, must determine a monetary threshold applicable to the size of the juristic person for the purposes of the section 5 (2) (*b*). In terms of section 5 (2) (*b*) thereof, the Act does not apply to any transaction in terms of which the consumer is a juristic person whose asset value or annual turnover, at the time of the transaction equals or exceeds the threshold value determined by the Minister in terms of section 6.

I, Dr Rob Davies, Minister of Trade and Industry, do hereby determine in terms of section 6 (1) of the Consumer Protection Act, 2008 (Act 68 of 2008) that the monetary threshold applicable to the size of the juristic person in terms of section 5 (2) (*b*) is R2 000 000.00 (Two Million Rands). The aforementioned monetary threshold must be calculated in accordance with the attached schedule.

(Signed)
Dr. Rob Davies, MP
Minister of Trade and Industry
The Department of Trade and Industry
Private Bag X84
Pretoria

SCHEDULE

THRESHOLD DETERMINATION - METHOD OF CALCULATION

1. Financial Reporting Standards Applicable.-For the purposes of section 6 of the Act, the assets, and the turnover, of a juristic person contemplated in item 2 (1) of this notice, must be calculated in accordance with South African generally accepted accounting standards subject only to items 2, 3 and 4 of this notice.

2. Valuation of Assets.-(1) For the purpose of section 6 of the Act, the asset value of a juristic person at any time is based on the gross value of the juristic person's assets, subject to the provisions of sub-items (2).

(2) In particular-

(*a*) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;

(*b*) the assets are to include all assets on the balance sheets of the juristic person, including any goodwill or intangible assets included in their balance sheets;

(*c*) no deduction may be taken for liabilities or encumbrances of the juristic person; and

(*d*) "assets in the Republic" includes all assets arising from activities in the Republic.

3. Calculation of annual turnover.-(1) For the purpose of section 6 of the Act, the annual turnover of a juristic person at any time is the gross revenue of that juristic person from income in, into or from the Republic, arising from the following transactions and events as recorded on the juristic person's income statement, subject to the provisions of sub-item (2)-

(*a*) the sale of goods;

(*b*) the rendering of services; and

(*c*) the use by others of the juristic persons' assets yielding interest, royalties and dividends.

(2) In particular-

(*a*) When calculating turnover the following amounts may be excluded-

(i) any amount that is properly excluded from gross revenue in accordance with South African generally accepted accounting standards;

(ii) taxes, rebates, or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;

(*b*) revenue excludes gains arising from noncurrent assets and from foreign currency transactions; and

(*c*) for banks or insurance entities, revenue includes those amounts of income required to be included in an income statement in terms of South African generally accepted accounting practices, but excluding those amounts noted in 3 (2) (*b*).

4. Form of financial statements.-Financial statements used as a basis for calculating assets or turnover of juristic persons-

(*a*) must be the juristic persons' audited financial statements, if-

(i) in terms of any law, the juristic persons is required to produce such statements; or

(ii) the juristic persons has audited statements for the relevant period; and

(*b*) otherwise, must be prepared in accordance with South African generally accepted accounting standards.

GN 532 of 27 June 2011: Notice to exempt banks from the provisions of section 14 of the Act (*Government Gazette* No. 34399)

DEPARTMENT OF TRADE AND INDUSTRY

I, Dr Rob Davies, Minister of Trade and Industry, hereby give a notice in line with section 5 (4) of the Consumer Protection Act, exempting all banks registered in terms of the Banks Act, mutual banks registered in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993) and co-operative banks registered in terms of the Co-operative Banks Act, 2007 (Act No. 40 of 2007) from the provisions of section 14 of the Consumer Protection Act.

(Signed)
Dr. Rob Davies
Minister of Trade and Industry

GN 533 of 27 June 2011: Notice to exempt the Pension Fund Industry, the Collective Investment Schemes Industry and the Security Services Industry (*Government Gazette* No. 34400)

DEPARTMENT OF TRADE AND INDUSTRY

I, Dr Rob Davies, Minister of Trade and Industry, hereby give a notice in line with section 5 (4) of the Consumer Protection Act, exempting the Collective Investment Schemes industry regulated under the Collective Investment Schemes Control Act No. 45 of 2002, the Pension Fund industry regulated under the Pension Funds Act No. 24 of 1956 and the Securities Services industry regulated under the Securities Services Act No. 34 of 2004.

Provisions of the Consumer Protection Act that will not apply to Collective Investment Schemes industry are as follows: sections 4, 8, 13, 14, 16, 17, 19, 21, 22, 23, 26, 27, 28, 29, 30, 32, 38, 39, 40, 41, 42, 48, 49, 50, 51, 52, 54, 65, 68, 69, 70, 71, 72, 73, 74, 75, 76 and Chapters 3 and 6 for a period of 18 months from the 1st of April 2011;

Provisions of the Consumer Protection Act that will not apply to Pension Funds industry are as follows: sections 4, 8, 14, 19, 21, 22, 23, 26, 29, 32, 38, 39, 40, 41, 42, 48, 49, 50, 51, 54, 64, 65, 68, 69, 70, 71, 72, 73, 74, 75, 76, 79 and Chapters 3 and 6 for a period of 18 months from the 1st of April 2011; and

Provisions of the Consumer Protection Act that will not apply to Securities Services industry are as follows: sections 4, 8, 13, 14, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 56, 58, 64, 65, 68, 69, 70, 71, 72, 73, 74, 75, 76 and Chapters 3 and 6 from the 1st of April 2011.

(Signed)
Dr. Rob Davies
Minister of Trade and Industry

GN 898 of 31 October 2011: Notice to revoke the application of the Consumer Protection Act to municipalities (*Government Gazette* No. 34724)

DEPARTMENT OF TRADE AND INDUSTRY

I, Dr Rob Davies, Minister of the Department of Trade and Industry, hereby revoke the deferment granted in March 2011 in relation to sections 1 to 7, sections 11 to 13, sections 15 to 52 and sections 62 to 122 of the Consumer Protection Act to all small and medium capacity municipalities.

I maintain deferment granted in March 2011 in relation to sections 8 to 10 and sections 53 to 61 of the Consumer Protection Act in respect of medium capacity municipalities until 31 December 2012, subject to the findings of a joint review by the Minister of Trade and Industry and Cooperative Governance and Traditional Affairs to be completed before this date.

I also maintain the deferment granted in March 2011 for low capacity municipalities in relation to sections 8 to 10 and sections 53 to 61, subject to the findings of a joint review by the Minister of Trade and Industry and Cooperative Governance and Traditional Affairs to be completed before 30 June 2014.

(Signed)
Dr Rob Davies, MP
Minister of Trade and Industry

Date: 12/10/2011

GN 492 of 25 July 2011: National Consumer Commission: Final enforcement guidelines, relating to the internal enforcement functions of the Commission in order to give effect to the Act (*Government Gazette* No. 34484)

DEPARTMENT OF TRADE AND INDUSTRY

I, Ms Mamodupi Mohlala, the Commissioner of National Consumer Commission, hereby publish final enforcement guidelines, relating to the internal enforcement functions of the Commission in order to give effect to Consumer Protection Act, 2008 (Act No. 68 of 2008).

(Signed)
Ms. M MOHLALA
COMMISSIONER: NATIONAL CONSUMER COMMISSION

NATIONAL CONSUMER COMMISSION
ENFORCEMENT GUIDELINES
Final Draft - 20/07/2011

Definitions

"The Act" means the Consumer Protection Act, 68 of 2008.

"The Commission" means the National Consumer Commission established in terms of Section 85 of the Consumer Protection Act, 68 of 2000.

"Court" means any court of law with the requisite jurisdiction established in terms of an applicable legislation, but does not include a consumer court.

"Inspector" means a person appointed in terms of Section 88 of the Consumer Protection Act, 88 of 2008 to carry out investigative functions of the Act.

"Investigator" means a person appointed in terms of Section 88 of the Consumer Protection Act, 88 of 2008 to carry investigative functions of the Act, and includes any person appointed on a contractual basis.

"Minister" means the Minister of the Department of Trade and Industry, who as a member of the Cabinet is responsible for consumer protection matters.

"Tribunal" means the National Consumer Tribunal established in terms of Section 26 of the National Credit Act, 34 of 2005.

Abbreviations

ADR	**Alternative Dispute Resolution**
CC	**Contact Centre**
CHU	**Complaints Handling Unit**
CPA	**Consumer Protection Act**
EXCO	**Executive Committee**
NCC	**National Consumer Commission**
NCT	**National Consumer Tribunal**
NGO	**Non-Governmental Organisation**
NPA	**National Prosecuting Authority**
PFMA	**Public Finance Management Act**

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PART A

INTRODUCTION

These Guidelines have been developed with the aim of providing an operating framework by which the National Consumer Commission may carry out its mandate in terms of the Consumer Protection Act, 68 of 2008. The Guidelines cover a wide range of issues, from how the NCC will enforce the Act, up to how various essential processes and procedures will be carried out.

1. Functions of the NCC

The National Consumer Commission (NCC) is a juristic body established in terms of the Consumer Protection Act. It is headed by a Commissioner who is appointed by the Minister of Trade and Industry. It is obliged to carry out the functions and exercise the powers assigned to it by the CPA.

In carrying out its functions, the NCC may-

- **Take into consideration** international developments in the field of consumer protection;
- **Consult** any person, organisation or institution with regard to any matter relating to consumer protection;
- **Develop** and promote the voluntary use of Codes of Practice with regard to the following-
  - Use of plain language in documents;
  - Standardised or uniform means of presenting and communicating the right to disclosure of information;
  - Alternative dispute resolution[1];
- **Identify** national or provincial legislation, or regulations that affect the welfare of consumers, in relation to laws that govern matters affecting consumers; and consistent with the purposes of the CPA develop proposals with the purpose of reforming current legislation;
- **Consult** with provincial consumer protection authorities; organs of state, consumer protection groups, alternative dispute resolution agents and suppliers;
- **Promote** consumer protection within organs of state[2], in order to better achieve the purposes of the CPA in relation to goods and services supplied to consumers;
- **Consult** with relevant provincial consumer protection authorities, organs of state within the national sphere of government, regulatory authorities, consumer protection groups, and ombudsman with respect to the delivery of

any such goods or services, with the object of-

- identifying any practice that is inconsistent with the purposes and policies of the CPA;
- developing proposals for reform of any such practices; and
- reporting from time to time to the Minister with recommendations for achieving the progressive transformation and reform of practices contemplated in this section.

1.1 Functions of the Commissioner

The Commissioner is responsible for all matters pertaining to the proper functioning of the NCC and is also the accounting authority for the NCC. As such, the Commissioner is responsible for the following-

- all income and expenditure of the NCC;
- all revenue collected by the NCC;
- all assets, and the discharge of all liabilities of the NCC; and
- the proper and diligent implementation of the Public Finance Management Act, 1999 (Act No. 1 of 1999), with respect to the NCC.

The Commissioner may in addition-

- assign management or other duties to employees with appropriate skills to assist the NCC in the management, or control over the functioning of the NCC; and
- delegate, any of the powers or functions of the Commissioner to any suitably qualified employee of the NCC.

1.2 How the NCC Will Enforce the CPA

In terms of Chapter 6 of the CPA the NCC will enforce the Act in the following ways-

- **promote** informal resolution of any dispute arising in terms of this Act between a consumer and a supplier, **but is not responsible** to intervene in or directly adjudicate any such dispute;
- **receive** complaints concerning alleged prohibited conduct or offences, and deal with those complaints in accordance with Part B of Chapter 3;
- **monitor** the consumer market to ensure that prohibited conduct and offences are prevented, or detected and prosecuted;
- **monitor** the effectiveness of accredited consumer groups, industry codes and alternative dispute resolution schemes, service delivery to consumers by organs of state, and any regulatory authority exercising jurisdiction over consumer matters within a particular industry or sector;
- **investigate and evaluate** alleged prohibited conduct and offences;
- **issue and enforce** compliance notices;
- **negotiate and conclude** undertakings and consent orders contemplated in section 74;
- **refer** to the Competition Commission any concerns regarding market share, anti-competitive behaviour or conduct that may be prohibited in terms of the Competition Act, 1998 (Act No. 89 of 1998);
- **refer** matters to the Tribunal, and **appear** before the Tribunal; and
- **refer** alleged offences in terms of this Act to the National Prosecuting Authority.

2. CONSUMER COMPLAINTS

This section of the document highlights the manner in which the NCC will deal with complaints received. As indicated in the Act, the NCC will be required to investigate and evaluate alleged prohibited conduct. Such conduct is spelt out in the CPA and will emanate from complaints lodged by consumers.

The investigation component is critical to the enforcement function of the NCC. Before an investigator is able to understand the investigation process that the NCC will follow in conducting investigations, they must ensure they are well conversant with all aspects of the Act.

2.1 What is a Complaint?

A complaint will comprise of an allegation that a consumer's rights in terms of the CPA have been infringed, impaired or threatened; or that prohibited conduct has occurred or is occurring. Such a complaint must be lodged in the prescribed form.

2.2 Who Can Lodge a Complaint?

In terms of the CPA, any person to whom goods or services are marketed in the ordinary course of a supplier's business; or any person who has entered into a transaction with a supplier in the ordinary course of the supplier's business, can lodge a complaint with the NCC. Consumers include franchisees and businesses that fall within the ambit of the threshold stipulated in the regulations.

The NCC itself may directly initiate a complaint or an investigation concerning any alleged prohibited conduct. It may also do so when directed by the Minister in terms of section 86 (*b*); or at the request of-

- a provincial consumer protection authority;
- another regulatory authority; or
- an accredited consumer protection group.

The following categories of people can lodge complaints with the NCC-

- persons acting on their own behalf;
- an authorised person acting on behalf of another person who cannot act in their own name;
- a person acting as a member of, or in the interest of, a group or class of affected persons;
- a person acting in the public interest (in this instance such person can only lodge the complaint with leave of the Tribunal or Court, as the case may be); and
- an association acting in the interest of its members.

A person who lodges a complaint is referred to as the **complainant**, whereas the person against whom the complaint is lodged is referred to as the **respondent**.

2.3 Against whom may a Complaint be Lodged?

A complaint may be lodged against the following classes of people-

- an individual;
- a juristic person;
- a partnership or trust;
- an organ of state;
- an entity owned or directed by an organ of state;
- a person contracted or licensed by an organ of state to offer or supply any goods or services;
- a public private partnership in the ordinary course of business;
- a club, trade union, association, society or other collective, whether corporate or unincorporated, of persons voluntarily associated and organised for a common purpose or purposes;
- a body or entity provided elsewhere in the Act.

Where the respondent's principal office is situated outside the country, the NCC still has jurisdiction, provided that the prohibited conduct was committed within the Republic of South Africa.

2.4 Types of matters that the NCC may Deal With-

In terms of the CPA[3], the NCC will have jurisdiction over the following matters-

- Every transaction occurring within the Republic unless exempted;
- The promotion or supply[4] of any goods or services within the Republic unless those goods or services have been exempted;
- Goods or services supplied in terms of a transaction irrespective whether these are offered or supplied in conjunction with any other goods or services or separate from any goods or services. (e.g.: X supplies a copier and X also agrees to service the copier or X subcontracts the servicing);
- If goods are supplied in terms of an exempt transaction as provided for in section 5 (5) of the Act, the importer, producer, distributor and retailer of those goods respectively are still subject to sections 60 and 61. These sections relate to safety monitoring and liability for damage caused by goods;
- Goods or services that are subject to the National Credit Act. "whilst the NCC has no jurisdiction over the credit agreement itself it would still have deal with contraventions arising from the goods or services that are the subject of the credit agreement";
- **Franchise transactions irrespective of the value of the transaction in so far as the following**[5]-
  - the solicitation of offers to enter a franchise agreement;
  - an offer by potential franchisor to enter into franchise agreement with potential franchisee;
  - a franchise agreement or supplementary agreement to a franchise agreement;
  - the supply of any goods or services to a franchisee in terms of a franchise agreement.

The application of this Act extends to all matters irrespective of whether the supplier-

- resides or has their principal office in or outside the Republic;
- operates on a for-profit basis or otherwise;
- is an individual; juristic person; partnership; trust; organ of state; an entity owned/directed by the State; a person contracted or licensed by an organ of State to offer or supply any goods or services;
- is a public-private partnership; or is required or licensed in terms of law to avail the goods and services to the public.

2.5 Types of matters that the NCC may not Deal With

The NCC cannot deal with transactions that are as follows-

(1)	Involving the promotion or supply of any goods or services outside the Republic.
(2)	Which are exempt.
(3)	Which relate to exempt goods or services.
(4)	Relating to goods and services promoted or supplied to the State.
(5)	Where the consumer is a juristic person whose asset value or annual turnover, at the time of the transaction, equals or exceeds the threshold value of 2 Million Rand.
(6)	A credit agreement in terms of the National Credit Act.
(7)	Services that are supplied in terms of an employment contract.
(8)	Give effect to a collective bargaining or collective agreement in terms of the Labour Relations Act.

2.6 The Enforcement of Consumer Rights

The process(es) below may be followed in the enforcement of a consumer's right-

In order to enforce any right in terms of the CPA[6], a transaction or agreement or if a consumer wishes to resolve any dispute with a supplier, the consumer may-

- refer the matter directly to the Tribunal, if such a direct referral is permitted by the Act in the case of the particular dispute;
- refer the matter to the applicable Ombud with jurisdiction, if the supplier is subject to the jurisdiction of any such Ombud;
- if the matter is not in the jurisdiction of an Ombud then it may be referred to an accredited[7] industry Ombud provided the supplier is subject to the jurisdiction of that Ombud;
- apply to the consumer court of the province with jurisdiction over the matter;
- refer the matter to another alternative dispute resolution agent[8];
- file a complaint with the NCC in accordance with CPA[9];
- approach a court with jurisdiction over the matter, if all other remedies available to that person in terms of national legislation have been exhausted. (Of last resort).

2.7 What can the NCC do when a Complaint is received in Terms of the Consumer Protection Act?

When a complaint is received or initiated, the NCC may deal with it in any one of the following ways-

2.7.1 Notice of Non-Referral

A notice of non-referral[10] may be issued by the NCC to the complainant. The notice must be in the **prescribed form**. (See Regulations)

A non-referral notice will be issued where the complaint-

(i) appears to be frivolous or vexatious;

(ii) does not allege any facts which, if true, would constitute grounds for a remedy under this Act; or

(iii) is made more than three years after-

(*a*) the act or omission that is the cause of the complaint; or

(*b*) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased;

(iv) is against any person that is, or has been, a respondent in proceedings under another section of this Act relating substantially to the same conduct.

If the Commission issues a notice of non-referral in response to a complaint, the complainant may refer the matter directly to the Consumer Court or the Tribunal.

2.7.2 Referral

The following are the actions the NCC may take in instances of referral-

The NCC may refer the complaint to-

(i) an alternative dispute resolution agent;
(ii) a provincial consumer protection authority;
(iii) a provincial consumer court,

for the purposes of assisting the parties who would be attempting to resolve the dispute in terms of Section 70 (ADR), unless the parties have previously and unsuccessfully attempted to resolve the dispute in that manner.

The complaint may be referred to another regulatory authority with jurisdiction over the matter for investigation.

Footnotes

1. In terms of section 70.
2. Section 95 of CPA.
3. Section 5.
4. Section 5 (1) (*b*) (i) makes reference to "supplier", it is submitted that it should have read "supply".
5. Section 5 (7).
6. Section 69.
7. In terms of section 82 (6).
8 Section 70.
9. Section 71.
10. Section 72.

PART B

COMPLAINTS HANDLING AND INVESTIGATIONS BY THE NCC

1. COMPLAINTS HANDLING BY THE COMMISSION

The Alternate Dispute Resolution (ADR) and Investigation processes to be adopted by the NCC are hereinafter discussed in detail.

1.1 Receipt of Complaints

. Complaints are received from consumers, consumer NGOs and/or any person or entity acting on behalf of consumers. These complaints will be received by the **NCC Contact Centre** and would be escalated to the **Complaints Handling Unit (CHU) of** the **NCC.**	**Complaints** **NCC Contact Centre** **Complaints Handling Unit (CHU)**

1.2 Assessment and Allocation

. Upon receipt and escalation of the file, the Manager will implement a process of **Assessment and Allocation**. There are **four (4) key steps in the resolution of complaints namely**- . **Assessment & Allocation**; . **Notices of Non-referral**; . **Referral**; . **Negotiation/Conciliation**.	**Receipt and Escalation** **Assessment and Allocation** **Negotiation** **Resolution**

1.2.1 Assessment & Allocation Phase

Upon receipt of the escalated complaints from the **Contact Centre**, the Manager	**Assessment For Validity, Problem-type and Jurisdiction by CHU**

Complaints Handling Unit will assess- . **validity** and **problem-type** and allocate the file to officials for **negotiation** and **conciliation**. . The Manager will **allocate** the complaint to the appropriate official upon receipt. (***a***) **Assessment** . The Manager in complaints will asses information in the file; . In order to confirm jurisdiction; . Make an initial recommendation. (***b***) **Allocation** Record allocation on the **Allocation Database** (including - Date of allocation, name of official)	**Allocate File to Officials For Negotiation and Conciliation** **Allocation** **Allocation Database**

Investigating the Complaint

As a rule, the NCC may **direct** an Investigator to investigate the complaint as quickly as practicable. At any time during an investigation, the NCC may designate one or more persons to assist the Investigator conducting the investigation.

It may not be possible for the NCC to investigate every matter depending on whether such matters follow the investigation criteria set by the NCC.

1.2.2 Notices of Non-Referral

- **Notices of Non-Referral will be issued in consultation with management in the CHU**. The reasons for issuing the notice must be objective and all other alternatives must be ruled out before the notice is issued.
- **Managers in the unit will moderate information** contained in all notices before they are issued.
- **Draft letters will be referred to the Commissioner's office for approval and signature**.

1.2.3 Referral

- The unit will establish **Referral Protocols** with Provinces, Regulators, Ombud-schemes and ADR Agents. Referrals will be to such entities in accordance with the referral protocols.
- **Referrals will be in writing** and will include **all documents received** from the complainant.
- **Written confirmation of referrals will be issued in writing to the complainant**. The said written confirmation will include-
  - **The name of the institution** to which the matter has been referred,
  - Contact details of the person handling the matter.

1.2.4 Negotiation

After allocation of cases, the official dealing with the complaint will-

- **Where insufficient information has been provided**: request the complainant to furnish further information. If the information provided by the complainant is not sufficient to enable officials to determine the core of the complaint, the official must contact the complainant to request further information. The request for additional information can be done telephonically or in writing depending on the appropriate mode of correspondence stated by the complainant in the complaint form.

- **Where sufficient information has been provided**: proceed with a mediation and negotiation process.

- **Where the complaint is perceived as complex**: request the intervention of an independent expert or mediator.

1.2.5 Request For Further Information From The Complainant

- The complainant will be given a sufficient time to provide the required information.
- Should the complainant fail to provide the required information, **the official should conduct a final follow-up**.
- Should the complainant still not furnish the additional information, **the official should record the action and close the file**.

2. Analysis of Facts

When all the facts and all supporting information relating to the complaint have been obtained, the facts in dispute must be analysed in terms of the law, primarily the Act. **Analysis of the facts** may take into consideration any other national legislation, any treaty, international law, convention or protocol.

Upon analysis, the official prioritises the complaints taking into account the following factors-

- **nature of the complaint**;
- **complexity of the complaint**;
- **harm the consumer may suffer if the matter is delayed**.

3. Conciliation

The mediation methods to be employed by officials in Complaints Handling are-

- telephonic mediation;
- written mediation; and/or
- face to face conciliation.

3.1.1 Telephonic Conciliations

In this method the telephone will be used.

During **telephonic conciliations** the official must begin by introducing her/himself and must provide a brief background of the function of the Commission generally and the **Complaints Handling Unit** in particular. He/She should then request to speak to a person with the authority to make decisions. He/She must record the name, position and all relevant details in the initial conversation.

Benefits of the Telephone Conciliation Method

- **As a conciliation method, use of the telephone is quicker**, and it has low cost implications for both the consumer and the business.
- It is effective for less complex complaints and in instances where the respondent's business is co-operative.
- The official must then **furnish a summary of the complaint and the redress sought by the complainant** e.g. refund and/or repair etc.
- S/he should **provide the respondent with the opportunity to respond to the allegations**. The respondent must be allowed to suggest possible methods of resolving the complaint. In the event that the complainant is not entirely satisfied with the offer the official should also probe for other possible offers.
- **If a settlement is reached it should be confirmed in writing** and a copy of the confirmation is sent to both the consumer and the respondent/business for reference purposes.

Generation of a Consent Order

- Where appropriate, a settlement may be processed so as to generate a **Consent Order** in terms of section 74 of the Act. In the event where there is no settlement and there are reasonable grounds that a business has engaged in a prohibited practice, **the complaint may be escalated for**

the purpose of obtaining a Compliance Notice in terms of section 100 of the Act.

. The appropriate corrective action will be determined on a case by case basis but may include, *inter alia*, that the respondent sign a written undertaking to remedy the matter complained about.

. If the respondent agrees with one of the remedies suggested by the complainant, i.e. refund or repair, the official should thank the respondent and advice that a written confirmation of the offer will be sent to both the complainant and the respondent, including a Consent Order. The official should then end the call.
(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the word "advice" is intended to be "advise".)

1.6.1.1 Written Conciliation

Written conciliation is appropriate where either the consumer or the businesses are not in close proximity to the office or of each other.

(Editorial Note: Numbering as per original *Government Gazette*.)

. The official should send a letter to **the respondent** and also attach a **copy of the original complaint** (but take caution to exclude offensive statements) and request a response. . **The first written correspondence** to the respondent must include a statement to the effect that a formal conciliation process may follow, in the event that the complaint is not resolved amicably. The letter is sent to the respondent, Tele-fax or e-mail communication is encouraged because receipt is immediate. . **Should the response be an offer to settle the complaint, the official will notify the complainant in writing and attach correspondence from the respondent. If settlement is accepted it will be confirmed in writing. A copy of the confirmation is sent to both the consumer and business for reference purposes**. . In the event that the **complainant is not satisfied** with all the offers made by the respondent, the official must decide, in consultation with the managers, the reasonableness of the refusal by the complainant to accept the offer and may suggest other possible remedies. . In the event that the **respondent does not agree** with the remedy suggested or disputes the allegations, the official must advise the complainant of the deadlock and/or dispute of fact which results in the matter not being capable of resolution. . In circumstances where the **response is not forthcoming**, the official should conduct a follow-up by telephone, if more time is requested the official will provide an additional period. **The official will be required to update the file at all times on all steps taken**. **NB: Guidelines and Procedures for the Conciliation of Complaints in the National Consumer Commission marked ADR Guidelines are attached.**

3.1.3 Face to Face Conciliation

. **Conciliation conferences should be held at the Commission's offices. However, they may also be held at the respondent's offices or at a venue agreed upon by both parties**. Conciliation conferences at the respondent's place of business can be used in complex cases. During the conciliation session the official should assist the parties reach a settlement **by finding common ground**. It will be better to work from that premise rather than by attempting to establish true facts because this may lead to a dispute of fact, which cannot be adjudicated.

. The official must telephone the respondent, introduce himself/herself and provide a brief mandate of the Commission and in particular that of the Complaints Handling Unit. He/She should then request the name & position of the person on the other end of the line. Ideally officials should request to speak to the senior official of the company who would be able to take decisions. The official will then request to visit the premises of the respondent for a mediation meeting.

. On the day of the visit, the official must advise the respondent about the complaint and the redress sought by complainant, i.e. refund and/or repair etc. He/she should provide the respondent with the opportunity to respond to the allegations. The respondent must be allowed to suggest possible methods of resolving the complaint. The official should also probe for other possible offers in the event that the complainant is not entirely satisfied with the offer.

. In instances were the respondent is conducting a prohibited practice, the official must inform the respondent of the CHU's view that the business might be conducting an unfair business practice. The official must further explain the consequences of the contravention and the sanctions that can be imposed. In the event that there can be no settlement reached and there is reasonable ground to believe that a business has engaged in a prohibited practice, the complaint may be escalated for the purposes of obtaining a **Compliance Notice** in terms of Section 100.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the word "were" is intended to be "where".)

. When a settlement is reached, the official should end the mediation conference. The **Settlement Agreement** will be prepared and sent to both parties for reference purposes. The written agreement must be sent within two (2) days. Details of the respondent will be referred to the **Education and Compliance Unit** that will assist the company involved in the prohibited practice to comply.

. In the event that the parties fail to reach an agreement, the official must prepare a report on the reasons for the failure to resolve the complaint and submit it within two (2) days to the Manager. The Manager should then decide on the appropriate action to be taken which may include *inter alia*-

(1) escalation to investigation;

(2) referral to another agency; and/or

(3) a written letter to the complainant advising that the matter is incapable of resolution and that legal recourse through the courts is recommended.

3.1.4 Extraordinary Conciliation Measures

Instances when Extraordinary Conciliation Measures may be taken (Employment of Services of independent conciliators, experts, etc.) are as follows-

. Employment of services of independent conciliators in cases where questions about impartiality of the NCC may impede the success of a mediation process or complexity of the case in question.

. Employment of services of experts to assist in analysis of disputed facts in conciliation processes.

. In mass complaints, where face to face conciliation against a respondent will not be suitable since all the complainants have a similar dispute against the respondent.

. In the event that a respondent fails to co-operate with the usage of civil means of communication; summons in terms of the Act may be used to bring the respondent to an audience with the Commission.

NB: Guidelines and Procedures for the Conciliation of Complaints in the National Consumer Commission marked ADR Guidelines are attached.

4. Finalisation Phase

After a settlement has been reached, the official must confirm the settlement in writing. This applies in the case of all mediation methods used. This phase is vital for record purposes and it is also important for the parties to have documented proof of the settlement reached.

In the event that the respondent does not agree with the remedy suggested or disputes the allegations, the official may, depending on the merits, have resource to the following-

- **Refer the matter to the Investigations Unit**;
- **Refer matter to the Provincial Tribunal for adjudication**;
- **Refer matter to the NCT or issue a Compliance Notice**.

The official must then update the case file and close it.

5. Escalations to Consumer Investigations

- **If the allegations are that a prohibited practice is being conducted then the matter must be escalated to Consumer Investigations. The official must provide a brief Escalation Report. The official must then advise the complainant of the escalation and explain the process in terms of the Consumer Protection Act. In the event that there are other available remedies i.e. or legal remedies via the courts, the official must inform the complainant accordingly. In the event that a settlement is not reached and there is reasonable ground to believe that a business has engaged in a prohibited practice, the complaint may be escalated for the purposes of obtaining a Compliance Notice in terms of Section 100.**
- **This action should be followed by a written confirmation that the matter is incapable of resolution and would be escalated to the Consumer Investigations Unit and/or referred to other relevant bodies, whichever is applicable. The official must then update the case file, escalate it for investigation and close the file.**
- **In the event that a Settlement Agreement has been obtained from the respondent, a period of time may be allowed, to ensure that the respondent honours the settlement; failing which, the matter shall be escalated for the purposes of obtaining a Consent Order to be issued and confirmed by the National Consumer Tribunal.**

5.1 Procedure for Escalation

An Escalation Report should be prepared in order that a decision to escalate the matter is made. The Report should be brief and must contain details of both the complainant and the respondent. There should be a summary of the complaint and a break down be made of actions taken in attempting to resolve the matter. The reasons for concluding that the complaint is incapable of an amicable resolution should be clearly indicated.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "break down" is intended to be "breakdown".)

PART B

2. INVESTIGATIONS BY THE NCC

All matters either escalated from the **Complaints Handling Unit** or are received by the **Investigations Unit** of the NCC will be screened by the Investigations Unit.

2.1 Screening of Complaints and Screening Standards/Enquiries of the NCC

Screening meetings will be held at least once (1) per week and as often as may be necessary. The purpose of the screening meetings is to determine the following-

.	whether the enquiries indicate a *prima facie* breach of the CPA;
.	which enquiries the NCC should investigate;
.	what further action is required to enable a more informed analysis of the possible breach;
.	Evidence;
.	NCC's target areas as set out in the Enforcement Strategy;
.	NCC's enforcement criteria to be implemented.

Critical to the screening is the determination of the following, in terms of Section 4 (1) of the CPA-

- whether there is an allegation that the consumer's rights as contained in the CPA have been-
  - **infringed**;

- **impaired**;
- **threatened**; **and/or**
- **whether there is an allegation of prohibited conduct (Chapter 2 and regulations) that occurred or is occurring**.

2.2 Identifying the Source of a Complaint

Another important aspect to the screening phase is the determination of the profile of the person who has lodged the complaint. Section 4 of the CPA permits a complaint to be lodged by-

- the consumer him/herself;
- a person who has done so on behalf of the consumer (provided the consumer cannot act in his/her own name. The intention here is to dissuade consumers from seeking costly legal assistance on consumer complaints. Lawyers should be encouraged to send such complainants directly to the NCC or other relevant consumer protection authorities;
- a person acting as a member of or in the interests of a group/class of affected persons (this is important from a class action point of view which could speak to impact);
- a person acting in the public interest and if so, with leave of the tribunal or court;
- an association, and if so, whether the association is acting in the interests of its members.

2.3 The Procedure to be Followed

From a procedural perspective, Section 71 of the CPA requires that-

- The complaint to the NCC be filed in the prescribed form;
- The Regulations contain the said form and all complainants should be encouraged to follow this requirement.

3. Complaints Initiated by the NCC

It should be noted that the NCC, in terms of Section 71 of the CPA, is also permitted to initiate complaints. It can do so only in the following instances-

- if directed by the Minister of Trade and Industry;
- on its own motion;
- on the request of a Provincial Consumer Protection Authority, a Regulatory Authority or an accredited Consumer Protection Group.

3.1 Decision to Pursue or Not to Pursue

It is at the screening phase (on receipt of a complaint) that a decision has to be made whether to pursue the complaint or not. A decision may be made not to pursue the complaint even where an apparent contravention exists. This would occur with complaints that do not meet the NCC's Enforcement Criteria.

3.2 Enforcement Criteria

The Enforcement Criteria are the sets of factors or principles that the NCC uses in order to arrive at a decision as to whether to commence and continue with an investigation.

The Enforcement Criteria give an indication of what the most appropriate type or types of enforcement action should be.

The Enforcement Criteria give an indication of what the appropriate response should be in each case.

The Enforcement Criteria provide standard, objective factors against which to measure the complaints received and issues raised.

The different Provinces may also have priority areas that they would want to enforce.

Those attending the weekly screening meetings are responsible for determining the appropriate action that must be taken in each enquiry.

4. Determining the Appropriateness For Investigating a Complaint

In order to assist the NCC determine whether a complaint that has been lodged in accordance with the CPA, is indeed a matter that is appropriate for investigation by the NCC, certain **enforcement criteria**, amongst others will be considered.

Likewise, **a decision not to investigate** a complaint will be made by the NCC and will be based on several factors or criteria.

4.1 Criteria to be Considered in Investigating a Complaint

The following criteria, amongst others will be considered-

4.1.1 Jurisdiction of National Consumer Commission

In determining whether the NCC has jurisdiction it should establish whether-

- **the alleged conduct is a breach of the CPA;**
- **a consumer court exists, or for that matter, an alternate dispute resolution agent duly accredited by the NCC (NCC can co-operate or conduct a joint investigation within or between Provinces);**
- **it has been decided by the NCC, as a matter of policy/strategy, to apply a particular sanction to all conduct of the kind alleged;**
- **the alleged conduct is in breach of a NCC enforcement priority area or a current NCC strategic enforcement program;**
- **the investigation may further be part of joint compliance priorities as may be determined in consumer forums or in working together with the Competition Commission, Credit Bureaux or other similar authorities.**

4.1.2 Strategic Significance and Seriousness of the Matter

When a complaint is received it is imperative that the issue that comes to the fore must be of such weight, significance and/or importance as to warrant an investigation.

4.1.3 Determining Whether a Matter Warrants an Investigation

In determining whether a matter warrants investigation, the following factors will be considered-

- **whether intervention by the NCC will have a timely impact on market conduct;**
- **quantum of financial loss or other detriment suffered by the consumer(s). In relation to loss or detriment, consideration may be given to the number of consumers affected or an assessment of the impact of the conduct on an affected individual;**
- **the health and safety of the community or other public interest;**
- **prevalence of the alleged prohibited conduct. Whether the conduct is widespread and the application of a sanction is likely to have a deterrent effect;**
- **the conduct is systemic, deliberate and not inadvertent, a blatant or flagrant breach;**
- **the complaint is not trivial and/or a technical breach without harm.**

5. Special Circumstances Surrounding the Complaint and Quality of Evidence

In determining whether special circumstances surrounding the complaint and whether sufficient evidence exists, the following issues should be given consideration-

- any special circumstances attached to the complaint that give the complaint added significance i.e.: any disability and/or characteristic of the class of complainant that puts them in a susceptible or a high risk category, these could relate to rural, poor, young, aged consumers, in other words, vulnerable consumers;
- the matter has been referred by another consumer protection agency or consumer advocate;
- the complainant is willing to support fully proposed NCC action;
- an assessment of the credibility of the witness;
- timeousness of the complaint as compared to the time of the alleged offence and the effect of any statute of limitations;
- availability of corroborative evidence;
- availability of obvious defences;
- the likely outcome in the event of a finding of guilt, having regard to the penalty options available to the Tribunal or Court and the impact of such an outcome on the community;
- a history of complaints against the alleged offender;
- the alleged offender has been the subject of previous enforcement action by NCC;
- alleged offender is not responsive to consent orders and/or dispute resolution;

- a risk of continuing misconduct;
- legislative requirement for NCC to undertake an investigation.

Once a matter has been assessed against the aforementioned criteria, **it is prioritised as high, medium or low. The level of priority determines the appropriate enforcement outcome**. Not all criteria need to be met in order for a specific priority to be attributed. The NCC will also use its discretion in allocating priority.

5.1 How Enquiries are Resolved at Screening Meetings

Having screened the matters at the weekly screening meeting, the **Commission may, in terms of section 72 of the CPA, make any one of the following resolutions**-

(i) Issue a Notice of Non-Referral
(ii) Referral to ADR Agent Provinces
(iii) Referral to another Regulator/Agency
(iv) NCC Investigation

5.1.1 Issue a Notice of Non-Referral

If a notice of non-referral is issued to the complainant it has to be done in the prescribed form as contained in the regulations. The following are the reasons that a Notice of Non-Referral may be issued if the matter-

- **is of a frivolous nature;**
- **is of a vexatious nature;**
- **does not constitute grounds for a remedy under the CPA;**
- **is not permitted in terms of section 116 of the CPA, in that the complaint was made more than three years after - the act or omission (which is the cause of the complaint); the conduct/practice ceased;**
- **is against a respondent who already is before the Tribunal on a matter under one section of the CPA and then brought again under a different section on the same facts - in other words, a duplication of charges is not permitted.**

5.1.2 Process of Issuing a Notice of Non-Referral

If the weekly screening meeting concludes that a notice of non-referral must be issued, the enquiry is recorded in the minutes as **notice of non-referral**.

A brief letter signed by the Commissioner explaining why the matter will not be investigated further is prepared and issued to the Complainant.

5.1.3 Referral to ADR Agent and Provinces

The Commission may resolve that the matter be referred to-

- **An ADR Agent**;
- **Provincial Consumer Protection Authority**;
- **Another Regulatory Authority**;
- **Consumer Court**.

- **So that the parties could attempt to resolve the dispute in terms of Section 70 of the CPA. However, such a referral is not permitted if the attempt at resolving the matter was unsuccessful and where an ADR agent was used; or where a notice was issued by the ADR agent to the effect that the ADR agent has failed to arrive at an amicable resolution.**
- **If the weekly screening meeting concludes that it is more appropriate for the alleged conduct to be handled by an ADR agent; Provincial Consumer Protection Authority; or Consumer Court, the enquiry is recorded in the minutes as Referral to ADR agent; Provincial Consumer Protection Authority; or Consumer Court.**
- **The enquiry is referred to the relevant entity by the relevant component of the NCC who then advises the complainant to contact that entity and thereafter monitors progress.**

5.1.4 Referral to another Regulator/Agency

- **If the weekly screening meeting concludes that it is more appropriate for the alleged conduct to be handled by another enforcement or regulatory agency who has jurisdiction over the matter, the enquiry is recorded in the minutes as *<u>ADR Referral to Regulator/Agency together with the details of the party to whom the matter is referred</u>*. The enquiry is referred to the relevant entity of the NCC who then advises the complainant to contact the relevant entity and thereafter monitors progress.**
- **A referral is not merely a simple forwarding of a matter to the relevant person or entity. Any referral has to be done in accordance with the NCC's Referral Policy and Procedures. The monitoring of such referrals is crucial. Such monitoring will occur in terms of the Monitoring Policy and Procedures of the NCC.**

5.1.5 NCC Investigation

- **If the weekly screening meeting concludes that it is likely that a breach of the CPA has occurred and that the matter be investigated by the NCC, then the enquiry will be assigned to the Manager: Investigations. The Manager will be responsible for assigning the enquiry to an investigator.**

6. Complainant Disagrees with Screening Committee's decision

If the complainant does not accept a Screening Meeting decision with regard to an enquiry, then the matter is placed on the agenda for the next Screening Meeting for reconsideration. If the decision following the reconsideration is the same as the previous one, then full reasons will be provided to the complainant in a letter signed by the Commissioner.

7. Approval and Allocation of Cases

Once an investigation is assigned, the complainant is contacted telephonically to verify the complaint and for the Commission to acknowledge receipt thereof. This verbal acknowledgement is immediately followed up with a written acknowledgement of receipt.

The inspector/investigator also assesses and considers the complaint as to be discussed at a case discussion meeting. The inspector/investigator must update the case management system and ensure that it is updated at every step.

When a matter has been approved for investigation inspectors/investigators will-

- **prepare an Initial Screening Report upon receiving the complaint. The Screening Report will briefly describe the nature of the complaint, identify key issues for initial investigation, and offer a recommendation (if possible) for/against early disposition**;
- **investigate the relevant criteria as set by the NCC**;
- **prepare an Investigation Report with recommendations**;
- **table the report to the Commissioner**.

NB: If, after an investigation, a referral is not made, then there are essentially only two recommendations that an investigator/inspector can make, namely-

(1) propose a Consent Order; or

(2) propose a Compliance Notice.

8. Purpose of the Investigation

The purpose of the investigation is to determine-

(1) Whether an offence has been committed in terms of the CPA.

(2) Whether the Respondent has engaged in a prohibited conduct.

(3) The remedy to be put in place to resolve a transgression.

NB: an explanation of Prohibited Conduct is to be found in Chapter 2 of the CPA and in the Regulations.

9. Receipt of Complaint by Investigations Unit

Complaints will be dealt with, in a manner provided for in terms of Section 72 of the Act.

9.1 Case Discussion Meetings

Case discussion meetings are held once (1) a week. At these meetings the officials of the Division give input into-

- new complaints;
- progress and direction of existing investigations; and
- any other case related issues.

At these case discussion meetings-

- a change of inspectors may occur and where matters may be re-allocated;
- new complaints may be allocated;
- input that may be contained in the Report to Senior Management (Exco) on new complaints is canvassed.

It is imperative that the personnel from the Legal Unit be invited to case discussion meetings.

10. Report on Receipt of New Complaint to Exco and Progress Report

This Progress Report is provided to Exco upon receipt of a new complaint. The Report to Exco is a synthesis of three processes, namely-

.	**the Screening Report;**
.	**the input from the inspector (primarily the verification of the complaint); and**
.	**the input from the Division staff at the case discussion meeting.**

The Progress Report will contain such information as-

(1)	**the case number;**
(2)	**the names of the parties;**
(3)	**the sector/industry within which the conduct occurs;**
(4)	**a short description of the complaint;**
(5)	**the relevant sections of the Act; and**
(6)	**the name of the senior inspector.**

Confidential information will not be made available to the public except to the NCC management, experts appointed by the NCC, external conciliators and Exco. The Progress Report will be based on the report to Exco. It will contain regular updates on the status of the investigation. Reports on status involve short statements, such as example "request for information from complainant sent on a particular date." **Updates will be done by the inspectors and the full report on all cases will be compiled on a monthly basis.** This Report will contain very brief descriptions of the matter and the current status of all open investigations. The Report is restricted information and will be available on the intranet/case management system to all NCC staff for their information and for incorporation into the reports of the NCC.

10.1 Request for Input From Complainant

Once the inspector has formed a preliminary opinion as to whether he/she should recommend a non-referral, he/she writes to the complainant setting out the reasons for the non-referral. The complainant is then requested to give input within one to two weeks. The inspector takes that input into account when preparing the final report to Exco.

10.2 Evidence Gathering

Evidence will be gathered by the investigator. The evidence aspect is dealt with in Part C. It is envisaged that the NCC will often make use of summonses which it is empowered to issue in order to gather evidence. This is more fully dealt with later in this Part.

It will be the investigator's task to relate the law to the facts in each matter. Relating the law to the facts simply means that there has to be a comparison of each element of the breach with the facts as revealed throughout the investigation. Some facts will prove of one element only, while some may assist in the proof of more than one element. Some facts may not assist in the proof of any element and are therefore irrelevant material which can be ignored.

It is **helpful** to write a list of the elements of each breach and, next to that list, itemise the facts that assist in its proof. By carrying out this exercise an investigator is immediately alerted to any potential deficiencies in proving any breach. One can then identify any further investigation which must be undertaken in order to complete the proof. This is commonly known as a **'liability sheet'**.

If the facts already on file are sufficient to prove each element of a breach then establishing liability is straightforward. If not, seek additional facts required and if such additional facts have been exhausted and cannot be established, then cease with the investigation into that breach.

One would normally only choose to end a low priority investigation after having consulted with the Supervisor or Manager. However, it may still be in possible to issue a Consent Order if the evidence gathered supports this level of action.

For a routine investigation one would be able to issue a Compliance Notice or enter into an agreed

Consent Order.

It will often be found that no one fact will prove an element of a breach. Usually, the accumulation of several facts or pieces of evidence will assist in establishing or providing proof. Sometimes none of the facts will directly prove the element of the breach. However, when all the facts are put together they may constitute a strong inference leading to the conclusion that the element is proved. Such facts are known as a **preponderance of possibilities** and it is perfectly acceptable to prove an element of a breach of conduct in this way. Remember also that the inference must be sufficiently strong to prove the case. This, again, is a matter of judgment and it is advisable to discuss the strength of any circumstantial evidence with the Supervisor/ Manager

The matters of justification or excuse are sometimes explicitly highlighted in legislation by the use of phrases such as-

- "reasonable"
- "reasonably likely"
- "calculated to".

Thus the CPA creates a number of defences that may be available in respect of breaches under the Act. The CPA often, for example, states that "it is not a contravention of section ...if" Those defences define circumstances which, if the Respondent proves them, provide a defence against the alleged breach. Such justifications, if available, must be reported on.

11. The Investigation Report

Once an investigation is completed and an action or an NCC settlement is proposed, a detailed **Investigation Report** must be prepared. The primary purpose of an Investigation Report is to aid the **Enforcement Division** of the NCC in making a decision as to the appropriate enforcement action to be taken. The Investigation Report provides the Division with the Investigator's recommendations as to the appropriate enforcement action that should be taken. The Report includes clear and concise information in support of the recommendations made.

The **Investigation Report** should contain recommendations as to-

- the appropriate resolution;
- any further action required e.g. where referral to the Tribunal is the recommended outcome, the recommendations should include appropriate guidance to the Legal Unit;
- The report and the recommendations made in it should be objective and legally precise. This is the case even though a good investigation usually starts out with some basic facts mixed with intuitive feeling. That initial approach is gradually refined to indicate liability through a more robust and objective analysis of the facts;
- For routine investigations, one would not normally prepare a detailed report but this may be warranted in many cases. However, where a report is not prepared for routine investigations, a summary in the form of a memorandum is required. Regardless, one should still reach a conclusion and make a recommendation to the Manager as to how the investigation should be resolved.

11.1 The Investigation Report Format

All finalisation reports should at least contain the following-

- details of parties;
- relevant information of parties (e.g. - if complainant a business - size of business etc.);
- issue/allegation investigated (as identified when initially categorising the complaint);
- any other issues/breaches identified;
- supplier's response;
- avenues of inquiry undertaken;
- legal analysis (Case Law, Legislations, legal writings, international jurisprudence);
- findings and supporting reasons;
- recommended action;
- any other issues that may be of interest to NCC, e.g., loophole in, or inadequacy of legislation;
- any likely prosecution or compliance issues that may have media value for NCC;
- reference and disposal of evidentiary material;
- confirmation of redress being provided by the supplier to the consumer, where relevant; and
- certification of the report by both Legal Unit and Investigations Manager.

Unless an investigation is extremely serious, complex or requires briefing at a more senior level, **a**

formal memorandum can be replaced with a shorter, dot point, reporting style that still addresses the above criteria, as long as appropriate file notes are maintained during the course of the investigation.

12. Recommendations

The following recommendations may be made by an investigator-

A. Consent Order

If, after an investigation, sufficient evidence is available to support a clear finding that the Respondent has engaged in prohibited conduct then a **Consent Order** can be considered and proposed, provided that, such matter falls within the **Consent Order Strategy** of the NCC operating at the time in question.

A **Consent Order** is an agreement which is drafted in the form of an order to be confirmed by the NCT or Court. The parties to such an order will be the Respondent and the NCC and not between the Respondent and Complainant.

The form of the **Consent Order** that is proposed must be drafted in line with the *pro forma* approved by the NCC. There is no need to consult with the complainant when concluding a draft **Consent** Order as the complainant is not a party thereto.

However

In terms of the CPA[11], a **Consent Order** can include an award of damages. This award can only be included if the Complainant consents thereto. In such an instance the consent of the Complainant will have to be acknowledged. Presumably this can be done on the draft order itself or on a separate document but with reference to the draft order.

An award for damages is not a matter that must be trifled with and must be approved by the Legal section of the NCC prior to the. Respondent appending a signature thereto.

Ordinarily, neither the NCC nor the NCT has the power to award damages. Caution must be exercised in the inclusion of damages in a draft order.

In order to award damages under Section 74 (3), the following should apply-

(1) an offer made to the respondent will be tabled to the complainant;

(2) in case a dispute arises between both the respondent and the complainant on the offer so tabled, the matter will be referred to an ADR agent;

(3) since the order is entered into between the NCC and the Respondent it would follow that it must be approved by the NCC. Thus, the investigator/inspector will propose a draft consent order, in consultation with the parties. It is critical that the Respondent and Commission agree to the proposal. If either party does not agree there cannot be a **Consent Order**. At all times, it must be explained and understood by the parties that it is a draft and that it is subject to the approval of the NCC and then further subject to it being made an order by the NCT or a court. The draft order is then submitted to the Manager Investigations who will present this to the Legal section of the NCC in accordance with the approved processes followed in such circumstances.

. **Thereafter, the matter is submitted by the Head of Enforcement to the Executive Committee for their input, deliberations, approval or rejection.**

. **All Consent Orders will be signed on behalf of the NCC by the Commissioner or by any other duly delegated employee of the NCC.**

It must be remembered that suppliers and service providers conduct their business through various types of entities-sole proprietorship, partnership, close corporations, private and public companies, not for profit entities etc. For a Consent Order to be effective, it must be confirmed that the person signing as Respondent or on behalf of the Respondent is duly authorised to do so.

13. Confirmation of the Consent Order

In order for the Consent Order to be confirmed by the NCT or a court, there must be an application, presumably made by the NCC to the NCT. The legal section of NCC will deal with this aspect once the Consent Order is signed.

The NCT or court, on hearing the application, with or without hearing any evidence, must do one of the following things-

(1) make an order as agreed between the parties;

(2) suggest changes that must be made to the draft order before it can be made an order;

(3) refuse to make the order

If the NCT suggests changes that must be made to the draft order before it can be made an order these changes have to be canvassed with both the Respondent and the NCC. Both the parties must agree. If there is no agreement then the assumption is that there can be no Consent Order.

Investigators must ensure that their investigation diaries, files, including evidence therein are in order as this will be the reference point when the NCT requires evidence to be adduced prior to making an order. It cannot be assumed that the NCT will merely confirm a proposed order.

If the Respondent is keen on a Consent Order, it does not necessarily mean that the NCC must then enter into a consent arrangement with the Respondent. There will be times when it may not wish to do so. Guidance must be sought from senior personnel in the Unit.

Proposed Consent Orders must be recorded on a **Consent Order Register** upon the Respondent's signature and updated until the order is finalised.

If a consent order is not entered into then the issuing of a Compliance Notice may be considered. The case management system must be updated.

B. Compliance Notices

A Compliance Notice is issued in terms of Section 100 of the CPA[1 2]. This notice can only be issued if a provision of the CPA has been breached, in other words, if the Respondent has engaged in prohibited conduct.

Before the NCC issues a Compliance Notice-

. against a regulated entity, the NCC must consult with the regulator that issued a licence to that entity;

. it must on reasonable grounds believe that a person has engaged in prohibited conduct.

The consultation with the regulator is **firstly** to inform the regulator that the NCC intends taking action against its member or licensee; and **secondly** to allow the regulator to make representations in relation to the impending proceedings. Thus, if there are complaints against an attorney or an estate agent, the NCC will consult with the Law Society or Estate Agency Affairs Board respectively.

Until it is proved otherwise, regulated entity will refer to an entity regulated by a statutory regulator, that is, one established in terms of an Act of Parliament.

In order to justify or establish a belief on reasonable grounds, the NCC will need evidence of the breach. Such evidence will usually be available subsequent to an investigation being concluded. A recommendation that a Compliance Notice to be issued will mainly emanate from the investigator/inspector.

The Compliance Notice, which must be issued in the prescribed form (see regulations), must set out the following-

(*a*) the person or association to whom the notice applies;

(*b*) the provision of the CPA that has not been complied with;

(*c*) the details and extent of the non compliance;

(*d*) any steps required to be taken;

(*e*) the period within which those steps are to be taken;

(*f*) any penalty that may be imposed in terms of the CPA if those steps are not taken.

Drafting of Compliance Notice

The Compliance Notice will be drafted by the Investigator/Inspector checked by Legal and then issued together with an Investigation Report to the senior official in the unit. The matter will be canvassed at the NCC Exco. If approved, it will be signed by the Commissioner or duly delegated employee, recorded in the Compliance Notice Register and then despatched in an appropriate manner.

Upon receipt of the Compliance Notice, the respondent may approach the NCT or a court for it to be reviewed. If it is not set aside then compliance therewith must be monitored.

It is possible that there could be a number of reviews to the NCT relating to the notice period. Certain respondents could use the review by NCT to simply buy more time. This could result in matters clogging up the NCT rolls or delaying the work of the NCC.

To avoid this it is advisable to issue, with the consent of the NCC, a draft notice to the Respondent, for a response thereto within 5 (five) days. The response must clearly indicate the issues in dispute together with sound proposals on the resolution of the dispute. If there is no response then the Compliance notice is issued immediately after the expiry of the 5 days. If any response is received then this must be canvassed immediately with the senior manager.

The response could dispute-

(i) the provision of the CPA that has not been complied with;

(ii) the details and extent of the non compliance;

(iii) the steps required to be taken; or

(iv) the period within which those steps are to be taken.

In the event that there is a response to the effect that a dispute exists then the matter must be referred immediately to the senior officer with a recommendation for an acceptance or a rejection of the proposals made by the Respondent. The senior manager or officer will refer the matter either to the Legal Division or to Exco depending on the circumstances. Thereafter, a directive will be issued as to how to proceed with the Compliance Notice.

Once a Compliance Notice has been issued, compliance thereto must be monitored. In order to monitor compliance, the Investigator/Inspector will create a checklist that reflects the various compliance elements required within the notice and make the necessary arrangements to verify compliance following the expiry date of the Notice.

The recommendation may be that the-

(1) NCC issues a Compliance Certificate.

(2) NCC applies to the Tribunal for a fine to be imposed.

(3) NCC refers the matter to the National Prosecuting Authority for prosecution as an offence in respect of any particular Compliance Notice. (Cannot impose an administrative fine and prosecute at the same time).

If there is full compliance and this has been verified and proof thereof is available, the findings must be included in a **Compliance Report** with proof of compliance included therein. In addition a draft **Compliance Certificate** must be included for the Commissioner's signature. The report must be submitted to the senior within 3 days calculated from the first working day following the expiry of the compliance notice period.

The despatch of the notice must be verified, a copy of the notice must be included in the file and the file must be closed.
At all times the case management system must be updated.

14. Recommendation of Referral to the Tribunal

Apart from recommending a Consent Order or a Compliance Notice, it may also be recommended that the matter, after investigation, be referred to the NCT. This will occur primarily where it is felt that neither a Consent Order or Compliance Notice is to be issued. This could occur when there may be a need for the NCT to impose a penalty as proposed in the Act.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "neither a Consent Order or Compliance Notice" is intended to be "neither a Consent Order nor Compliance Notice".)

If Exco and the NCC accept the referral recommendation, the matter is taken to the Tribunal. The matter then gets transferred to the Legal Services Division of the NCC.

15. Finalisation of Investigations and Turnaround Times-

15.1 *Finalisation of cases in terms of the CPA*

Investigation into a matter is deemed to be finalised, in terms of the CPA, on any one of the following grounds-

(*a*) When a notice of **non-referral** is issued on the grounds contemplated in Section 116[13], and on any other grounds the Commission may reasonably believe to exist.[14]

(*b*) When the matter is referred to the **National Prosecuting Authority**; if the Commission alleges that a person has committed an offence in terms of this Act (for offences refer to 110).[15] The matter will be dealt with under the Criminal Procedure Act.

(*c*) When the matter is referred to the **Equality Court**, as contemplated in Section 10, if the complaint involves a matter in terms of Part A of Chapter 2 of the Promotion of Equality and Prevention of Unfair discrimination Act.

(*d*) When the **Consent Order** that has been agreed to is signed by the parties and submitted to Legal Services before it is confirmed by the

NCT.

(*e*) When the matter is referred to a **Consumer Court** of the Province in which the supplier has its principal place of business.[16]

(*f*) When the matter is referred to **the Tribunal** for the imposition of an administration fine in terms of Section 73 (2) (*b*).

16. Categories of Cases and Turnaround Times

16.1 Categories of Cases

Investigation matters are/will be divided into three categories i.e. **Non-Complex, Complex and Exceptional Matters**.

(i) **Non-Complex Matters** are those matters that after investigation a Commission may issue a non-referral in terms of Section 116, a referral to the Provincial Court in terms of Section 73 (2), a referral to Equality Court in terms of Section 73 (1) (i). Usually matters of a non-complex nature are decided on the presentation of facts whether without or with minimal evidence.

(ii) **Complex Matters** are those matters that after investigation the Commission will issue a Compliance Notice, agree to a Consent Order; refers the matter to the National Prosecuting Authority, or applies to the Tribunal for the imposition of an Administration Fine. Complex Matters will be decided mainly on the evidence gathered.

(iii) **Exceptional Matters** are those matters that after investigation, the Commission will issue a Compliance Notice; agrees to a Consent Order; refers the matter to the National Prosecuting Authority, or applies to the Tribunal for the imposition of an Administration Fine. In these matters, the evidence gathering exercise relies on external forces i.e. court order for search and seizure, warrants to enter premises.

17. Turnaround Times

. **Turnaround times for purposes of conducting an investigation cannot be categorically or specifically be decided as each case will vary on the duration of the various actions that are to be taken. There will be instances where finalisation is delayed as a result of factors outside the control of the officials and the Commission.**

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "specifically be decided" is intended to be "specifically decided".)

18. Summary

. **Non-complex matters** - draft non-referral or referral notice.

. **Complex and Exceptional Matters** - Agree to issue Consent Orders, or issue Compliance Notices or refer the matter to the National Prosecuting Authority (NPA) and apply to the Tribunal for the imposition of an administrative fine.

. **Beginning of Investigations** - at this stage the Investigator starts the investigations by gathering and assessing evidence, consulting with experts, product testing, interviews, inspection, summons, etc.

(i) Receive a file, assess the information. Acknowledge receipt and request further information.

(ii) Diarise file for which the complainant should furnish the outstanding information.

(iii) **Initial investigation** - preliminary investigation to decide whether referral, non-referral or develop an investigation plan and draft report to Exco with recommendation.

. **Status Report** - prepare a Status Report on the findings of the investigation as well as the recommendations. The Status Report should recommend either a referral, non-referral, issuance of Compliance Notice, agree to a Consent Order or apply for imposition of an administrative fine. Compliance Notices must be monitored to ensure that compliance is adhered to.

. **Monitoring of Compliance Notice**.

. **Matters Referred to Legal Services** (Consent Orders, administrative fines and matters to NPA).

3. THE DEBRIEF

A debrief will be held as soon as possible after the conclusion of the Investigation.

A debrief should also be held after significant phases have taken place such as the execution of a search warrant and/or after an investigated party's interview.

The form that the debrief takes will depend on the nature of the investigation. The form could range from a formal meeting to an informal chat. Whatever the form of debrief, it should serve as a learning exercise and incorporate discussion as to the good and bad aspects of the investigation. The focus of the debrief should be on reviewing the way in which the entire process was implemented, how effective it has been, what has worked well and what could have been done differently the next time, as well as what those involved have learned.

Some debriefs will result in a documented account of the debrief, including any learning to be taken from the investigations.

The debrief may involve any Divisions that manage larger investigations and in which litigations are on the whole, successful.

Debriefing must be documented in a file and kept for future reference.

4. CONCLUSION

The establishment of a person's liability for breach of the CPA comes about as a result of a well conducted investigation. Although others may provide guidance, it is the Investigator's role to conduct the investigation and reach an outcome. The primary role of Counsel for the NCC is to present the evidence obtained by the Investigator to the relevant forum.

5. POWERS IN SUPPORT OF AN INVESTIGATION

5.1 Summons

5.1.1 Why will Summons be issued?

At any time during an investigation conducted in terms of the CPA[17], that is, an investigation approved by the NCC, the NCC may issue a summons to any person-

- who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject;
- to appear before the NCC, or before an inspector or independent investigator, to be questioned at a time and place specified in the summons; or
- to deliver or produce to the NCC, or to an inspector or independent investigator, any book, document or other object referred to in paragraph (*a*) at a time and place specified in the summons.

5.1.2 Validity of Summons

There are two important factors necessary for a summons to be valid-

- It must be signed by the Commissioner, or by an employee of the NCC **designated** by the Commissioner; and
- It may be served in the same manner as a **subpoena in a criminal case** issued by the magistrate's court.

5.1.3 Duty of Inspector/Investigator after Summons Served

The following are the actions expected of an Inspector or Investigator before whom a person is summoned to appear, or to whom a person is required to deliver any book, document or other object-

- May interrogate and administer an oath to, or accept an affirmation from, the person named in the summons;
- May retain any such book, document or other object for examination, for a period not exceeding two months, or for such longer period as the Tribunal, on application and good cause shown, may allow; and
- Must inform a summoned person that he/she is not obliged to answer any question if the answer is self-incriminating.

5.1.4 Duty of a Person to whom a Summons is Served

A person questioned by the NCC or by an inspector or investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but-

- a person is not obliged to answer any question if the answer is self-incriminating; and
- the person asking the questions must inform that person of the right not to provide any self-incriminating answer.

No self-incriminating answer given or statement made by any person to the NCC, or an inspector or investigator exercising powers in terms of this Act, will be admissible as evidence against that person in criminal proceedings against that person instituted in any

court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 108 (3) or 109 (2) (*d*), and then only to the extent that the answer or statement is relevant to prove the offence charged.

5.2 AUTHORITY TO ENTER AND SEARCH UNDER WARRANT

5.2.1 Obtaining a Search Warrant

Executing a search warrant causes a person's interests rights and interests to privacy, property, confidentiality, personal freedom and dignity to be overridden. It is therefore not something to be done lightly, nor without a full understanding of the seriousness of the action.

5.2.2 Who can issue a Search Warrant?

A judge of the High Court or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate.

5.2.3 When can a Search Warrant be issued?

A Search Warrant may be issued only when an affidavit is produced to the Judge or Magistrate and it is clear from that affidavit that there are reasonable grounds to believe that-

- a contravention of the Act has taken place, is taking place, or is likely to take place on or in those premises; or
- that anything connected with an investigation in terms of the Act is in the possession of, or under the control of, a person who is on or in those premises. A warrant to enter and search may be issued at any time.

5.2.4 Requirements for a Valid Search Warrant

A search warrant must specifically-

- identify the premises that may be entered and searched; and
- authorise an inspector or a police officer to enter and search the premises and to do anything listed in section 104.

5.2.5 Duration of a Valid Search Warrant

A warrant to enter and search is valid until one of the following events occurs-

- the warrant is executed;
- the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
- the purpose for issuing it has lapsed; or
- the expiry of one month after the date it was issued.

5.2.6 Execution of a Search Warrant

- A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate, or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.
- A person authorised by the warrant may enter and search premises named in that warrant.
- Immediately before commencing with the execution of a warrant, a person executing that warrant must meet the following requirements if the owner, or person in control, of the premises to be searched is present-
  - **provide identification** to that person and explain to that person the authority by which the warrant is **being** executed; and
  - **hand a copy of the warrant** to that **person** or to the person named in it; or
  - **if none of those persons is present**, affix a copy of the warrant to the premises in a prominent and visible place.

5.2.7 Powers to Enter and Search

A person who is authorised under section 103 to enter and search premises may[18]-

- **enter** upon or into those premises;
- **search** those premises;
- **search** any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;
- **examine** any article or document that is on or in those premises that has a bearing on the investigation;

- **request** information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;
- **take extracts** from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;
- **use any computer system on the premises**, or require assistance of any person on the premises to use that computer system, to-
  - (i) search any data contained in or available to that computer system;
  - (ii) reproduce any record from that data;
  - (iii) seize any output from that computer for examination and copying; and
  - (iv) attach, and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the investigation.

An Inspector authorised to conduct an entry and search in terms of Section 103 may be accompanied and assisted by a police officer[19].

5.2.8 Conduct of Entry and Search[20]

A person who enters and searches any premises under Section 104 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

During any search under Section 104 (1) (*c*), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.

A person who enters and searches premises under Section 104, before questioning anyone-

- must advise that person of the right to be assisted at the time by an advocate or attorney; and
- allow that person to exercise that right.

A person who removes anything from the premises being searched must-

- issue a receipt for it to the owner of, or person in control of, the premises; and
- return it as soon as practicable after achieving the purpose for which it was removed.

5.2.9 Right of Refusal to Inspection

During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information and if the owner or person in control of a privileged article or document refuses to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.

A police officer who is authorised to enter and search premises under Section 103, or who is assisting an inspector who is authorised to enter and search premises under Section 104 may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises[21].

Before using force in terms of Subsection (6), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.

The NCC may compensate any authorised person who suffers damage because of a forced entry during a search when no one responsible for the premises was present.

5.2.9 Storage for Seized Goods

The Commission must maintain on its premises a facility to be utilised for storage purposes of any items or goods seized during the course of the investigation. Access to such facility will be limited to personnel with authority.

5.3 CONFIDENTIALITY

5.3.1 Claims that Information is Confidential

When submitting information to the NCC, the Tribunal, or an Inspector or Investigator appointed in terms of this Act, a person may claim that all or part of that information is confidential.

Any such confidentiality, as claimed, must be supported by a written statement explaining why the information is confidential.

The NCC, Tribunal, Inspector or Investigator, as the case may be, must-

- consider claims of confidentiality; and
- immediately make a decision on the confidentiality of the information and access to that information, which decision may or may not be supported by reasons.

When making any ruling, decision or order in terms of this Act, the NCC, or Tribunal may take confidential information into account.

If any reasons are provided, it terms of the Act, that a decision be made to declare the information as confidential, the NCC or Tribunal, as the case may be, must provide a copy of the proposed reasons to the party claiming confidentiality, at least five (5) business days before publishing those reasons.

After receiving a copy of the proposed reasons in terms of subsection (5), a party may apply to the court for an appropriate order to protect the confidentiality of the relevant information within five (5) business days.

The Commission must make an independent determination of what information should be classified as confidential.

5.3.2 Breach of Confidence

It is an offence to disclose any personal or confidential information concerning the affairs of any person obtained[22]-

- in carrying out any function in terms of the Act; or
- as a result of initiating a complaint or participating in any proceedings in terms of this Act.

However, this does not apply to information disclosed-

- for the purpose of the proper administration or enforcement of the Act;
- for the purpose of the administration of justice; or
- at the request of an inspector, regulatory authority or Tribunal member entitled to receive the information.

5.4 OFFENCES AND PENALTIES

5.4.1 Offences Relating to Prohibited Conduct

It is an offence[23]-

- for any person to alter, obscure or remove a displayed price or trade description, without authority.
- to fail to act in accordance with a compliance notice, but no person may be prosecuted for such an offence in respect of compliance notice if, as a result of the failure of that person to comply with that notice, the NCC has applied to the Tribunal for the imposition an administrative fine.

5.4.2 Penalties

Any person convicted of an offence in terms of this Act, is liable-

- in the case of a contravention of Section 107 (1), that is, when disclosing personal/confidential information - to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or
- in any other case, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in this section.

5.4.3 Administrative fines

The **National Consumer Tribunal** may impose an administrative fine only in the circumstances expressly provided for.

An administrative fine imposed in terms of this Act may not exceed the greater of 10% of the respondent's annual turnover during the preceding financial year; or R 1 000 000.

When determining an appropriate administrative fine, the National Consumer Tribunal must consider the following factors-

.	the nature, duration, gravity and extent of the contravention;
.	any loss or damage suffered as a result of the contravention;
.	the behaviour of the respondent;
.	the market circumstances in which the contravention took place;
.	the level of profit derived from the contravention;
.	the degree to which the respondent has co-operated with the National Consumer Commission and National Consumer Tribunal.

Footnotes

11. Section 74 (3).
12. Section 100.
13. Section 73 (1) (*a*).
14. Section 75 (1).
15. Section 73 (1) (*b*).
16. Section 73 (2).
17. Section 72 (1) (*d*).
18. Section 104.
19. Section 104 (i) (3).
20. Section 105.
21. Section 105 (7).
22. Section 107.
23. Section 108.

PART C

EVIDENCE & PROCEDURAL FAIRNESS

1. Evidence Handling

Documentary or other additional evidence must be appropriately collected, recorded, seized and secured in accordance with NCC's **Exhibit and Property Handling Policy**.

1.1 Witness Statements

All relevant information required for enforcement before a Court or Tribunal is recorded in **Witness-Statement Format**.

1.2 A signed statement is desirable because-

.	it serves as a basis for investigation and provides information for further enquiry where necessary;
.	the interviewee endorses the accuracy of its content by signing it;
.	it is easy to review and assess;
.	it reduces the time required to produce briefs of evidence for those interviewees who will be required to give evidence;
.	the interviewee can refer to the statement to refresh his or her memory if they come to the NCT or appear in Court; and
.	it allows an interviewee to be cross examined on the contents of the statement if-
	. he or she is called to give evidence for the NCC and is not declared hostile; or
	. the NCC decides not to call him or her as a witness but he or she is called by the defence and gives evidence inconsistent with the

contents of the statement.

1.3 **Investigators should record statements in writing at the time of the interview**-

.	If that is not possible, as soon as practicable after the interview;
.	Investigators should not record an interview on a dictaphone, tape or laptop in order what the witness said can be drafted into a statement later;
(Editorial Note: Wording as per original *Government Gazette*.)	
.	Recordings are acceptable since any inconsistencies may affect the witness's credibility in the NCT or in Court;
.	It is important that the witness is able to fully reconstruct and clarify his or her recollections before this is committed to a statement;
.	If a statement cannot be taken at the time of interview, it is considered better practice to make handwritten notes of the interview and then draft a statement based on those notes.

1.4 **Reasons for taking a statement**

Statements are used for the following purposes-

. gaining evidence;

. comparing evidence;

. serving as a basis for further investigation;

. recording observations while still fresh in the interviewee's memory;

. linking physical evidence to the investigation;

. identifying exhibits and people;

. checking and corroborating stories;

. assisting with preparing the file for Court (briefs of evidence) and serving as a basis for examining a witness in Court;

. allowing a Court witness to refresh their memory prior to giving evidence.

1.5 **Conducting the interview and taking the statement**

Before commencing with an interview an attempt should be made to put the interviewee at ease. Many interviewees will not have dealt with an enforcement agency before and may be anxious. One should only begin the interview once the interviewee is relaxed and ready to talk. Do not bring out the laptop or pen and paper to make notes until that point or later.

Once one begins with the interview allow the interviewee to tell the story in his or her own words. Only interrupt if necessary. Allow the interviewee to digress. The digression may lead to the disclosure of additional information of which you were not aware.

Once the interviewee has told the story and appears to have exhausted his or her recollection, go through the story again with him or her. Ask questions to probe and clarify inconsistencies. Notes may be taken at this point.

When satisfied that the interviewee has told everything possible begin to record the statement by writing or typing it. Record the story from beginning to end with as much relevant detail as possible.

Do not be concerned if the interviewee says something that will be inadmissible in Court (for example hearsay). It could still be valuable information to help guide the investigation.

1.6 **During the information gathering phase best results will be achieved if**-

. the interview has been planned;

. a logical and/or chronological flow is followed;

. each point is exhausted before moving to the next.

1.7 **When recording a statement**

When taking a statement-

.	record the statement in chronological order using separate paragraphs for each change of subject or part of an event;
.	exhaust each point before moving on to the next;
.	if the interviewee is talking about more than one event or offence,

- deal with each one in full before starting the next event or offence;
- write in the first person i.e. in the words of the person making the statement;
- do not correct the interviewee's vocabulary or grammar unless it is necessary to clarify what they mean;
- avoid the use of abbreviations or slang unless it has already been clarified and recorded as to its meaning;
- do not underline, mark or otherwise draw attention to any part of the statement;
- include specific dates and times - not just "last night";
- be explicit when referring to people or objects;
- where exhibits are involved, the chain of evidence needs to be proved by including information such as when the interviewee-
  - saw the item;
  - located or uplifted the item;
  - sold or disposed of the item;
  - handed it to an investigator.

If electronically recording an interviewee endeavour to manage the interview with reference to the above.

1.8 Statement Endorsements

(1) Whenever possible have an interviewee endorse and sign his or her statement. Once the statement is recorded in writing ask the interviewee to read it. If necessary read the statement aloud to him or her.

(2) At the bottom of the statement, write or have the interviewee write the following: **"*I have read the above statement* (*or the above statement has been read aloud to me*) *and to the best of my knowledge it is true.*"**

(3) The interviewee should then sign the statement below the endorsement.

(4) The investigator then witnesses the endorsement by writing: **"*The above statement was recorded and signature witnessed by me at* (*location*) *on* (*date*)"**

(5) If the interviewee has written out the statement himself or herself in the presence of the investigator, the investigator should endorse the statement as follows: **"*The above statement was made in my presence and signature witnessed by me at (location) on (date)*"**.

1.9 Activity Recording

All occurrences, actions and decisions must be recorded on an Investigation Running-sheet or File Note. Until the introduction of an online compliance system is possible, a legibly handwritten report is acceptable (word-processed documents are preferred). These should include the following where relevant-

- actions taken in investigating the complaint;
- significant incidents/events during the course of investigation of the complaint, especially, any occurrences of a breach;
- decisions made that affect the course or outcome of an investigation.

All records made are dated, timed and signed by the writer and either placed without delay on the investigation file, or an annotation made on the file as to where the records may be located.

2. Procedural Fairness

If a supplier is suspected of having breached NCC administered legislation the allegation should be personally put to the supplier. When this occurs the following actions should take place-

- the supplier's response should be recorded by the use of contemporaneous notes;
- if the matter is serious then the supplier should be invited to participate in a formal interview;
- should the supplier consent to a formal interview then it may be conducted on audiotape;
- the formal taped record of interview should have appropriate structure and protocols;
- in all cases only one person suspected of committing the breach should be interviewed at a time; and
- the provisions of the Promotion of Administrative Justice Act, 2000 (PAJA) must be taken into account.

3. Assessment of Evidence

When considering enforcement action other than issuing a compliance notice, the following assessment

criteria should be taken into account-

.	Whether the NCC has the necessary jurisdiction;
.	The availability, competence and credibility of witnesses;
.	The manner in which evidence was obtained;
.	The availability of independent and corroborative evidence;
.	The availability of competent and admissible evidence;
.	Sufficient weight of evidence behind each element of an offence;
.	The supplier has had an opportunity to respond to an allegation;
.	Lines of defence are open to, or indicated by, the supplier;
.	Any other factors that could affect the likelihood of successful enforcement action; and
.	Adherence to all chains of evidence at all times.

NCC requires admissible, substantial and reliable evidence relating to any alleged breach. Only if this evidence is present will tribunal or court enforcement action be considered.

3.1 Sufficiency of Evidence

The assessment of evidence gained in the inquiry process is a crucial part of the compliance process. One of the primary objectives of an investigation is to obtain the facts and evidence to determine if enforcement action is appropriate.

There may be insufficient evidence to support the alleged substantive breach. During an investigation, however, sufficient evidence may be gained to support enforcement action for another type of breach.

The test of whether sufficient evidence exists must be applied regularly throughout the investigation review process to ensure that matters continue to be investigated effectively and efficiently.

3.2 Insufficient Evidence

If there is insufficient evidence the investigation should be reviewed to identify other avenues of inquiry that can reasonably be expected to reveal further facts to clarify the matter one way or another.

- If these avenues of inquiry exist they should be followed within reason.
- An investigation may be closed at any time if there is insufficient evidence to take further action, and continued exploration of the matter cannot reasonably be justified, or for a policy reason.

4. Investigation Reporting

Investigation files and processes have to stand up to both internal and external scrutiny and should therefore contain only the information that explains how the matter was investigated, assessed and dealt with.

5. Dealings with the Complainant

The investigation officer is required to deal fairly and efficiently with the complainant. The following is to occur on receipt of an investigation file by the investigation officer-

.	contact the complainant within five (5) working days;
.	confirm the issues for investigation with the complainant;
.	explain what NCC can and cannot do;
.	advise the estimated time frame for the investigation; and
.	make a file note recording the contact made and listing the issues discussed.

Whilst a matter remains open for investigation, the complainant is to be updated on at least a monthly basis about what action is occurring. Contacts with the complainant are to be recorded on the investigation file and/or online compliance system.

When informing the complainant about the outcome of an investigation, where possible, written advice should be given to the complainant outlining the-

.	issues originally confirmed with the complainant and subsequently investigated;
.	Act and Section (title and reference) of the substantive breach;
.	investigation findings and the basis upon which the findings are supported; and
.	contact name and number of the investigation officer, inviting the complainant to contact the officer if they wish to discuss the matter further.

Consideration is given to contacting the complainant telephonically in the first place to advise them of the findings before sending out a written reply. In cases where the matters have been complex or extended over a period of time consideration should also be given, where practical to do so, to visiting the complainant personally to discuss the outcome, before sending out the written reply.

PART D

INVESTIGATION CASE FILE REVIEW AND AUDIT PROCESSES

The Supplementary Standard governing the investigation, the case file review and audit processes is of critical importance to the Investigations Directorate.

The Supplementary Standard is intended to serve as a guide for NCC investigators, supervisors, managers and reviewers who will be responsible for conducting case file reviews.

1. Scope

This Standard is of critical importance to, amongst others, staff engaged in investigations, compliance and enforcement duties.

Investigation case file review and audit introduces systematic assessment processes for matters currently under investigation and also of investigations finalised within the review period. The processes seek to measure compliance with accepted investigation methodologies and NCC's Enforcement Framework requirements.

2. Business Process - Investigation Case File Review and Audit

The business process framework is composed of four elements that work together to-

- assess;
- enquire;
- address and analyse information relating to complaints and suspected breaches of legislation;
- undertake appropriate enforcement, whilst ensuring Policy and Standards are appropriately applied. These elements are-
  - case assessment;
  - inquiry;
  - enforcement and review.

All incoming complaints referred for enforcement action are assessed against framework requirements (see PART C - Screening Phase). Supplementary Standards may be developed and issued from time to time to provide additional detail or to clarify framework policy issues and/or standards.

The File Review and Audit Process is conducted in several parts, namely-

. Self/Peer review;
. Manager/supervisor review;
. Divisional audit.

3. Self/Peer Review

The Self/Peer review assists investigators in achieving satisfactory case file outcomes. This occurs through regular reappraisal of work in progress and results obtained, and the in-confidence sharing of information about cases with experienced colleagues, seeking confirmation or alternative viewpoints and opinions.

The Case File Review Checklist-

. Self/Peer Review is to be used to review all files on at least one occasion, preferably nearer to the completion of the investigation.
. It is suggested that the review take place when the investigation is well progressed, but before any final recommendation is made.
. Completed checklists are to be placed on the case file and entries made on the Investigation/File Activity Sheets stating when and by whom the last self/peer review was conducted.

4. Management Review

Management Reviews are an essential part of the **Case File Review and Audit Process.** Drawing on the expertise of Supervisors or Managers of Investigations staff, will ensure a balanced overview of each file is maintained, with appropriate follow-up actions recommended and monitored. Supervisors and/or Managers will complete the Case File Review Checklist - Management Review assessing compliance with accepted investigations methodology and framework requirements.

- Completed checklists are to be placed on file and entries made in the Investigation/File Activity Sheets stating when and by whom the last Management review was conducted.
- An essential prerequisite for completion of the branch review and associated checklist will be the timely and accurate completion of the self/peer review checklist.
- Reviewing officers are encouraged to provide feedback to ensure that the review process is both effective and value adding.

5. Issues of Management

The **review process** may identify issues requiring **follow-up action** to be taken by **investigating officers**. In such cases, investigators will be notified of necessary follow-up action, or recommendations to improve future case file management and/or review outcomes.

Managers, Supervisors and NCC staff performing case file reviews, **will be required to monitor progress. Subsequent reviews will assess the effectiveness of follow-up action or recommended improvements to case file management methodology and compliance with framework requirements.**

(Logo)

NATIONAL CONSUMER COMMISSION

GUIDELINES AND PROCEDURES FOR THE CONCILIATION OF COMPLAINTS IN THE NATIONAL CONSUMER COMMISSION

1. INTRODUCTION

1.1 In terms of Section 3 (1) of the Consumer Protection Act, 68 of 2008, the purpose and policy of the Act, is to promote and advance the social and economic welfare of consumers in South Africa by, amongst others: providing for a consistent, accessible and efficient system of **consensual** resolution of disputes arising from consumer transactions; as well as providing for an **accessible**, consistent, harmonised, effective and efficient system of redress for consumers.

These Guidelines are meant to ensure that the NCC gives effect to Section 3 (1) by ensuring that the NCC resolves complaints in a procedurally fair, economical and expeditious manner through Conciliation.

1.2 NCC seeks to ensure that parties first attempt to resolve a dispute through Conciliation prior to investigating a complaint. In order to achieve this objective, the Commission formulated these Guidelines to prescribe circumstances in which parties will be required to attend Conciliation.

1.3 The Guidelines lay down general procedures and principles to be followed in the Conciliation process.

1.4 The Guidelines also prescribe the powers and functions of Conciliators.

1.5 Conciliation under the auspices of the NCC will be confidential and conducted without prejudice to the parties.

2. PURPOSE OF THE GUIDELINES

2.1 To promote an understanding of Conciliation by the NCC.

2.2 To inform parties in a dispute of the policies and procedures of Conciliation under the auspices of the NCC.

2.3 To prescribe the powers and functions of the Conciliator.

2.4 To guide Conciliators in the performance of their functions.

3. WHAT IS CONCILIATION?

3.1 In broad terms, Conciliation is a process in which an independent, objective person, who without prejudice, attempts to assist disputing parties reach an agreement towards the resolution of a complaint.

3.2 Under NCC Conciliation, the Commission will provide the forum for the parties to a complaint to engage in a process of open negotiation around the complaint with the aim of reaching an agreement.

4. ROLE OF THE COMMSSIONER

4.1 To facilitate speedy resolution of disputes in terms of the CPA.

4.2 To decide what complaint is appropriate for Conciliation.

4.3 To assist in narrowing the range of issues in the complaint.

4.5 To appoint Conciliators.

(Editorial Note: Numbering as per original *Government Gazette*.)

4.6 To provide assistance to the parties to arrive at an amicable resolution of the complaint.

5. PROCEDURES

5.1 Prior to investigating a complaint, the Commission will determine whether that complaint is appropriate for Conciliation.

5.2 Once the Commission has determined that a complaint can be conciliated, the parties to the complaint will be notified of the Conciliation in writing, by telephone or other appropriate means.

5.3 Conciliation proceedings are private and confidential. No person may refer to anything said at Conciliation proceedings during any subsequent proceedings, save where such issue is not likely to cause prejudice to any of the parties.

5.4 Generally, documents will be exchanged between the parties prior to the holding of Conciliation in the form of the referral form and other relevant documents determined by the Conciliator.

5.5 The Conciliator will decide on the form and method of Conciliation which could include a telephonic Conciliation.

5.6 If the parties to a Conciliation reach a settlement of the complaint, the Conciliator will confirm the outcome in writing to all parties. Following this a Consent Order will be drafted and signed by the supplier and the Commissioner in terms of Section 74.

5.7 The parties to the Conciliation may not be represented by a legal representative.

5.8 The venue of the Conciliation Proceedings will be determined by the Commission with due consideration to the costs of such an arrangement.

6. FUNCTIONS AND RESPONSIBILITIES OF A CONCILIATOR

6.1 To ensure that the names of all parties in attendance have been properly recorded in the attendance register.

6.2 The Conciliator will be guided by the principles of objectivity, transparency, fairness and justice in the discharge of the Conciliator's duties.

6.3 The Conciliator must disclose if the Conciliator has any interest in the outcome of the complaint. The Conciliator must withdraw from the process if the Conciliator believes there is a reasonable apprehension of bias or partiality.

6.4 The Conciliator shall assist the parties in an independent and impartial manner in an attempt to reach an amicable settlement to the dispute within the context of the Consumer Protection Act 68, of 2008.

6.5 The Conciliator should outline to the parties how the Conciliation will be conducted and deal with any concerns or queries raised by the parties about the process.

6.6 At the completion of the Conciliation, the Conciliator will issue a Certificate of Outcome of a Dispute (COD Form).

6.7 If the parties reach a settlement, that agreement must be recorded in writing and signed by the parties to the dispute.

7. FORMS OF CONCILIATION

7.1 The Conciliator may conduct the Conciliation in any manner that the Conciliator deems appropriate.

7.2 The process may be conducted telephonically or through mediation and facilitation in order to achieve an expeditious resolution of the complaint but in all cases mindful of the principle of fairness.

8. LANGUAGE POLICY

8.1 The Conciliation will be conducted in English.

9. CONSENT AGREEMENT

9.1 Consent Agreement in terms of Section 74 of the Consumer Protection Act, 68 of 2008, will be signed by the supplier and the Commission. The Commission will forward the Consent Agreement to the Consumer Tribunal to be confirmed as a Consent Order.

10. POSTPONEMENT

10.1 Conciliation may be postponed if all the parties to the dispute agree in writing to the postponement and the written agreement for postponement is received by the Commission more than five days before the scheduled date of the Conciliation.

10.2 Any party may also formally request a postponement at the Conciliation.

11. ATTENDANCE AT CONCILIATION

11.1 Attendance and participation at Conciliation must be in person, in the case of a natural person or a representative in the case of a juristic person.

12.1 As a procedural step, the Conciliation co-ordinator shall first establish the availability of the parties telephonically before a matter is set down for Conciliation.

15. TRAVEL COSTS

15.1 Travel and all associated costs will be borne by the individual parties.

(Editorial Note: Numbering as per original *Government Gazette*.)

16. CO-OPERATION OF PARTIES WITH THE CONCILIATOR

16.1 The parties will co-operate with the Conciliator and, in particular, will endeavor to comply with requests by the Conciliator to submit documents, provide evidence and attend Conciliation hearings.

17. COSTS

17.1 Issues of costs in Conciliation may only be met by the Commission only in exceptional circumstances. Costs relating to frivolous or vexatious conduct will under no circumstances be entertained.

18. DISPUTE RESOLUTION

18.1 Any dispute about the interpretation or implementation of these Guidelines must be referred to the Commission in writing and the Commission's decision will be final and binding on all parties.

GN 490 of 13 June 2012: National Consumer Commission: Consumer Product Safety Recall Guidelines (*Government Gazette* No. 35434)

DEPARTMENT OF TRADE AND INDUSTRY

I, Mamodupi Mohlala-Mulaudzi, Commissioner of the National Consumer Commission, hereby publish the Consumer Product Safety Recall Guidelines in terms of the Consumer Protection Act, 2008 (Act No. 68 of 2008).

(Signed)
Mamodupi Mohlala-Mulaudzi
National Consumer Commission
29/05/2012

NATIONAL CONSUMER COMMISSION

Consumer Product Safety Recall Guidelines

What a supplier is required to do when conducting a product safety recall

SECTION A

1. Introduction

. The product safety recall guidelines (the Guidelines) require a supplier to adopt a system that will ensure the efficient and effective recall of unsafe consumer products from consumers and from within the supply chain. Such systems of recall should be tailored to the type of product and the risk posed to consumers. A supplier may seek independent advice (including legal advice) regarding the system to be developed or put in place when conducting a consumer product recall.

. Section 60 (1) of the CPA provides that the Commission must promote the development, adoption and application of Industry-wide Code of Practice providing for effective and efficient systems to receive notice of Consumer complaints or reports of product failures, defects or hazards and the return of any goods because of a failure, defect or hazard.

1.1 What is the purpose of these guidelines?

. The purpose of the Guidelines is to provide guidance to suppliers on how to Conduct a product safety recall.

. The Guidelines are created in terms of the provisions of section 60 of the Consumer Protection Act, No. 68 of 2008 (CPA).

. The Guidelines have been developed by the National Consumer Commission (The Commission).

1.2 What is the scope of these guidelines?

The Guidelines have been developed to help suppliers plan for, and respond to, an incident where the recall of potentially unsafe consumer products is required. It does this by setting out-

- The legal requirements for suppliers in relation to a consumer product recall specified in the CPA.
- The role and responsibilities of suppliers and government agencies when recall is necessary.
- Requirements for conducting a recall, including-
  - notification;
  - recall strategy;
  - retrieval of the product;
  - reporting on the recall.

2. Background

- A consumer product safety recall may take place when a problem that may be identified as a health or safety hazard occurs.
- Voluntary product recalls may be initiated by suppliers when they become aware of safety issues. Product recalls may also be negotiated with suppliers by the Commission or other Regulators when they identify a safety issue or following enforcement or compliance action.
- As a last resort, the Commission may order a compulsory recall to protect the public from any unsafe goods in terms of section 60 (2) of the CPA. When this happens, the Commission may issue a written notice stipulating the manner in which the recall is to occur. The Commission will monitor compliance with all such notices issued by it.

3. Why is the NCC involved in consumer product recalls?

- Suppliers have an obligation under the CPA to notify the Commission when they undertake a recall.
- The Commission's primary purpose with regards to product recalls is to ensure that any unsafe product is effectively removed from the marketplace and the hands of consumers.
- The Commission enforces and administers the CPA; that applies to all transactions occurring within the Republic that involve goods including transactions that are exempt from the application of the CPA.
- Section 5 (5) provides that; *if any goods are supplied within the Republic to any person in terms of a transaction that is exempt from the Application of this Act, those goods, and the importer or producer, distributor and retailer of those goods, respectively, are nevertheless subject to Sections 60 and 61*.
- The range of goods covered under the CPA, and to which the product safety requirements apply, is broad and covers any goods as defined by the Act. Section 1 of the CPA, the definition of "goods" include-

  (*a*) *anything marketed for human consumption;* (*b*) *any tangible object not otherwise contemplated in paragraph* (*a*)*, including any medium on which anything is or may be written or encoded;* (*c*) *any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or coded on any medium, or a licence to use any such intangible product;* (*d*) *a legal interest in land or any other immovable property, other than an interest that falls within the definition of 'services' in this section; and* (*e*) *gas, water and electricity*.

SECTION B

1. Legal requirements and responsibilities

1.1. Legal requirements

Consumer Protection Act Recall Provisions-

- Section 60 (1) of the CPA provides that the Commission must promote, within the framework of section 82, the development, adoption and application of Industry-wide Code of Practice providing for effective and efficient systems to-

  (*a*) Receive notice of-

  - (i) Consumer complaints or reports of product failures, defects or hazards;
  - (ii) The return of any goods because of a failure, defect or hazard;
  - (iii) Personal injury, illness or damage to the property caused wholly or partially as a result of a product failure, defect or hazard; and
  - (iv) Other indication of failure, defect or hazard, in any particular goods or in any component of them, or injury or damage resulting from the use of those goods.

  (*b*) Monitor the sources of information contemplated in paragraph (*a*), and analyse the information received with the object of detecting or identifying any previously undetected or unrecognised potential risk to the public from the use of or exposure to those;

  (*c*) Conduct investigations into the nature, causes, extent and degree of the risk to the public;

  (*d*) Notify consumers of the nature, causes, extent and degree of the risk pertaining to those goods; and

  (*e*) If the goods are unsafe, recall those goods for repairs, replacement or refund.

- Section 60 (2) provides that, if the Commission has reasonable grounds to believe that any goods may be unsafe, or that there is a potential risk to the public from the continued use of or exposure to the goods, and the producer or importer of those goods has not taken any steps required by an applicable code contemplated in subsection (1), the Commission, by written notice, may require that producer to-

  (*a*) Conduct an investigation contemplated in subsection (1); or

  (*b*) Carry out a recall programme on any terms required by the Commission.

- Section 60 (3) provides that, a producer or importer affected by a notice issued in terms of subsection (2) may apply to the Tribunal to set aside the notice in whole or in part.
- The guidelines will form part of any Industry Code developed in terms of section 82 of the CPA where goods are a subject matter.
- Section 60 (1) of the CPA provides that the Commission must within the framework of Industry-wide Code of Practice promote voluntary recalls of products for safety-related reasons.
- A voluntary recall occurs when the supplier initiates the recall and voluntarily takes action to remove the relevant goods from distribution, sale, and/or consumption. A voluntary recall may also be negotiated with a supplier by the Commission following enforcement or compliance action. The use of the word 'voluntary' does not correspond to whether or not the distribution network/chains can choose to remove the product from sale. When a recall occurs, all of the particular consumer products subject to the recall must be removed from the market place and/or trading areas.
- The Commission requires the notification in writing within two days of the supplier initiating the recall.
- The notice must state that the goods are subject to a recall and set out the nature of the defect, or the dangerous characteristic of, the goods.
- A supplier who fails to notify the Commission may be found guilty of an offence under s. 110 (2) of the CPA.
- Section 60 (2) empowers the Commission to order a supplier to recall any goods which on reasonable grounds the Commission believes that those goods will or may be unsafe, or that there is a potential risk to the public from the continued use of or exposure to the goods, and the producer or importer of those goods has not taken any steps required by an applicable code. The Commission, by written notice, may require that the producer to carry out a recall programme on any terms required by the Commission. These are known as 'compulsory' recalls.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "producer to carry out a recall programme" is intended to be "producer carry out a recall programme".)

1.2. Supplier responsibilities

1.2.1. Responsibility for the supply of safe products

- A supplier is the entity who has the primary responsibility for the supply of safe consumer products in South Africa. 'Suppliers' include manufacturers, importers, distributors and retailers. There will often be more than one supplier responsible for a particular product.
- Individual suppliers are responsible for the investigation and rectification of safety related hazards in products that they supply.
- A safety hazard may be identified by many means, including-
  - detection by the supplier undertaking the recall or another supplier within the supply chain;
  - complaint by a consumer;
  - detection by an industry body or consumer organisation; and
  - detection by the Commission, another Regulator or a State entity.
- An unsafe product may result from a manufacturing or production error that is where the manufacturer of the product departed from its design or material specifications during production.
- An unsafe product may also result from a design defect, that is, a product may be unsafe even if the product is manufactured exactly in accordance with its design and specifications. A defect in design may also be the cause of risk or injury as a result of the operation or use of the product, the reasonably foreseeable use of the product, or the failure of the product to operate as intended.
- Where the Commission detects or becomes aware of a safety related hazard it will attempt to identify the supplier at the highest level in the supply chain in order to assist the supplier to ensure all relevant suppliers from within the supply chain, including international recipients, are identified and advised of the safety related hazard relating to the product.

1.2.2. Supplier recall responsibilities

- A supplier has the following general responsibilities in relation to a recall-
  - conduct a comprehensive risk analysis of the safety hazard;
  - stop distribution of a product that has been identified for recall;
  - cease production or modify the manufacturing process for a product that has been identified for recall;
  - remove the unsafe product from the marketplace;
  - notify the relevant regulator/s;
  - notify the public;
  - notify international product recipients;
  - notify others in the domestic supply chain;
  - facilitate the return of recalled products from consumers;
  - store and dispose of recalled products safely;
  - have a written recall strategy/plan;
  - maintain records and establish procedures that will facilitate a recall (records should be in a form that can be quickly retrieved); and
  - provide progress reports on the conduct of the recall to the Commission and relevant regulators.
- Where the risk analysis determined that it is not necessary to retrieve products from consumers, however to mitigate the safety risk some other action by the supplier is required. These other actions may include a trade level recall or issuing a safety alert.
- Where a supplier initiates a trade level recall, the same general responsibilities would apply except that the supplier would not be required to notify the public. Likewise when issuing a safety alert, a supplier would have the same general responsibilities, however, it would not be required that the unsafe product be removed from the market place and/or trading areas.

Section C

1. Mitigating a product safety risk

1.1. Identifying a consumer product safety hazard

- Where a supplier becomes aware of a possible safety hazard in a consumer product that may cause injury to a person, the supplier should immediately conduct the following assessment-
  - gather and assess the reliability of all available information about the potential hazard;
  - identify how the problem occurred;
  - conduct a comprehensive risk analysis; and
  - look at all possible ways to address the safety related hazard and decide whether the product can be repaired or modified.
- The Commission requires a supplier to contact it when commencing such an assessment. This will enable the Commission to work with the supplier to determine what action (if any) is required to mitigate a safety related hazard with the product.

1.2. Determining an appropriate course of action

- Depending on the outcome of the risk analysis there are a number of possible actions a supplier may choose to take to mitigate a safety related hazard. These include-
  - calling back or withdrawing of products from the market or distribution chain;
  - requesting consumers or other suppliers-
    - (i) to return products for refund, replacement or modification; or
    - (ii) to contact the supplier to arrange for a replacement product or part to be sent to the consumer; or
  - sending a service agent to a person's home or place of business to repair or modify a product; or
  - requesting a service agent repair or modify a product when it is next presented for servicing.
- The decision about the most appropriate action in order to reduce the risk to consumers will depend on a number of factors, including the nature of the risk and distribution and lifecycle of the product. The supplier should consult with the Commission about the most appropriate strategy.

2. Conducting a recall

2.1. What are the objectives of a recall?

. The objectives of a recall are to-

- . stop the distribution and sale of the affected product as soon as possible;
- . inform the relevant authorities of the problem;
- . inform the public of the problem;
- . effectively and efficiently remove from the market place and/or trading areas, any product which is potentially unsafe; and
- . prevent the further distribution of unsafe products.

2.2. Requirements for conducting a recall

. The supplier has the prime responsibility for implementing a recall. A recall should be implemented in accordance with its recall policy and after consultation with the Commission.

. In order for the Commission to be assured that a product safety risk will be effectively mitigated, it requires that the supplier undertake the following actions-

- . notify the regulator/s of the recall, which includes providing details of other entities within the supply chain that have been notified of the recall;
- . prepare and submit a recall strategy to the regulator/s;
- . retrieve the affected product from consumers and from within the supply chain; and
- . report on the recall to the regulator/s.

3. Notification

3.1. Notification of the Commission

. A supplier undertaking a safety-related recall is required by the CPA (section 60 (1)) to notify the Commission in writing preferably before commencing recall action. However, the supplier must notify the Commission within two days of commencing a recall action.

. As a matter of administration, the Commission recommends that a supplier notify the Commission when the supplier decides to take any one of the following actions to mitigate a product safety related hazard-

- . call back or withdraw products from the market or distribution chain;
- . requesting consumers or other suppliers-
  - (i) to return products for refund, replacement or modification; or
  - (ii) to contact the supplier to arrange for a replacement product or part to be sent to the consumer; or
- . send a service agent to a person's home or place of business to repair or modify a product; or
- . make arrangements for a service agent to repair or modify a product when it is next presented for servicing.

. A supplier will fulfil the notification requirement by completing and submitting a recall Notice to the Commission's offices on the prescribed form;

- . Recall Notification Form (Section 60 Notification)
- . A Recall Notification Form can be obtained from the Commission by calling: 012 940 4450 OR E-mail: Productrecall@thencc.org.za.
- . A completed form can be submitted to the Commission's office situated at the **08 Bauhinia Str, Berkley Office Park, Techno Park, Centurion**.

3.2. Notification of international product recipients

. A supplier undertaking a voluntary or compulsory safety-related recall is also responsible for goods supplied outside South Africa. It is therefore, required that the supplier notify in writing any person outside South Africa, to whom they have supplied goods, that the goods are subject to a recall.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "It is therefore, required" is intended to be "It is therefore required,".)

. The notification must state that goods are subject to a recall and, if the goods contain a defect, have a dangerous characteristic or do not comply with a prescribed consumer product safety standard, set out the nature of the problem or non-compliance.

. Where a supplier has complied with the notification requirements under section 60 (1), the supplier should provide to the Commission, within 10 days of providing the notice, a copy of the notice. This requirement can be fulfilled by sending a copy to the Commission via email, fax or by hand delivery the Commission.

(Editorial Note: Wording as per original *Government Gazette*.)

3.3. Other entities in the domestic supply chain

. Recall effectiveness is contingent upon the effective notification and cooperation between all entities in the supply chain.

. The Commission therefore requires a supplier who undertakes a safety related recall of consumer goods to notify any entity from within the domestic supply chain in writing that a recall has been initiated.

. Where a supplier has complied with this requirement to notify entities from within the domestic supply chain that a recall has been initiated, the supplier should advise the Commission.

4. Recall strategy

. A supplier is required to submit a recall strategy to the Commission on initiating a recall thereby assuring the Commission that the product safety risk will be effectively mitigated.

. A supplier should negotiate the content of the recall strategy with the Commission prior to submitting it.

. The recall strategy is the first stage of reporting in relation to a recall and will assist the Commission to assess whether the product safety risks associate with the unsafe product will be adequately addressed.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the word "associate" is intended to be "associated".)

. Some elements of the recall strategy should be supplied to the Commission at the time of initiating the recall however other elements will not become evident until the recall has progressed and are to be provided at agreed intervals.

4.1 Elements of a recall strategy

. A supplier's recall strategy must include-

. an explanation of the problem, including the hazard associated with the product and the supplier's assessment of the risk posed by the product;

. the number of units supplied to consumers and others in the supply chain;

. information about any known injuries or incidents associated with the product;

. information about the life cycle of the product;

. information about the proposed communication with consumers, including the method of communication, frequency with which the communication will be repeated and details of the message. This should be negotiated with the Commission;

. information about the way in which the supplier will manage contact from consumers about the recalled product, including any complaint handling procedures;

. information about the manner in which the recalled product will be collected, destroyed or rectified;

. contact details of the manufacturer and/or importer of the product;

. contact details of other entities in the supply chain to whom the recalling supplier has supplied the product;

. contact details of international product recipients; and

. action taken by the supplier to identify and correct the cause of the hazard, including the outcome of any root cause analysis or the time period in which such analysis will occur.

5. Communication plan

. The purpose of communicating with consumers about a recall is to ensure that product related injuries are prevented through the removal or rectification of unsafe products. The goal in communicating a product recall is to ensure consumers comply with the recall notification.

. Matching the communication medium to the consumer is important to achieve the objective of compliance with a recall notice. Communications regarding the recall should therefore be directed towards the particular consumer demographic for the recalled product, using an appropriate communication method.

. Although there are a range of communication methods through which a supplier can communicate with consumers about a recall, there are some minimum requirements for written communication.

. A written recall notice must include-

. **Product description** - a clear description of the product, including the name, make and model and any distinguishing features, batch or serial numbers, including dates the product was available for sale;

. **Picture of the product** - a photograph or drawing of the product will provide the consumer a visual representation of the product;

. **Description of the defect** - a clear description of what the defect is. The defect should be described in simple terms so that the average consumer can understand. Refrain from using technical specifications wherever possible;

- **A statement of the hazard** - describes the maximum potential hazard and associated risk. Where available an appropriate hazard symbol should be included;
- A section titled **'What to do'**, which explains the immediate action the consumer is to take, for example, cease use immediately and return product to the place of purchase for a full refund. It should be clear that the consumer should return the product and not dispose of it. The supplier must ensure it minimises the inconvenience to consumers to encourage consumer compliance with the recall notice;
- A section titled **'Contact details'**, what explains who consumers should contact to receive a refund or have the product repaired or replaced. Include business and after hours telephone numbers, preferably toll free and email and website addresses.

. The recall notice must not include the words 'voluntary recall'.

. A supplier should place information relating to a product recall prominently on its website.

. There are a number of factors that influence the effectiveness of a recall communication, including the following-

- characteristics of consumers who originally purchased the affected product;
- geographic distribution of the affected product;
- nature of the hazard/risk posed by the affected product; and
- access to direct contact with consumers who have been supplied the affected product.

6. Retrieval of the affected product

. The ultimate goal of a recall is to retrieve as many unsafe products from the hands of consumers as possible and prevent any further distribution of the affected product in the market place.

. Products that are the subject of a recall may be recovered from different entities in the supply chain or directly from consumers.

. A supplier is required to make arrangements for the retrieval of the product. These arrangements should include-

- establishing collection points across the distribution network;
- notifying the relevant parties, including other entities in the supply chain and consumers of the method of retrieval of the recalled product; and
- arrangements for disposing of the returned product-this may involve arranging for the returned product to be held and kept separate until it can be rectified or safely destroyed.

. Low value products pose particular challenges for suppliers when it comes to a recall. Low value does not mean low risk and suppliers should still seek to achieve effective recalls of such products.

7. Reporting on the recall

7.1. Progress reports

- In order to monitor the progress and enable on going assessment of the effectiveness of the recall the Commission requires a supplier to provide progress reports.
- The Commission will develop a reporting schedule with a supplier at the beginning of a recall that appropriately reflects the product risk being addressed. The information the Commission will require as part of any progress reports will be dependent on the circumstances of the recall and therefore will be negotiated on a case by case basis. Examples of the types of information the Commission may require in a progress report include-
  - the number of products returned from within the supply chain and from consumers;
  - the number of complaints and inquiries that have been received regarding the product and the nature of these complaints;
  - the number of inquiries that have been received from consumers regarding the recall and the nature of these inquiries; and
  - whether the supplier deviated from the original plan at all in relation to the communication strategy or any other strategies and the reasons why.

7.2. Final r eport

- When a supplier has taken all reasonable steps to effectively mitigate the risk posed by the unsafe product, the recall can be closed. Closure of a recall does not affect the rights of consumers in relation to the product and the public can continue to access information about the recall through the supplier's recalls website or any form designed by the Commission. However, when a recall is closed the supplier no longer needs to actively promote the recall and the regulatory oversight ceases.
- The Commission requires a supplier to submit a final report before the recall can be closed.
- A supplier's final report must include-
  - confirmation of the total number of product supplied and the final number of units recovered from consumers and from within the supply chain;

- evidence to demonstrate that all entities from within the domestic supply chain were notified of the recall;
- information about the communication strategy, including copies of any data about its effectiveness (for example, number of unique visitors to the relevant webpage);
- action taken by the supplier to identify and correct the cause of the safety related hazard in the product, including the outcome of any root cause analysis, whether the defect was a manufacturing or design or some other defect and the steps the supplier has taken to remedy such defect;
- information about any known injuries or incidents associated with the product;
- the final number of complaints or inquiries that have been received regarding the recall and/or the product; and
- information about the manner in which the recalled product has been destroyed or rectified, including evidence of the destruction or rectification of the unsafe product.

NATIONAL CONSUMER COMMISSION

Recall Notification Form

Completion of this form constitutes notification to the Commission under Section 60 of the Consumer Protection Act 68 of 2008.

Public information:

Name of supplier	
Website	

Product Details:

Product name	
Product description	
Identifying numbers	

e.g. VIN no., batch no., model no., serial no., approval no. Etc.

Where the product was sold	National		Limpopo		Gauteng		N. Cape		W. Cape	
	E. Cape		Free State		N. West		Mpumalanga		KZN	
Traders who sold the product										
Dates available for sale										

Product Defect Details:

What are the product defects?	
What are the hazards	
What should the consumer do?	

Private Information:

Quality Affected				
Who initiated the recall?	The Commission		Other Regulator	
	Supplier		Gov. Department	

Product Details:

Recommended retail price (R)	
Life span of product (years)	
Age group/s that purchased your product	0-17 | | 18-30 | | 31-45 | | 46-65 | | 65+ |
Marketing medium used to sell the product	National Newspaper/s | | TV | | Online | | Radio | | In-Store | Direct Contact | | Catalogues | | Other |
Product is supplied with a warranty registration card or an online registration option	Yes | | No | | Unknown |

Supply Chain:

Your position(s) in the supply chain	Manufacturer | | Retailer | | Importer | | Distributor | | wholesaler |
Manufacturer's name	
Manufacturer's contact details	
Product's country of origin	
Countries where product was exported (if any)	
Processes/mechanisms are in place to track the product through the supply chain	Yes | | No | | Unknown |

Injuries:

Known injuries or damage related to this product	

Recall Advertising:

Provide details of any action you are taking to publicise this recall	
Consumers are offered incentives to return the product (e.g. cash, gift card, discount)	Yes | | No | | Unknown |

Supplier's details:

Contact name	
Contact position	
Phone 1	
Phone 2	
Fax	

Email	
Street address 1	
Street address 2	
Suburb	
Province	
Post code	
Country	

Nominated representative (if different from above)

Contact name	
Contact position	
Phone 1	
Phone 2	
Fax	
Email	
Street address 1	
Street address 2	
Suburb	
Province	
Post code	
Country	

GN 380 of 12 April 2013: Labelling of goods originating from East Jerusalem, Gaza or West Bank wrongly labelled as originating from Israel
(*Government Gazette* No. 36364)

DEPARTMENT OF TRADE AND INDUSTRY

1. **Whereas** in terms of section 24 (2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) (hereinafter referred to as "the Act"), a person must not knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description;

2. **Whereas** in terms section 24 (4) of the Act, the Minister may prescribe categories of goods that are required to have a trade description applied to them; and

3. **Whereas** in terms of section 24 (5) of the Act, the producer or importer of goods that have been prescribed in terms of section 24 (4) must apply trade descriptions to those goods, disclosing the country of origin of the goods and any other prescribed information;

4. I, **Dr Rob Davies**, hereby, issue a notice in terms of section 24 of the Act prescribing categories of goods and information which requires an importer, producer, retailer or supplier in the Republic of South Africa, to label Israeli goods that originate from-

(*a*) East Jerusalem, as goods originating from East Jerusalem: Israeli Goods ("East Jerusalem: Israeli Goods");

(*b*) Gaza, as goods originating from Gaza: Israeli Goods ("Gaza: Israeli Goods"); or

(*c*) West Bank, as goods originating from West Bank: Israeli Goods ("West Bank: Israeli Goods").

5. The label "Made in Israel" may only be applied to goods that originate from within Israel's borders of 1948 - 1967 before they were unilaterally changed by Israel in 1967 "Six Day War". The 1949 Armistice Agreement and UN Resolutions e.g. Resolution 181 and Resolution 242 confirm the Israeli and Palestinian Borders.

6. I further hereby, in terms of section 24 (4) of the Act, prescribe that the producer or importer of the goods specified in the Category of Goods below must apply a trade description to those goods, disclosing-

(*a*) the country of origin of the goods;

(*b*) in the event of a producer or importer using imported material from-

(i) East Jerusalem to produce goods mentioned in the Category of Goods, such goods must be labeled "made in the Republic of South Africa from material imported from East Jerusalem: Israeli Goods";

(ii) Gaza to produce goods mentioned in the Category of Goods, such goods must be labeled "made in the Republic of South Africa from material imported from Gaza: Israeli Goods"; or

(iii) West Bank to produce goods mentioned in the Category of Goods, such goods must be labeled "made in the Republic of South Africa from material imported from West Bank: Israeli Goods";

(*c*) in the event of a producer or importer of goods in the Republic of South Africa, made from material imported from-

(i) East Jerusalem, such goods shall be labeled "made in country X from material imported from East Jerusalem: Israeli Goods";

(ii) Gaza, such goods shall be labeled "made in country X from material imported from Gaza: Israeli Goods"; or

(iii) West Bank, such goods shall be labeled "made in country X from material imported from West Bank: Israeli Goods".

7. Labelling must permanently be applied to the prescribed category of goods in a conspicuous and easily legible manner.

8. Failure to comply with this notice constitutes an offence in terms of section 110 (1) and may lead to a penalty in terms of section 111 (1) (*b*) read with section 111 (2) of the Act.

(Signed)
Dr Rob Davies (MP)
Minister of Trade and Industry
5 April 2013

CATEGORY OF GOODS

The above notice applies to the following categories:

1. Cosmetics;
2. Technology;
3. Food and Beverages;
4. Textiles; and
5. Household Goods.

In terms of section 24 (4) (*a*) of the Act the Minister may from time to time prescribe further categories that are required to have a trade description applied to them.

GN 825 of 25 October 2013: Categories of goods that are required to have a trade description applied to them in terms of the Act
(*Government Gazette* No. 36968)

DEPARTMENT OF TRADE AND INDUSTRY

I, Dr Rob Davies, Minister of Trade and Industry, after having considered comments made in relation to Notice 238 of 2013, published in *Government Gazette* No. 36285 on 22 March 2013 on categories of goods that are required to have a trade description applied in terms of section 24 (4) (*a*) and (*c*) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) (the Act) do hereby issue a final notice prescribing certain categories of goods that are required to have a trade description applied to them and prescribing the information that is required to be included in such trade description from among the categories of information contemplated in the definition of a "trade description" as stated in section 1 of the Act. The categories of goods that are required to have a trade description and the prescribed information is set out in the attached schedule.

This notice will come into effect six months after publication in the *Government Gazette*.

(Signed)
Dr Rob Davies (MP)
Minister of Trade and Industry
Date: 02/10/2013

SCHEDULE

CATEGORIES OF GOODS THAT ARE REQUIRED TO HAVE A TRADE DESCRIPTION APPLIED TO THEM	INFORMATION REQUIRED TO BE INCLUDED IN THE TRADE DESCRIPTION
	1. The number, quantity, measure, weight or gauge of the goods.

Processed and Packaged Meat Products	2. The name of the producer of the goods. 3. The ingredients of which the goods consist, or material of which the goods are made, including a plain language description of the animal from which any particles, portions or constituents of meat were derived, e.g. Water Buffalo, Horse and Donkey etc. 4. The mode of manufacturing or producing the goods.
Dried and Packaged Meat Products	1. The number, quantity, measure, weight or gauge of the goods. 2. The name of the producer of the goods. 3. The ingredients of which the goods consist, or material of which the goods are made, including a plain language description of the animal from which any particles, portions or constituents of meat were derived, e.g. Water Buffalo, Horse and Donkey etc. 4. The mode of manufacturing or producing the goods.

Please note that in terms of section 24 (4) (*a*) of the Act the Minister may from time to time prescribe further categories that are required to have a trade description applied to them.

GN 817 of 17 October 2014: Prescription of the South African Automotive Industry Code and Accreditation of the Alternative Dispute Resolution Scheme Administered by the Motor Industry Ombud of South Africa as an accredited Industry Ombud
(*Government Gazette* No. 38107)

DEPARTMENT OF TRADE AND INDUSTRY

I, Dr Rob Davies, Minister of Trade and Industry, after having considered comments made in relation to Notice 69 of 2014, published in *Government Gazette* No. 37301 on 7 February 2014 on the application for accreditation of the South African Automotive Industry Code of Conduct made in terms of section 82 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) (the Act) and acting on the recommendations thereto made by the National Consumer Commission in terms of section 82 (3) of the Act, do hereby prescribe the code in the attached schedule as the industry code for the automotive industry and accredit as an accredited industry ombud the alternative dispute resolution scheme administered by the Motor Industry Ombud of South African in terms of section 82 (6) (*b*) of the Act.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "Motor Industry Ombud of South African" is intended to be "Motor Industry Ombud of South Africa".)

This notice will come into effect three (3) months after publication in the *Government Gazette*.

(Signed)
Dr Rob Davies (MP)
Minister of Trade and Industry
Date: 2/10/2014

SOUTH AFRICAN
AUTOMOTIVE INDUSTRY CODE OF CONDUCT

Vision:

The Automotive Industry of South Africa will at all times endeavour to comply with the contents and spirit of the Consumer Protection Act 68 of 2008 when supplying goods and services to consumers.

Mission:

The Automotive Industry of South Africa will achieve its vision in three ways, by-

1. **Subscribing to this Code of Conduct;**
2. **Providing goods and services that are safe and at prices that are fair and reasonable;**
3. **Publicly acknowledging the consumer's rights to be heard, to be informed, to have the right to safety, the right to choose, and the right to redress with regard to the South African Automotive Industry.**

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Part A

1. INTRODUCTION

The South African Automotive Industry Code (the Code) was proposed by the automotive industry and recommended to the Minister of Trade and Industry by the National Consumer Commission in accordance with the provisions of section 82 (3) of the Consumer Protection Act 68 of 2008 (the Act). The Code will regulate the interactions between persons conducting business in the automotive industry and their interactions with consumers.

Purpose of the Code is to regulate relations between persons conducting business within the automotive industry and to provide for a scheme of alternative dispute resolution between consumers and all participants in the industry and to create an industry ombud to provide alternative dispute resolution services. Any provision in the Code that is inconsistent with the Act will be invalid.

The Code is an industry code and it applies to the entire Automotive Industry as defined in this code of conduct irrespective of whether such persons are members of any automotive industry association. The Code relates to the conduct for the supply of goods and services by the Automotive Industry and consumers within the Republic of South Africa and focuses on consumer protection, supplier guidance and fair business practices.

The Automotive Industry for the purposes of this Code means: importers, distributors, manufacturers, retailers, franchisors, franchisees; suppliers, and intermediaries who import, distribute, produce, retail or supply passenger, recreational, agricultural, industrial, or commercial vehicles, including but not limited to passenger vehicles, trucks, motor cycles, quad cycles, whether self-propelled or not or an internal combustion propelled engine for a boat, or import, distribute, manufacture, retail or supply any completed components and/or accessories to such vehicles, and/or renders a related repair or replacement service to consumers in respect of such vehicles; and trailers, and "anyone who modifies, converts or adapts vehicles.

(Editorial Note: Wording as per original *Government Gazette*.)

This Code will be implemented by the Motor Industry Ombudsman of South Africa (MIOSA) and its interpretation is vested in the MIOSA.

The Code provides for an Alternative Dispute Resolution process, within the Automotive Industry, and between-

. consumers and suppliers; and

- suppliers themselves, which will, amongst other things, include instances in which-
  - a supplier falls within the definition of consumer as envisaged in the Act; and
  - a supplier falls under the threshold as determined by the Regulations to the Act; and
  - supplier and manufacturer;
  - consumer and manufacturer.

2. DEFINITIONS

The definitions in the Act will apply to the Code.

In this Code-

2.1 **"ADR"** means Alternative Dispute Resolution;

2.2 **"the Act"** means The Consumer Protection Act 68 of 2008 and the Regulations thereto, as amended from time to time;

2.3 **"Automotive Industry"** means importers, distributors, manufacturers, retailers, franchisors, franchisees; suppliers, and intermediaries who import, distribute, produce, retail or supply passenger, recreational, agricultural, industrial, or commercial vehicles, including but not limited to passenger vehicles, trucks, motor cycles, quad cycles or, whether self-propelled or not an internal combustion propelled engine for a boat, or import, distribute, manufacture, retail or supply any completed components and/or accessories to such vehicles, and/or renders a related repair or replacement service to consumers in respect of such vehicles; and trailers, and "anyone who modifies, converts or adapts vehicles;

(Editorial Note: Wording as per original *Government Gazette*.)

2.4 **"the Code"** means this Code of Conduct as amended from time to time;

2.5 **"days"** means business days which is any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;

2.6 **"dealer"** means a retailer who supplies goods or services to the end-consumer;

2.7 **"distributer"** in relation to any particular goods, means a person who, in the ordinary course of business-

2.7.1 is supplied with those goods by a manufacturer; and

2.7.2 in turn, supplies those goods to either another distributor or to a retailer;

2.8 **"importer"** means, with respect to any particular goods, a person who brings those goods, or causes them to be brought, from outside the Republic into the Republic, with the intention of making them available for supply in the ordinary course of business;

2.9 **"manufacturer"** includes a producer or importer and it means a person who-

2.9.1 manufactures or produces goods, or causes any goods to be manufactured or produced, with the intention of making them available for supply in the ordinary course of business; or

2.9.2 by applying a personal or business name, trademark, trade description or other visual representation on or in relation to the goods, has created or established a reasonable expectation that the person is a person contemplated in clause 2.9.1;

2.10 **"MIOSA"** means Motor Industry Ombudsman of South Africa, established to assist in resolving disputes that arise in terms of the Act regarding any goods or services provided by the Automotive Industry to such consumers, including suppliers who are in turn also consumers within the industry supply chain;

2.11 **"motor vehicle"** means any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity or any other means, including a motorcycle, trailer, caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle;

2.12 **"NCC"** means the National Consumer Commission;

2.13 **"NCT"** means National Consumer Tribunal;

2.14 **"normal office hours"** means from 08H30 to 16H30 Monday to Thursday and 08H30 to 16H00 on Fridays;

2.15 **"OEM"** means the original equipment manufacturer, and for the purposes of this code includes the distributor, importer or manufacturer as the case may be;

2.16 **"trade associations"** means associations that act as a collective to represent, assist, educate and advise their members in matters of common interest;

2.17 **"used vehicle"** means a motor vehicle that has been previously licensed or registered and includes demonstration (demo) vehicles but excludes a vehicle or the components thereof disposed of as scrap or utilised for parts and not saleable as an operating vehicle.

3. REQUIRED PERFORMANCE STANDARDS

3.1.1 Individuals and businesses operating within the Automotive Industry are required to follow the purpose and policy of the Act, to refrain from prohibited conduct and particularly to, in their dealings with consumers, protect consumers from-

3.1.1.1 unconscionable conduct;

3.1.1.2 unfair, unreasonable, unjust contracts and contractual terms;

3.1.1.3 unfair, unreasonable, unjust or otherwise improper trade practices; and

3.1.1.4 deceptive, misleading, unfair or fraudulent conduct.

(Editorial Note: Numbering as per original *Government Gazette*.)

4. OBLIGATIONS BY SUPPLIERS REGARDING COMPLAINTS

4.1 Suppliers shall-

4.1.1 Establish internal complaints handling processes, including the following:

4.1.1.1 an internal complaints handling department, if any, of the supplier; and/or

4.1.1.2 a suitable complaints resolution procedure; and

4.1.1.3 the process to be followed by the consumer in order for such complaint to be lodged with the MIOSA.

4.1.2 display in or at all trading premises a notice that-

4.1.2.1 reflects that there is a Code which binds suppliers; and

4.1.2.2 when requested by consumers, and at no cost, provide the consumers with the contact details of-

4.1.2.2.1 the particular internal complaints handling department, if any, of the supplier; and

4.1.2.2.2 the MIOSA, including details relating to the process to be followed by the consumer in order for such complaint to be lodged;

4.1.3 train, or if not possible inform all relevant staff members in respect of-

4.1.3.1 the Act and Regulations, as issued and/or amended from time to time; and

4.1.3.2 the Code, as amended from time to time; and

4.1.3.3 general principles and procedures on effective handling of complaints;

4.1.4 attempt to resolve complaints and disputes in accordance with-

4.1.4.1 the spirit and provisions of this Code, the Act and Regulations; and

4.1.4.2 the spirit and provisions of dispute procedures;

4.1.5 make every reasonable effort to resolve complaints within 30 (thirty) days and if unable to do so, for reasons such as on-going technical testing or the like, then to inform the consumer thereof before the expiry of 30 (thirty) days.

5. NON-COMPLIANCE WITH THE CODE

5.1 Non-compliance with the Code is prohibited by section 82 (8) of the Act.

5.2 Where there is any non-compliance with the Code by suppliers within the Automotive Industry and such non-compliance is brought to the attention of the MIOSA, the matter will be investigated and dealt with in accordance with the MIOSA procedures.

5.3 The MIOSA may, in addition to any step taken in terms of its procedures, refer such non-compliance to the NCC.

Part B
Alternative Dispute Resolution

This part of the Code deals with specific sections of the Act that cater for the resolution of disputes through an ADR function such as the MIOSA.

6. DISPUTE RESOLUTION MECHANISMS

6.1 If a matter is not resolved within 30 days of a dispute between a consumer and a supplier, the consumer may approach MIOSA.

7. MAINTAINING THE INDEPENDENCE OF THE MOTOR INDUSTRY OMBUD

7.1 The MIOSA is a voluntary, non-statutory body that has been afforded recognition under section 82 (6) of the Act.

7.2 The MIOSA may engage in the resolution of disputes arising within the Automotive Industry.

8. OBJECTIVES OF MIOSA

8.1 The objective of the MIOSA, in terms of clause 12.1 below, is to consider and dispose of complaints in a procedurally fair, informal, economical and expeditious manner in accordance with the principles of natural justice and by reference to what is equitable in all the circumstances in accordance with the Act and its Regulations.

9. MIOSA SELECTION CRITERIA

9.1 The Ombud and all persons conducting alternative dispute resolution must ideally have-

9.1.1 suitable qualifications and experience in economics, law, commerce, industry or public affairs and dispute resolution;

9.1.2 sufficient knowledge of the technical aspects of the goods and services provided in the Automotive Industry;

9.1.3 sufficient knowledge and skill to comprehend the Act to ensure that the staff component of the MIOSA will diligently and honestly conduct their day-to-day tasks.

9.2 An Ombud may not-

9.2.1 have any previous criminal conviction or conviction during her/his tenure of which dishonesty is an element;

9.2.2 be an un-rehabilitated insolvent or commit an act of insolvency during her/his tenure;

9.2.3 have a current interest (manufacturing, importing, distribution or retail) directly or indirectly in the Automotive Industry or serve in any capacity with regard to policy-making bodies or industry associations within the Automotive Industry whatsoever.

9.3 Selection criteria and qualifications of the Board of Directors:

9.3.1 All Board members will be selected in terms of the Memorandum of Incorporation of the MIOSA.

10. OMBUD APPOINTMENT PROCEDURES

10.1 An Ombud will be appointed as follows:

10.1.1 Subject to clause 10.4, each board member as well as the incumbent Ombud will have one vote;

(Editorial Note: Wording as per original *Government Gazette*.)

10.1.2 A new Ombud will be elected by way of simple majority of votes of the Board of Directors following the completion of a diligent recruitment process;

10.1.3 The Ombud will be appointed for fixed periods of 5 (five) years at a time with the option of a single further 5 (five) year appointment.

10.2 Whenever a new Ombud is to be appointed, the new Ombud will be appointed one year prior to his/her commencement of the period of service and will be remunerated according to the remuneration criteria as set by the MIOSA board for this period.

10.3 The Board of the MIOSA will be required to invite applications from the general public who meet the selection criteria as set out in clause 9.3 above.

11. REMOVAL OF THE OMBUD

11.1 During the period envisaged in clause 10.1.3 above, the Ombud enjoys security of tenure and can only be dismissed on the grounds of gross misconduct, incompetence, or its inability to effectively carry out duties.

12. MINIMUM STANDARDS AND POWERS OF THE MIOSA

12.1 The MIOSA will-

12.1.1 be registered with the Companies and Intellectual Property Commission as a NOT FOR PROFIT company in terms of the Companies Act, 71 of 2008;

12.1.2 comply with the requirements of the King Code of Governance Principles as amended from time to time;

12.1.3 at all times comply with the provisions of the Companies Act, 71 of 2008 and its regulations as amended from time to time relating to NOT FOR PROFIT Companies;

12.1.4 comply with all government regulation and legislation concerning Broad-Based Black Economic Empowerment including the Preferential Procurement Framework requirements;

12.1.5 be sufficiently resourced to perform and carry out its functions;

12.1.6 not be influenced when making its decisions;

12.1.7 be entirely responsible for the management and determination of complaints;

12.1.8 be accountable to the Minister, the Commissioner of the NCC and the Board;

12.1.9 act independently, objectively, openly and honestly;

12.1.10 have regard to the provisions of the Act as well as principles of the rule of law, of equality, fairness, justice and equity;

12.1.11 equally and impartially balance the rights of consumers (also called "complainants") and the rights of suppliers;

12.1.12 exercise its functions and duties in terms of these operating procedures;

12.1.13 resolve complaints as efficiently and as speedily as is possible; and

12.1.14 ensure that its staff perform their functions in terms of and according to these operating procedures;

12.1.15 be guided by the following considerations:

12.1.15.1 the Act;

12.1.15.2 the need to resolve disputes expeditiously.

13. FUNDING THE MIOSA

The MIOSA-

13.1 financial year will be from 1 March to 28 February.

13.2 is funded by the Automotive Industry in the manner as set out in Schedule 5.

13.3 will provide the Commissioner of the NCC with a written report on the progress made with the compilation of the database every 6 (six) months, the first report to be submitted within 6 (six) months of accreditation and every six months thereafter.

13.4 will be responsible to collect all contributions due and owing by the members of the Automotive Industry.

13.5 may put out to tender the compilation of the database of all members of the Automotive industry and the collection of funding contributions from those members, provided that it will only be entitled to do so if the related expenditure has been approved as part of the annual budget.

13.6 will invoice the members of the Automotive Industry monthly on or before the 7th (seventh) day of each month and the invoices are payable monthly in arrears on or before the 20th (twentieth) day of each month.

13.7 must deposit all funds in an account opened with a bank registered under the Banks Act, 1990 (Act No. 94 of 1990).

13.8 must utilise all funds received for the defrayal of expenses incurred in the performance of its duties and may invest funds which are not required for immediate use.

13.9 payments, excluding petty cash, must be made by way of cheques or Electronic Funds Transactions and/or debit orders drawn against the bank account of the MIOSA and must be signed in a manner decided on by the Board after consultation with the Ombud; provided that all cheques, bills and other negotiable instruments to be drawn on the MIOSA's bank accounts will at all times require the approval of 2 (two) of the directors of the MIOSA.

13.10 funds standing to its credit at the end of the financial year, as well as funds invested, must be carried forward to the next financial year.

13.11 will, through the Ombud, submit an annual budget to the Board on 1 November of each year which budget will include, without limitation, the budget for-

13.11.1 awareness and as per clause 16.3;

13.11.2 remuneration of the staff, including directors;

13.11.3 operating capital in respect of normal business activities;

13.11.4 capital in respect of training for staff;

13.11.5 unforeseen contingencies;

13.11.6 marketing in order to promote the MIOSA.

13.12 Board must consider the proposed budget and furnish the MIOSA with an approved budget by 31 January of each year.

14. CONFLICT OF INTEREST

14.1 The MIOSA must adopt a conflict of interest policy which includes at least the-

14.1.1 identification of conflicts of interest in which the Ombud and/or any Director and/or employee of the MIOSA have an actual or potential interest that may influence the objectivity of the Ombud and/or Director and/or employee may be in question;

14.1.2 provisions for avoiding any conflicts of interest, and where not possible, reasons therefore and procedures to mitigate such conflicts and internal controls to adhere to the policy;

14.1.3 processes to disclose any conflicts of interest;

14.1.4 rules relating to the giving and receipt of gifts, vouchers, incentives, hospitality or other benefits; and

14.1.5 creation and maintenance of a gift register.

15. ACCOUNTABILITY

15.1 The Ombud is the accounting officer in respect of all funds received and all payments made in respect of expenses incurred by the MIOSA.

15.2 The Ombud, as accounting officer, must ensure that proper accounting records for the recording of all the MIOSA's transactions are kept, which records will-

15.2.1 be kept at the main offices of the MIOSA regarded as such from time to time by the Board;

15.2.2 at all times during normal working hours, be available for inspection by the Minister, the NCC and the Board or their duly appointed and authorised representatives.

15.3 The MIOSA will ensure that financial statements consisting of-

15.3.1 an income and expenditure account for the financial year under observation; and

15.3.2 a balance sheet reflecting the financial position of the MIOSA at the end of the financial year,

are prepared by a firm of auditors appointed by the board of the MIOSA as soon as possible after the financial year end, but not later than 90 (ninety) days after the financial year end.

15.4 A copy of the financial statements must as soon as possible, but not more than 7 (seven) days after those statements have been prepared, be made available to each member of the Board.

15.5 The Board will, within one month of the finalization of the financial statements, meet to consider, provide comment and/or approve such financial statements.

15.6 A copy of the approved financial statements will be made available to the Minister, the Commissioner of the NCC and each member of the Board.

16. REPORTS, STATISTICS AND AWARENESS

16.1 The MIOSA will, in terms of section 82 (5) and (7) of the Act, provide monthly reports on-

16.1.1 management accounts;

16.1.2 trends;

16.1.3 statistics;

16.1.4 systemic issues;

16.1.5 general case information on-

16.1.5.1 Number cases referred to MIOSA for each supplier (OEM, dealer or repair workshop);

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "Number cases" is intended to be "Number of cases".)

16.1.5.2 Number of cases considered and closed;

16.1.5.3 Number of cases resolved; and

16.1.5.4 Turn-around times for case closure;

16.1.5.5 consumer details;

16.1.5.6 origin of complaint.

16.2 The MIOSA will annually provide the NCC with-

16.2.1 An annual Report on the general functionality of the Code, its successes and operation as well as the methods used by the MIOSA to monitor the effectiveness of the Code.

16.2.2 Annual Financial Statement, approved by the auditors of the MIOSA.

16.3 The MIOSA shall conduct ongoing awareness in order to educate and create awareness for consumers, suppliers and all other participants within the Automotive Industry on vehicle-related matters within the Act and the role of the MIOSA.

17. JURISDICTION OF THE MIOSA

17.1 The authority of the MIOSA to resolve disputes is acquired from this Code and the Act.

17.2 It should be noted that the MIOSA does not have jurisdiction in respect of any dispute-

17.2.1 which falls within the exclusive mandate of any other Ombudsman;

17.2.2 which has prescribed in terms of the Prescription Act-

17.2.2.1 the period of 3 (three) years commences on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first;

17.2.3 which requires the determination of merits and the quantum of damages;

17.2.4 which requires the Ombud to act as arbitrator in the above mentioned circumstances;

17.2.5 where a class action must be determined;

17.2.6 where legal action has been instituted by either party unless such complaint was received by the MIOSA before such legal action was instituted;

17.2.7 where it appears that a criminal offence has been committed by either party, in which event the MIOSA will only deal with the facts outside the ambit of the suspected criminal offence.

17.3 Limits on the MIOSA's jurisdiction:

17.3.1 The MIOSA may not consider a complaint or dispute that relates to a juristic person as a consumer whose asset value or annual turnover equals or exceeds the threshold (limit) being the amount as determined by the Minister by regulation issued in terms of section 5 (2) of the Act, from time to time;

17.3.2 The MIOSA may not make a finding on product liability.

18. GENERAL ADMINISTRATIVE POWERS OF OMBUD

18.1 The Ombud may for the performance of functions in the MIOSA and as a charge against or for the benefit of the funds of the MIOSA, as the case may be-

18.1.1 hire, purchase or otherwise acquire property, and let, sell or otherwise dispose of property so purchased or acquired;

18.1.2 enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services;

18.1.3 insure the office against any loss, damage, risk or liability;

18.1.4 employ sufficiently trained persons to assist the Ombud, determine their terms of appointment and, subject to such conditions as may be determined by the Ombud, delegate or assign to any such employee, including a Deputy Ombud, any administrative function vesting in the Ombud in terms of this part;

18.1.5 obtain such professional advice as may reasonably be required; and

18.1.6 in general, do anything which is necessary or expedient for the achievement of the objectives of the Ombud.

19. DEREGISTRATION AND LIQUIDATION OF MIOSA

19.1 The MIOSA may not be deregistered, dissolved or liquidated except in terms of the Companies Act or other relevant prevailing legislation.

20. CONSIDERING A COMPLAINT

20.1 The MIOSA may consider a complaint brought by or on behalf of a consumer as defined in the Act.

21. PROCEDURE FOR DETERMINATION OF A DISPUTE

21.1 Any party will be required to respond to a request by the MIOSA within 10 (ten) days of receiving notification from MIOSA, failing which the party will be barred from providing information, unless the MIOSA in its discretion and considering the reasons for the delay determines otherwise.

21.2 After complaints are lodged with the MIOSA for investigation regarding alleged contraventions of the Code or the Act, the MIOSA must-

21.2.1 investigate and evaluate alleged complaints arising from the alleged contraventions of the Code or the Act;

21.2.2 attempt to facilitate a settlement between the parties and where possible, provide a recommendation with regard to such settlement.

21.3 The MIOSA will determine a dispute within 30 (thirty) days from the date it has received all the necessary documentation/information to enable the MIOSA to make an informed decision regarding the complaint.

22. MIOSA ACTIONS

22.1 The MIOSA can act upon disputes involving-

22.1.1 consumers;

22.1.2 consumers on the one hand and suppliers; and/or

22.1.3 complaints concerning alleged contraventions of the Code or the Act.

22.2 The MIOSA can further act upon disputes where a supplier has referred a dispute on behalf of a consumer with the permission of the consumer.

22.3 Where more than one Ombud has jurisdiction to decide a matter, the MIOSA will have jurisdiction to the extent that the dispute relates to the automotive industry.

23. POST RESOLUTION OF DISPUTE

23.1 In the event of a dispute being resolved, the MIOSA must-

23.1.1 record the resolution thereof in the form of an order in terms of section 70 (3) (*a*) of the Act;

23.1.2 at the request of a party to a dispute, submit an order to the Tribunal or the High Court for purposes of a consent order in terms of its rules and of section 70 (3) (*b*), the cost of such order to be borne by the party making such request;

23.1.3 terminate the process by notice to the parties in terms of section 70 (2) of the Act;

23.1.4 report any non-compliance with the Code or the Act by a supplier or service provider to the Automotive Industry Association to which it is a member (if any), in order for that particular Association to investigate the allegations.

23.1.5 Publish on its website, summaries of its significant findings that will be of interest to consumers and suppliers.

24. GENERAL OPERATIONS

24.1 Should resolution of any particular complaint require the input of a specialist authority or technical expert in any field, or advice from any third party, then in order to resolve such dispute before it, the MIOSA may employ or utilize the services of any specialist authority or technical expert to assist the MIOSA with its investigation or in order to produce any required report.

24.2 Should the MIOSA, its staff or any supplier become aware of any criminal act being committed or intended to be committed within the Automotive Industry, or of any practice that may be deemed or alleged to be criminal, then in such event the supplier, and/or the MIOSA and/or its staff will be obliged to report such practice or behaviour to the relevant authority(ies), in which case evidence may have to be given in a court of law.

24.3 Nothing contained herein precludes the MIOSA from developing internal rules, forms and procedures that are not in conflict with the provisions of this document or the Act.

24.4 All information (including settlement offers) provided by one party to a dispute before MIOSA to the other party will be deemed to be provided on a confidential "without prejudice" basis and may not be disclosed to any other party or used in any subsequent arbitration or litigation.

25. TRANSITIONAL PERIOD

25.1 The MIOSA is currently established as an Alternative Dispute Resolution body. The incumbent Ombud and the 3 (three) Directors appointed by him will continue in this position for 5 (five) years so as to ensure that the Code can be adequately enforced from the date of approval.

SCHEDULE 1:

LIST OF CURRENT INDUSTRY ASSOCIATIONS

ASSOCIATION	*INDUSTRY TYPE*
AMID - Association of Motorcycle Importers and Distributers	Motorcycle
IDA - Independent Dealers Association	Independently Owned Dealers, Inclusive of Independently Owned Franchisees
NAACAM - National Association of Automotive Component & Allied Manufacturers	Components
NAAMSA - National Association of Automobile Manufacturers of South Africa	Motor Vehicle OEM & Importer and Distributor
RMI - Retail Motor Industry Organisation	Umbrella Body for Various Automotive Retail Associations

SCHEDULE 2:

MIOSA COMPLAINTS PROCESS

Stage 1 - Laying of First Complaint

1. A consumer who has a complaint is advised to address the query in writing to the supplier and/or trade association to which the supplier subscribes.

2. The supplier must provide the consumer with a written acknowledgement of receipt of any complaint submitted to it.

3. The supplier may endeavour to resolve the dispute directly with the consumer. In this regard the supplier will respond to the query substantively, in writing, within 10 (ten) days of receipt of the query. If the supplier is unable to provide a substantive response or resolve the matter within 10 (ten) days thereafter, the supplier shall communicate this to the consumer and provide reasons to the extent possible in writing.

4. If the query is not resolved within the time period as mentioned in clause 2 above or such period as the parties may agree to in writing-

    4.1 the consumer shall file a complaint, in writing, with the office of the MIOSA by facsimile, e-mail or pre-paid registered post, stating the nature of the complaint and dispute as well as the action required and expected outcome;

    (Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "in clause 2" is intended to be "in clause 3".)

    4.2 copies of all relevant documentation shall accompany the complaint.

5. If a consumer requires assistance in understanding the procedures to conduct a dispute with the MIOSA, the MIOSA will assist the consumer in this regard.

Stage 2A - Lodging a Complaint with Motor Industry Ombud

6. A complainant who-

    6.1 referred a complaint to a supplier, and who is dissatisfied with the manner in which the supplier is dealing with it, or how it has been dealt with or with the outcome thereof; or

    6.2 has not approached the supplier as this would cause or be likely to cause the complainant undue harm or prejudice,

    may refer the complaint to the MIOSA.

7. The complainant must refer the complaint to the MIOSA within a reasonable time.

8. Receipt of each complaint should be acknowledged to the complainant within 2 (two) business days of receipt thereof by way of phone, facsimile or e-mail.

9. The supplier shall file its substantive response with the MIOSA within 10 (ten) days of receipt of the complaint

as provided in clause 7. If the supplier is unable to provide a substantive response within 10 (ten) days, the supplier must advise the MIOSA and provide acceptable reasons.

10. All communication between the parties and the MIOSA regarding the dispute must be in writing, unless alternative arrangements have been agreed between the parties, in writing.

11. After receipt, an initial assessment must be made of each complaint to ascertain whether it falls within the jurisdiction of the MIOSA.

12. The MIOSA shall be entitled to request further particulars from the parties. The parties shall provide all relevant information to each other and the MIOSA to deal with the query within 10 (ten) days of such a request. If oral evidence is necessary to resolve the dispute-

    12.1 the MIOSA shall request the parties to attend a hearing on not less than 10 (ten) days prior written notice;

    12.2 attendance at the hearing shall be at each party's own expense;

    12.3 the languages of MIOSA shall be English and isiZulu and if requested and at the requesting party's expense, arrange for an interpreter for any other language to be present;

    12.4 either party shall be entitled to be represented by a suitable party, including a legal representative, with the permission of the MIOSA, to make submissions and cross examine the other party and witnesses at the hearing.

13. All decisions fall exclusively within the discretion of the MIOSA.

14. An up-to-date status should be made available to both the complainant and the supplier at least at the time of pre-set deadlines.

Stage 2B - Referral by the MIOSA

15. The MIOSA may refer a complaint to any supplier within the supply chain, or to all suppliers within the supply chain, as the MIOSA considers appropriate in the circumstances.

16. Once the decision has been made to refer the complaint, it must be referred to the relevant party, body or institution within 10 (ten) days of it being received by MIOSA.

17. The MIOSA, and to the extent the MIOSA considers it necessary, will provide the supplier concerned with full details of the complaint, including copies of relevant documentation as submitted to MIOSA.

18. The MIOSA shall keep a register of all the complaints it refers to the suppliers, as well as the appropriate tracking mechanisms and records - to ensure that all of the complaints are able to be tracked at any time and are eventually addressed.

Stage 3 - Resolution by MIOSA

19. The supplier must acknowledge receipt of the notification within 10 (ten) days and may do so by letter delivered by hand or sent by post, telefax or e-mail.

20. The MIOSA shall first attempt to mediate the dispute between the parties. If mediation fails to resolve the dispute the MIOSA shall issue a certificate to that effect to the parties.

21. Proceedings may be recorded at the request of a party, provided the requesting party tenders the costs of the recording, payable to the MIOSA at least 10 (ten) days before the hearing takes place.

22. The MIOSA will present its decision within 10 (ten) days of conclusion of the proceedings. The MIOSA is allowed to provide its decision in writing and deliver the findings to the parties' chosen addresses.

SCHEDULE 3:

INTERNAL COMPLAINTS HANDLING SUGGESTED PROCEDURES

1. When dealing with complaints; customers, complainants and other interested parties should receive the following:

    1.1 necessary information concerning the internal complaints-handling process applicable to the supplier;

    1.2 any relevant MIOSA brochures and pamphlets.

2. All information must be provided in plain language and, where reasonably possible, in an accessible format to ensure that complainants are not disadvantaged by any format in which information is provided.

3. The following are examples of such information:

    3.1 where complaints can be made;

    3.2 how complaints can be made;

3.3 information to be provided by the complainant (see Schedule 5 for suggested format);

3.4 the process to be followed when handling complaints;

3.5 the time periods associated with the various stages in the process;

3.6 the complainant's options for remedy, including referral to the MIOSA;

3.7 the manner in which the complainant can obtain feedback on the stage of the complaint.

4. Receipt of complaint:

4.1 When the complaint is first reported, the complaint must be recorded and a unique identifier code or number must be provided for each complaint.

4.2 Any other information necessary for the effective handling of the complaint must also be recorded or attached to the complaint, including at least the following:

4.2.1 a description of the complaint must be made including-

i. the products or related organization practices complained about;

ii. information on the persons involved including department, branch, organization and market segment;

4.2.2 all supporting information, all relevant supporting data and documentation must also be recorded or attached to the complaint;

4.2.3 the record of the initial complaint should also specify-

i. the remedy that the complainant is seeking;

ii. the due date for a response; and

iii. whether any immediate action was or must be taken (if any).

5. Time limits for Complaint resolution:

5.1 The supplier should make every effort to resolve the matter within 15 (fifteen) business days.

5.2 If the supplier is unable to resolve the complaint within that period for reasons such as on-going technical testing, the supplier shall inform the complainant of that fact at least 2 (two) days before the expiry of the 15 (fifteen)-business day deadline.

6. Complaint resolution:

6.1 The supplier should make every effort to resolve the matter in good faith and in accordance with its internal complaints-handling processes.

6.2 In doing so, the supplier should deal with the complaint-

6.2.1 politely and courteously;

6.2.2 promptly and efficiently; and

6.2.3 in a confidential manner.

7. Acknowledgement of complaint:

7.1 Receipt of each complaint should be acknowledged to the complainant-

7.1.1 immediately; or

7.1.2 by the latest within 2 (two) business days (for example via post, phone or email).

8. Tracking of complaint:

8.1 The complaint should be tracked from initial receipt through the entire process until the complainant is satisfied or the final decision is made.

8.2 An up-to-date status should be made available to the complainant-

8.2.1 upon request; and

8.2.2 at regular intervals; or

8.2.3 at least at the time of pre-set deadlines.

9. Initial assessment of complaint:

9.1 After receipt, each complaint should be initially assessed by the supplier in terms of criteria such as-

9.1.1 severity;

9.1.2 safety implication;

9.1.3 complexity;

9.1.4 impact; and

9.1.5 the need and possibility for immediate action.

10. Attempt to settle:

10.1 The supplier should contact the complainant to-

10.1.1 clarify any issue; and

10.1.2 ascertain the essence of the complaint.

11. Investigation of complaints:

11.1 Every reasonable effort should be made by the supplier to investigate all the relevant circumstances and information surrounding a complaint.

11.2 The level of investigation should be commensurate with the seriousness, frequency of occurrence and severity of the complaint.

12. Response to complaints following an investigation:

12.1 Where able and appropriate, the supplier should offer a response, for example that will-

12.1.1 correct the problem; and

12.1.2 prevent it from happening in the future.

13. Communicating the decision:

13.1 As soon as is reasonably possible, after a decision has been made regarding the complaint or any action has been taken regarding the complaint, the supplier must advise-

13.1.1 the complainant of such decision made or action taken; and

13.1.2 any of its staff who may have been involved in the incident (if any).

14. Closing the complaint:

14.1 If the complainant accepts the proposed decision or action, then-

14.1.1 the decision or action should be implemented; and

14.1.2 the decision or action should be recorded.

14.2 If the complainant rejects the proposed decision or action, and the supplier rejects or refuses to implement or take further steps or measures regarding the complaint, then-

14.2.1 this should be recorded by the supplier; and

14.2.2 the complainant should be informed of his/her rights in respect of the referral of the complaint to either-

14.3.2.1 the MIOSA; or

14.3.2.2 other entity with jurisdiction.

(Editorial Note: Numbering as per original *Government Gazette*.)

SCHEDULE 4:

COMPLAINT FORMS

COMPLAINT NOTIFICATION FORM

DETAILS

Attention: The Motor Industry Ombudsman of South Africa

post: Suite 156
Private Bag X025
Lynnwood Ridge, 0040

Walk-in: Building 14B
CSIR Campus
Meiring Naude Drive

	Pretoria East
e-mail:	info@miosa.co.za
website:	www.miosa.co.za
telephone:	086 11 MIOSA/086 11 64672
fax:	086 630 6141
Date:	

Complainant's Details				
Surname			First Names	
Postal Address				
Contact Details	Cell No.		Home No.	
	Work No.		Fax No.	
	e-mail			
Preferred method of Communication	postal ?	e-mail ?	fax ?	
Transaction Details				
Representative's Name			Branch	
Product Name			Reference	
Date of Transaction/Incident				
Summary of Complaint				
Please attach all supporting documentation relevant to the complaint				

COMPLAINT REGISTER AND PROGRESS REPORT						
Company Name				Date Received		
Complaint Handler				Complaint No.		
Company Representative				Designation		
NAME OF CLIENT						
Client Address						
Client Contact Details	Cell		Home		Work	
	e-mail				Fax	
COMPLAINT DETAIL						
Complaint received by	Fax ?	E-Mail ?	Registered Post ?	Hand Delivered ?	Telephone ?	Other ?
Describe Other						
Date Received			Date of Initial Response			
Client Expectation						
SUPPLY CHAIN	Are there any other parties in the supply chain involved?			Yes ? No ?		
Any evidence of 3rd party responsibility?	Yes ? No ?	Has contact been made with the 3rd party/ies?		Yes ? No ?		

Date Contacted		Confirmed in writing with supporting documents	Yes ? No ?			
Initial Response						
Supply Chain Contact Details	Company Name		Contact Person			
	Tel No.		Fax No.		Cell No.	
	e-mail		Website			
Type	OEM ?	Retailer ?	Repairer ?	Sublet Repairer ?	Sublet Cleaner ?	Broker ?
	Warranty Administrator ?	VAP Provider ?	Credit Provider ?	Insurer ?	Other ?	
Describe Other		SLA/Vendor Contract	Yes ? No ?			
Client Response	Acceptance ?	Rejection ?	Date			
Reason for Rejection						
Ombud Referral	Yes ? No ?	Date				
Outcome from Ombud						
Final Result		Date				
Date Finalised		Signed off by				

TIME LINE IN RESPECT OF COMPLAINT HANDLING					
CLIENT NAME					
COMPLAINT NO.					
Date & Time		Contacted		Contact No.	
Comments					
Date & Time		Contacted		Contact No.	
Comments					
Date & Time		Contacted		Contact No.	
Comments					

SCHEDULE 5:

FUNDING OF MIOSA

BACKGROUND AND EXPLANATION

i. The MIOSA is an established Ombud Scheme and has operated since 2001. Due to this, there is an existing staff contingent, expert knowledge base, premises, telephone infrastructure, certain equipment, assets and stationary and IT network in place and sustainable.

ii. During 2012, the MIOSA received 22,320 complaints with a value of R156,500,000.00 all of which have been resolved.

iii. Before to the coming into operation of the Act, the MIOSA adjudicated disputes between consumers, OEM's and Retailers. In terms of the Act, the MIOSA has jurisdiction over all the members within the Automotive Industry.

iv. According to the records of the Motor Industry Bargaining Counsel, there are approximately 24 000 entities forming part of the Automotive Industry. In addition there are currently 42 motor vehicle OEM's and Importers forming part of the Automotive Industry.

v. The MIOSA shall vastly expand its current infrastructure to meet the needs of Consumers in line with other Ombud MIOSAs established under various forms of legislation. However as an existing MIOSA, the majority of start-up pressures and challenges will not be present which leads to a cost and efficiency saving from the beginning.

vi. The sustainable funding model below is based on the assumption that, following accreditation, the MIOSA will initially, in the first one to two years only be able to recover contributions from 60% of the retailers and all of the NAAMSA motor vehicle OEM's and importers forming part of the Automotive Industry.

vii. The contribution rate as set out in clause 'vi' above is based on a worst-case scenario and the quantum of each entity's contribution has initially been increased accordingly in order to ensure that the MIOSA is able to fulfil its obligations in terms of its budget requirements without the necessity of collecting more than 60% of required contributions.

viii. Each year the quantum of required contribution will be reviewed in line with the success rate of the previous year's contributions collected along with the revised budget requirements. At no stage will the model rely on a 100% collection success rate.

ix. The cost of collection will at all times be kept to a minimum and decisions regarding outsourced collection or in-house operations will be made with this in mind. The model has been structured to allow for this cost.

1. Funding during Transitional Phase from date of accreditation:

During the transitional period, the MIOSA will be funded as follows:

1.1 The MIOSA will charge and invoice all motor vehicle OEM's and Importers a combined annual fee equalling 50% of the MIOSA budget and each individual OEM or Importer's contribution shall be calculated by dividing 50% of the approved budget by the total number of entities who directly import or manufacture Goods.

1.2 The MIOSA will charge and invoice all retailers a combined annual fee equalling 50% of the MIOSA budget and each individual retailer's contribution shall be calculated by dividing that percentage of the approved budget by the total number of retail premises from which business is being conducted in the Automotive Industry.

2. Funding from date of accreditation:

From the first anniversary of the date of accreditation, the MIOSA will be funded as follows:

2.1 The OEM's and Importers shall be liable to contribute 20% of the approved budget and each individual OEM or Importer's contribution shall be calculated by dividing 20% of the approved budget by the total number of entities who directly import or manufacture Goods.

2.2 The retailers shall be liable to contribute 80% of the approved budget and each individual retailer's contribution shall be calculated by dividing 80% of the approved budget by the total number of retail premises from which business is being conducted in the Automotive Industry.

GNR.271 of 30 March 2015: Prescription of the Consumer Goods and Services Industry Code and accreditation of the alternative Dispute Resolution Scheme administered by Consumer Goods and Industry Ombud as an accredited Industry Ombud in terms of section 82 of the Act (*Government Gazette* No. 38637)

DEPARTMENT OF TRADE AND INDUSTRY

I, Dr Rob Davies, Minister of Trade and Industry, after having considered comments made in relation to Notice 69 of 2014, published in *Government Gazette* No.38058 on 3 October 2014 on the application for accreditation of the Consumer Goods and Services Industry Code of Conduct made in terms of section 82 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) (the Act) and acting on the recommendations thereto made by the National Consumer Commission in terms of section 82 (3) of the Act, do hereby prescribe the code in the attached schedule as the Industry Code for the Consumer Goods and Services Industry and accredit the Consumer Goods and Services Ombud as an accredited industry Ombud in terms of section 82 (6) (*b*) of the Act.

This notice will come into effect 30 days after publication in the *Government Gazette*.

(Signed)
Dr Rob Davies (MP)
Minister of Trade and Industry
13 March 2015

THE CONSUMER GOODS AND SERVICES OMBUD

THE CONSUMER GOODS AND SERVICES INDUSTRY

CODE OF CONDUCT

The Consumer Goods and Services Ombud

www.cgso.org.za

Email: info@cgso.co.za

Tel: 0860 000 272 (CPA)

Fax: 086 206 1999

The Consumer Goods and Services Industry Code of Conduct and the Office of the Consumer Goods and Services Ombud are the Industry Code and Ombud Scheme for the Consumer Goods and Services Industry set up in accordance with and accredited in terms of section 82 (6) of the Consumer Protection Act, 2008 (Act No. 68 of 2008).

CONTENTS

SECTION A

1. PREAMBLE

The Consumer Goods and Services Code of Conduct ("Code") and the office of the Consumer Goods and Services Ombud ("CGSO") are the Industry Code and Ombud Scheme for the Consumer Goods and Services Industry set up in accordance with and accredited in terms of section 82 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) ("CPA").

The Code and the CGSO were established to guide Industry as to what is considered the minimum standards of conduct expected when engaging with Consumers and to assist in resolving Disputes that arise between Consumers and Industry in terms of the CPA.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "what is considered" is intended to be "what are considered".)

In light of the Code being recognised under the CPA, the Code shall be enforceable against Consumer Goods and Services Industry Participants.

This Code shall be enforceable by the CGSO in line with the Terms of Reference herein.

A failure to comply with this Code amounts to a contravention of section 82 (8) of the CPA. Any provision of this Code that is inconsistent with the CPA is invalid.

SECTION B

2. PURPOSE AND OBJECTIVES

2.1 The Code for the Industry is an industry code drafted by the Industry.

2.2 The Code regulates interaction between Participants conducting business within the Industry and the Consumer, and provides for an alternative Dispute resolution mechanism as described in section 82 (6) of the CPA should there be a Dispute between a Participant and Consumers.

2.3 The Purpose of the Code is to:

2.3.1 Raise the standards of good conduct in the Industry without endangering the vitality and growth of business;

2.3.2 Generate growth in the Industry by increasing the level of certainty for all Participants;

2.3.3 Offer guidance to Participants in the Industry as to the implementation of and the compliance with the CPA and what constitutes fair business practices to be followed when operating within the Industry;

2.3.4 Educate Consumers as to their rights and redress available to them should a Participant breach the CPA or the Code; and

2.3.5 Provide for a scheme of alternative dispute resolution as described in section 82 (6) of the CPA.

2.4 The Participants within the Industry are required to pursue the objectives as set out in section 3 of the CPA, especially to:

2.4.1 Reduce and ameliorate any disadvantages experienced by Consumers in accessing the supply of any Goods and Services;

2.4.2 Promote fair business practices;

2.4.3 Protect Consumers from:

2.4.3.1 Unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and

2.4.3.2 Deceptive, misleading, unfair or fraudulent conduct.

2.4.4 Provide for a consistent, accessible and efficient system of consensual resolution of Disputes arising from consumer transactions.

2.5 The Code contains reference to certain principles, practices and legislation and for the purposes of application these need to be referred as to their interpretation and application where quoted in the Code.

3. INTERPRETATION

3.1 In this Code, unless inconsistent or otherwise indicated by the context, the following words and expressions will have the meanings set out below:

3.1.1 **"Business Day"** has the meaning given to it in terms of section 2 (6) of the CPA;

3.1.2 **"Board"** means the Board of the CGSO incorporated under the Companies Act, 2008 (Act No. 71 of 2008) as a not-for-profit company as more fully dealt with in terms of the CGSO's memorandum of incorporation which can be found on the CGSO's website;

3.1.3 **"CGSO"** means the Consumer Goods and Services Ombud, an Ombud Scheme set up in accordance with and accredited in terms of section 82 (6) of the CPA which is enforceable against Participants;

3.1.4 **"Code"** means this accredited Industry Code for the Consumer Goods and Services Industry as amended from time-to-time;

3.1.5 **"Complainant"** means a Consumer or Consumer's representative, including an accredited, recognised Consumer Protection Group referred to in section 78 (1) of the CPA, making a Complaint in respect of any Goods or Services provided by the Participant concerned;

3.1.6 **"Complaint"** means an expression of dissatisfaction made by a Consumer to a Participant related to its Goods and/or Services or the complaints-handling process pursued or alternatively embarked on thus far by the Consumer, the essence of which falls within the ambit of the CPA;

3.1.7 **"Confidential Information"** has the meaning given to it in terms of CPA Regulations, Regulation 43 (1) as published in Government Notice R.293 in *Government Gazette* 34180 of 1 April, 2011 which includes any information containing or consisting of:

3.1.7.1 trade secrets;

3.1.7.2 financial, commercial, scientific or technical information, if disclosure of the information is likely to cause harm to the commercial or financial interests of a person; or

3.1.7.3 information supplied in confidence by a person, if the disclosure of the information could reasonably be expected to:

3.1.7.3.1 put that person at a disadvantage in contractual or other negotiations; or

3.1.7.3.2 prejudice that person in commercial competition;

3.1.8 **"Consumer"** has the meaning given to it in terms of section 1 of the CPA;

3.1.9 **"Consumer Goods and Services"** means the Goods and Services provided to Consumers by Participants within the Industry;

3.1.10 **"Consumer Goods and Services Industry"** means all Participants and/or entities involved in the Supply Chain that provides, markets and/or offers to supply Goods and Services to Consumers, unless excluded in terms of clause 4.4 hereof;

3.1.11 **"Consumer Goods and Services Ombud"** means the office of the Consumer Goods and Services Ombud and shall also be termed **"CGSO"**;

3.1.12 **"Consumer Goods and Services Ombudsman"** means the person who:

3.1.12.1 is appointed and acts in accordance with "Matters Relating to the Appointment, Tenure and Powers of the Ombudsman" as more fully described in Annexure "A" hereto; and

3.1.12.2 is appointed as Ombudsman and the head of the Office of the CGSO from time-to-time by the Board.

3.1.13 **"CPA"** means the Consumer Protection Act, 2008 (Act No. 68 of 2008), the Regulations thereto and any amendments that are effected from time-to-time;

3.1.14 **"Consumer Protection Group"** has the meaning given to it in terms of section 1 of the CPA;

3.1.15 **"Designated Officer"** means a person responsible for the complaint resolution within the Participant's organisation as identified by the Participant and communicated to CGSO;

3.1.16 **"Dispute"** means a disagreement, arising from a Complaint submitted to a Participant in relation to Goods and/or Services provided to a Consumer of that Participant, which have not been resolved by the Parties;

3.1.17 **"Distributor"** has the meaning given to it in terms of section 1 of the CPA;

3.1.18 **"Facilitate, Facilitation and Facilitated Settlement"** means a Dispute resolution method in which the Dispute resolver, being the CGSO, communicates its initial position to the Parties and a settlement is sought through making one or more offers or counter offers;

3.1.19 **"Goods"** has the meaning given to it in terms of section 1 of the CPA;

3.1.20 **"Importer"** has the meaning given to it in terms of section 1 of the CPA;

3.1.21 **"Industry"** means the Consumer Goods and Services Industry as defined in clause 3.1.10 above and shall have the meaning prescribed therein;

3.1.22 **"Internal Complaints-Handling Process"** means a complaints-handling process as adopted by a particular Participant;

3.1.23 **"Juristic Person"** has the meaning given to it in terms of section 1 of the CPA;

3.1.24 **"Manufacturer"** means any Participant that makes, fabricates, or produces any Goods regardless of scale either to a Consumer or any other person operating in the Supply Chain;

3.1.25 **"Mediation"** means the active participation of a Dispute resolver, being the CGSO, intended to assist the Parties to identify the issues, to generate options, to consider alternatives and to endeavour to reach an agreement;

3.1.26 **"Minister"** has the meaning given to it in terms of section 1 of the CPA;

3.1.27 **"MOI"** means the Memorandum of Incorporation, including the schedules attached thereto, as amended from time-to-time, under which the office of the CGSO is established and as published on the CGSO's website;

3.1.28 **"Ombud with Jurisdiction"** has the meaning given to it in terms of section 1 of the CPA;

3.1.29 **"Participant"** means any entity operating within the Industry bound by the Code unless expressly excluded by clause 4.1 hereof;

3.1.30 **"Parties"** means the Consumer and Participant;

3.1.31 **"Person"** includes Juristic Person;

3.1.32 **"Producer"** has the meaning given to it in terms of section 1 of the CPA;

3.1.33 **"Recommendations"** means a Dispute resolution method in which the Parties are given written suggestions on how factual, legal and other issues should be resolved, on possible outcomes and how they can be achieved;

3.1.34 **"Retailer"** has the meaning given to it in terms of section 1 of the CPA;

3.1.35 **"Service"** has the meaning given to it in terms of section 1 of the CPA;

3.1.36 **"Service Provider"** has the meaning given to it in terms of section 1 of the CPA;

3.1.37 **"Supplier"** has the meaning given to it in terms of section 1 of the CPA;

3.1.38 **"Supply Chain"** has the meaning given to it in terms of section 1 of the CPA;

3.1.39 **"Terms of Reference"** shall mean the terms of reference for the CGSO as set out in Section E of this code.

3.2 Unless the context clearly indicates otherwise:

3.2.1 all words and expressions will have such meaning as may be given to them in the CPA unless expressly defined or referenced in this Code.

3.2.2 all references to:

3.2.2.1 a singular noun will be deemed to include the plural and *vice versa*;

3.2.2.2 a masculine gender will be deemed to include the other gender and *vice versa*;

3.2.3 the provisions of any law will be deemed to include amendments or substitutions thereof that will be effected from time-to-time.

3.2.4 All section headings and arrangements contained in this Code are intended for reference purposes only and will not affect or be taken into account in the interpretation of any of the paragraphs or sections to which they relate.

4. APPLICATION, SCOPE AND TYPE OF PARTICIPANT

4.1 The Code applies to all Participants, unless they are regulated elsewhere by other public regulation, a Code prescribed by the Minister in terms of section 82 of the CPA and/or where a complaint falls within the jurisdiction of an Ombud with Jurisdiction, or an Industry Ombud accredited in terms of section 82 (6) of the CPA.

4.2 It is mandatory for all Participants above to comply with the provisions of this Code, to register with the CGSO in accordance with the procedures provided on the CGSO website from time-to-time, and contribute towards the funding of the CGSO in accordance with the funding model as set out in clause 6.2 below.

4.3 This Code shall not be construed as to diminish a Consumers rights under the CPA or any other law but it shall enhance the Consumers rights to be equivalent to or better than the provisions of the CPA.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the word "Consumers" is intended to be "Consumer's".)

4.4 This Code excludes: transactions that are not covered by the CPA and/or that are governed by other public regulation; the automotive industry, Electronic Communication Service as defined in section 1 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) and transactions with organs of state or financial institutions.

SECTION C

5. CONSUMER AND INDUSTRY AWARENESS

5.1 The Participants under this Code are required to:

5.1.1 Establish an effective Internal Complaints-Handling Process that is accessible and understandable to all Consumers, which process includes but is not limited to:

5.1.1.1 process of internal complaints-handling;

5.1.1.2 design of the internal complaints-handling procedure; and

5.1.1.3 monitoring processes for the internal complaints-handling procedure and effectiveness.

5.1.2 Display prominently on all their trading premises by means of the CGSO decal and on their website, a prescribed notice that states that they are a Participant to this Code and are bound by it.

5.1.3 The prescribed notice must provide Consumers with the contact details of the CGSO and the Participant and/or his staff shall notify the Consumer of their right to refer Complaints to the CGSO in the event that they are unsatisfied with the Participant's Internal Complaints-Handling Process.

5.1.4 Ensure that a copy of this Code and/or summary hereof and their Internal Complaints-Handling Process is made available to any Consumer upon request and/or the Consumers are directed as to where to obtain a copy of the Code and/or their Internal Complaints-Handling Process.

5.1.5 Ensure that the relevant staff and agents in their business have adequate knowledge of the CPA and the Regulations issued thereunder, including the Code and their own Internal Complaints-Handling Process.

5.1.6 Ensure, where possible, that they keep proper records for a minimum of 3 (three) years of the Complaints that are received with the following details captured:

5.1.6.1 details and nature of the complaint;

5.1.6.2 the business unit, division, branch and/or brand that the Complaint is against;

5.1.6.3 the type of Complaint;

5.1.6.4 the number of similar Complaints;

5.1.6.5 details of how the Complaint was resolved;

5.1.6.6 the time taken to deal with the Complaint;

5.1.6.7 the type of remedy provided;

5.1.6.8 details of why the Complaint was not resolved;

5.1.6.9 details of potential remedies offered but not accepted by the Consumer; and

5.1.6.10 recording that a Consumer was referred to the CGSO for assistance in resolving the Complaint if the Complaint remained unresolved.

5.1.7 The data captured in 5.1.6 above shall be used, where possible, to highlight recurring complaints that have arisen and this feedback, where possible, is to be shared with management, staff and Industry in an attempt to continually uphold compliance with the CPA, this Code and Internal Complaint-Handling Process.

5.1.8 Provide, where possible, relevant information reasonably required by CGSO and/or the NCC on any aspect of their business for the purposes of assisting in the resolution of individual Complaints, subject to considerations of confidentiality, as set out under section G of this Code.

5.1.9 Endeavour to resolve Complaints and Disputes in accordance with the law, the spirit and provisions of this Code and the CPA as expressed under section B and with regards to their own Internal Complaints-Handling procedures.

5.1.10 Ensure that they, their staff members and their agents refrain from influencing or attempting to influence or harassing the CGSO, staff of the CGSO or any Consumer.

5.1.11 Co-operate with all reasonable requests made by the CGSO in a timely manner. Any failure to co-operate with the CGSO may be taken into consideration by the NCC and the Tribunal when issuing a compliance notice or proposing or determining an administrative fine.

5.2 The CGSO will determine a strategy for fostering awareness of the Code and the contents thereof by way of: information brochures, guidelines and workshops, and guidance regarding compliance particularly aimed at smaller Participants as agreed to and as can reasonably be funded from time-to-time by the CGSO, which includes the following:

5.2.1 information brochures, guidelines and workshops;

5.2.2 the display of the Code on the CGSO website and other social networking sites;

5.2.3 the publication of relevant matters on the CGSO website;

5.2.4 the facilitation of induction workshops for new employees in the Industry, on the principles and procedures contained in the Code; and

5.2.5 partnering with the Provisional Consumer Protection Authorities and other relevant bodies on awareness campaigns.

5.3 The CGSO will produce annual reports on the implementation and application of the Code. These reports will be made available to all interested parties, including but not limited to Participants, Consumers, the NCC and the Minister.

5.4 Performance indicators will be developed with reference to the criteria in 5.1.6 and 5.3 above and implemented as a means of measuring the Code's effectiveness.

5.5 The application of the Code will be reviewed annually by the Board to ensure that the standards of the Code meet identified objectives and consumer expectations. The review report will be made available to the NCC and the Minister, and be made available on the CGSO website.

SECTION D

6. ESTABLISHMENT AND POWERS OF THE CGSO

6.1 The CGSO shall adhere to the Terms of Reference of this Code.

6.2 Sustainable Funding Model:

6.2.1 Participants shall contribute to the funding of the operations of the CGSO by means of the payment of a joining fee and an annual levy and (if necessary) a special levy, as shall be determined from time-to-time by the Board of the CGSO.

6.2.2 In determining the joining fee, annual levy and special levy, the Board may have regard to the relative market share of the Participants, the anticipated number of complaints to be dealt with by the CGSO annually and the costs of operating the CGSO.

6.2.3 With reasonable notice to the Participants, a special levy may be raised when deemed necessary by the Board to provide for unanticipated expenditure incurred by the CGSO due to increased caseloads or any other reason acceptable to the Board.

6.2.4 The Board shall from time-to-time determine the scale of fees to be charged to any entity which falls outside of the CGSO's jurisdiction and with which the CGSO has entered into an agreement to render dispute resolution services.

6.2.5 The mechanisms for calculating the fees and levies and the current level of fees and levies for Participants shall be published on the CGSO website.

6.2.6 The CGSO shall be entitled to take legal action to recover any outstanding fees or levies owed by a Participant.

6.3 Complaints-Handling Procedure

6.3.1 The Ombudsman shall ensure an ethical complaints-handling, as outlined in section F below.

SECTION E

7. INTRODUCTION: TERMS OF REFERENCE AND OPERATING PROCEDURE FOR THE CGSO

7.1 The terms of reference seek to establish the appropriate operating procedures so as to meet the objects of the preamble of the Code.

7.2 These operating procedures are aimed at:

7.2.1 describing the manner in which the CGSO operates;

7.2.2 assisting staff members of the CGSO to carry out their duties; and

7.2.3 ensuring that Complaints are dealt with, both timeously, consistently and effectively.

7.3 The CGSO may enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services in resolving a Dispute or carrying out its functions.

8. MAINTAINING THE INDEPENDENCE OF THE CGSO

8.1 The CGSO may assist in resolving any Disputes arising within the Industry.

8.2 The CGSO is controlled by the Board. The Board is appointed in accordance with the provisions of the MOI and the composition of the Board shall be in terms of the MOI.

8.3 The Ombudsman shall act independently and objectively in resolving Disputes. The Ombudsman enjoys security of tenure and can only be dismissed in accordance with fair administrative procedures, as provided for in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), on the grounds of incompetence, gross misconduct, or inability to effectively carry out his or her duties.

8.4 The independence of the CGSO and the Ombudsman is further assured by the fact that the Ombudsman and employees of the CGSO are:

8.4.1 entirely responsible for the handling and determination of complaints;

8.4.2 accountable only to the Board; and

8.4.3 adequately resourced to carry out their respective functions.

8.5 The CGSO shall:

8.5.1 act honestly, independently and objectively;

8.5.2 have regard to fairness, justice, equity and the provisions of the CPA and the Code;

8.5.3 balance the rights of the Consumers on the one hand and the rights of the Participant and Industry on the other hand;

8.5.4 avoid discriminating against anyone on the grounds contemplated in section 9 (3) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and section 8 of the CPA; and

8.5.5 take reasonable steps to accommodate the needs of persons with disabilities and to eliminate obstacles that may unfairly limit or restrict persons with disabilities from using the services of the CGSO.

8.6 The criteria to be used in resolving Disputes includes:

8.6.1 the law, especially the CPA and the Code (in all cases where there is a conflict between the interpretation of the CPA and the Code, the CPA shall prevail);

8.6.2 applicable industry codes, guidelines; and

8.6.3 fairness in all circumstances.

9. FUNCTIONS OF THE CGSO

9.1 The CGSO's functions include the following:

9.1.1 upon receipt of a Complaint, investigating and evaluating alleged contraventions of the Code;

9.1.2 attempting to facilitate a settlement between the Parties;

9.1.3 making a recommendation as to how the Dispute should be settled by the Parties;

9.1.4 at the request of a Party to a Dispute, recording the resolution of a Dispute in the form of an order in terms of section 70 (3) (*a*) of the CPA;

9.1.5 at the request and at the costs of the Parties to a Dispute, submitting the order to the Tribunal or High Court to be made a consent order, in terms of section 70 (3) (*b*) of the CPA;

9.1.6 with the consent of a Complainant, including in the consent order an award of damages to the Complainant in terms of section 70 (4) of the CPA;

9.1.7 terminating the process by notice to the Parties in terms of section 70 (2) of the CPA;

9.1.8 educating the general public, Consumers, Participants, staff of Participants and any other interested parties regarding the existence of the CGSO, its procedures, where and how to lay a Complaint, the relevant time period, the resources available and how to obtain feedback on the status of the Complaint and providing all necessary assistance to the Parties;

9.1.9 providing access to information in accordance with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); and

9.1.10 striving for continual improvement of the complaints-handling process and the quality of the service provided by the office, by amongst other things, regularly testing the levels of satisfaction of Complainants with the complaints-handling process.

9.2 In particular, the CGSO shall:

9.2.1 receive and deal with Complaints and Disputes free of charge;

9.2.2 determine whether or not a complaint falls within the CGSO's jurisdiction;

9.2.3 decline to deal with or discontinue dealing with those matters:

9.2.3.1 that do not fall within the CGSO's jurisdiction; or

9.2.3.2 in which the Complainant has failed to respond to requests from the CGSO for information or comments within the time reasonably stipulated by the CGSO; or

9.2.3.3 that are trivial, frivolous or vexatious; or

9.2.3.4 in which the Complaint does not allege any facts which, if true, would constitute grounds for a remedy under the Code or CPA; or

9.2.3.5 and terminate the process by notice to the parties.

9.2.4 refer Complaints that would more appropriately be dealt with by another body to that body;

9.2.5 explore any reasonable prospect of resolving a Complaint by a Facilitated Settlement acceptable to both Parties and, where appropriate, make a suggestion or Recommendation to the Parties regarding how the matter should be settled;

9.2.6 request a Participant or his agent involved in a Complaint or Dispute to provide any relevant information to the CGSO, which in the view of the CGSO relates to that Complaint and its necessary resolution;

9.2.7 set and on good cause shown extend time limits relating to any issues involved in attempting to resolve the Dispute after giving due regard to any objection from either of the Parties and to the urgency of the matter and to any other relevant circumstances;

9.2.8 inform Complainants of further options available to them, if their Complaints are not resolved following the assistance provided by the CGSO;

9.2.9 report any non-compliance with the CPA or the Code by a Participant to the NCC, in order for it to investigate the allegations;

9.2.10 report any attempts to influence or harass the Ombudsman or the staff of the CGSO or any Consumer by a Participant to the NCC;

9.2.11 compile an annual report within 6 (six) months of the close of its financial year regarding the operations and effectiveness of the CGSO and make the report available to stakeholders, including the NCC, through the CGSO website and other suitable means. This report must include data regarding:

9.2.11.1 Complaint type;

9.2.11.2 business complained about;

9.2.11.3 the type and frequency of the Complaint;

9.2.11.4 how the Complaint was resolved;

9.2.11.5 time taken to deal with Complaints;

9.2.11.6 type of sanction(s) imposed; and

9.2.11.7 financial statements and audit reports.

9.2.12 collect data about the cause of the Complaints, identify systematic and recurring problems which Participants need to address; make recommendations to Participants as to how to deal with these recurring problems and identify ways of increasing compliance;

9.2.13 produce annual reports on the operations and effectiveness of the Code, which shall be made readily available to all stakeholders and interested Parties. The reports should provide important feedback for management and staff within the Industry or continually improve compliance with the CPA;

9.2.14 address each Complaint in an equitable, objective and unbiased manner through the complaints handling process;

9.2.15 engage the services of an interpreter for Consumers who may require such assistance as and when required;

9.2.16 classify and analyse all Complaints in order to identify systematic, recurring and single incidents and trends;

9.2.17 develop internal rules, forms and procedures that are not in conflict with the provisions of the Code or CPA.

10. THE JURISDICTION OF THE CGSO

10.1 Eligible Complainants

10.1.1 Subject to 10.3 below, the CGSO may consider a Complaint brought by or on behalf of a Consumer who is:

10.1.1.1 a private individual; or

10.1.1.2 a juristic person.

10.2 The CGSO can deal with:

10.2.1 Disputes arising in terms of the Code between Complainants on the one hand and Participants on the other hand; and/or

10.2.2 Complaints concerning alleged contraventions of the CPA or the Code.

10.3 Limits to the CGSO's jurisdiction

10.3.1 *Amounts Involved*: In line with the threshold (limit) determined by the Minister under section 5 (2) (*b*) of the CPA, the CGSO may not consider a Complaint or Dispute that relates to a Juristic Person as a Consumer whose asset value or annual turnover equals or exceeds the threshold amount determined from time-to-time by the Minister in terms of section 6 (1) of the CPA.

10.3.2 *Time Limit*: The CGSO may not consider a Complaint or Dispute that relates to an act or omission which occurred before 1 April 2011 or in any event more than 3 (three) years prior to the date when the Complaint was lodged with the CGSO in order to ensure that such claims do not become prescribed by law. The period of 3 (three) years commences on the date on which the Complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first. If the Complaint or Dispute is older than two years, the CGSO should advise the Complainant of the danger of it prescribing.

10.3.3 *Other Processes*: After a preliminary assessment of the Complaint, or Dispute, or at any stage during the process that any of the factors referred to below become apparent, the CGSO shall not further consider a Complaint or Dispute that in the opinion of the Ombudsman:

10.3.3.1 falls within the jurisdiction of any other Ombud with Jurisdiction as per its enabling legislation; or

10.3.3.2 is based on the same event and facts as any matter which is, was, or becomes, the subject of any proceedings in any court, tribunal or regulatory body or any Ombud with Jurisdiction of any jurisdiction, unless the CGSO has considered it appropriate to intervene and is not prohibited from doing so under any law; or

10.3.3.3 could more appropriately be dealt with by the police, a court of law, by any regulatory body or through any other dispute resolution process.

10.3.4 *Excluded*: After a preliminary assessment of the Complaint or Dispute, or at any stage during the process that any of the factors referred to below becomes apparent, the CGSO shall not further consider a Complaint or Dispute that in the opinion of the Ombudsman:

10.3.4.1 is being pursued in an unreasonable, frivolous, vexatious, offensive, threatening or abusive manner or if the Complainant fails to co-operate with the process;

10.3.4.2 does not allege any facts which, if true, would constitute grounds for a remedy under the Code or CPA;

10.3.4.3 is lacking in substantive merit;

10.3.4.4 has been substantially dealt with by the CGSO;

10.3.4.5 is based on the same events and facts as any matter which is, was or becomes, the subject of any proceedings in any court or other independent dispute-resolving body;

10.3.4.6 is under consideration by a legal practitioner on behalf of a Consumer, whether or not with a view to institute legal proceedings, unless the Ombudsman determines that the involvement of a legal practitioner is appropriate in the circumstances.

10.3.5 *Termination by the Complainant*: A Complainant may at any time terminate the CGSO's handling of the Complaint and resort to litigation or another dispute resolution process by withdrawing the Complaint in writing to the CGSO.

SECTION F

11. THE COMPLAINTS PROCESS

STAGE 1:
LAYING THE COMPLAINT

11.1 Referral to Participant:

11.1.1 *Refer Complaint*: A Complainant may first refer the matter in Dispute to the Participant to be dealt with, in accordance with the Participant's Internal Complaints-Handling Process. Should the Consumer initiate his or her Complaint at the CGSO, without having referred it to the Participant first, the CGSO shall refer the Consumer back to the Participant.

11.1.2 *Time Limits for Logging the Complaint*: The Complainant must refer the Complaint to the Participant as soon as practically possible after the Complainant has become aware of it as contemplated in clause 10.3.2 above.

STAGE 2:
REFERRAL TO THE OFFICE OF THE CONSUMER GOODS AND SERVICES OMBUD

11.2 Complaining to the CGSO:

11.2.1 *Referral to CGSO*: A Complainant who referred a Complaint to the Participant concerned, and who is dissatisfied with the manner in which the Participant is dealing with it, or how it has been dealt with, or the outcomes thereof, may, if a matter is not resolved by the Participant within 15 Business Days or such extended period as agreed between the Parties, refer the Complaint to the CGSO within a reasonable time in the form or format as presented in Annexure "**B**" or such other form or format adopted by CGSO from time-to-time, by calling its call centre on 0860 000 272 or by such other means acceptable to the CGSO. The Complaint form may be submitted by hand, mail, fax, email or in any other format acceptable to the CGSO at the following addresses:

11.2.1.1 *Physical Address*: Association House, Bond Street Business Park, cnr Bond Street and Kent Avenue, Ferndale, Randburg; or

11.2.1.2 *PO Box* 168, Randburg, 2125; or

11.2.1.3 *Fax*: 086 206 1999; or

11.2.1.4 *Email*: info@cgso.org.za

11.2.2 *Time Limits for Complaining*: The Complainant must refer the Complaint to the CGSO as soon as is reasonably possible and within the time limits specified in clause 10.3.2.

11.2.3 *Acceptance of Complaint*: The Complaint with the supporting information shall be recorded and issued a unique identifiable code. The recordal should identify the remedy sought by the Complainant and any other information necessary for the effective handling of the Complaint. Receipt of each Complaint shall be acknowledged within 2 (two) business days either via email, fax or telephone call to the Complainant.

11.2.4 *Initial Assessment of the Complaint*: After receipt, each Complaint shall be initially assessed to ascertain whether it falls within the jurisdiction of the CGSO. It will also be assessed in terms of severity, safety implications, complexity, impact and the need and the possibility of immediate action.

11.2.5 *Time Limits of Complaint Resolution*: The CGSO shall make every effort to resolve all Complaints within 60 (sixty) business days of receipt by it, failing which it will refer the Complaint to the NCC or motivate to the NCC for an extension of this time limit.

11.2.6 *Tracking the Complaint*: The Complaint shall be tracked from the time of receipt through the entire process until the matter has either been finalised by the CGSO, or the Consumer has been referred to the NCC or elsewhere. An up-to-date status report shall be made available to the Complainant upon request and at regular intervals, at least at the time of pre-set deadlines.

11.2.7 Processing of Complaint: Referral:

11.2.7.1 When the CGSO receives a Complaint that **does not fall within the CGSO's jurisdiction,** the CGSO shall decide which other body (including the NCC), if any, would be best able to assist the Complainant and shall inform the Complainant either by fax, telephone or email.

11.2.7.2 The discretion to refer the Complaint to alternative bodies vests in the CGSO. If it decides to do so, the CGSO will give the Complainant a copy of the referral letter which it sends to such alternative body. Once the decision has been made to refer the Complaint, it must be referred to the relevant body within 2 (two) Business Days of it being received by the CGSO.

11.2.7.3 If the Complaint is one that appears to fall **within the CGSO's jurisdiction** and the Complainant **has not taken the matter up directly with the Participant as a first step in trying to resolve the matter**, the CGSO will advise the Complainant to refer the matter to the Participant to give the Participant the opportunity to resolve the Complaint. Alternatively, the CGSO may directly refer the matter to the Participant with the permission of the Complainant;

11.2.7.4 The CGSO may refer a Complainant to either the Retailer or Manufacturer, or both, as the CGSO deems appropriate in the circumstances.

11.2.7.5 Any Complainant who is advised to refer the matter to the Participant will also be informed that he or she can again approach the CGSO, if the Complaint is not resolved to the satisfaction of the Complainant within 15 (fifteen) Business Days or such extended period as agreed between the Parties.

11.2.7.6 If it would, in the CGSO's opinion, with particular reference to section 3 (1) (*b*) of the CPA (vulnerable consumers), cause a Complainant undue hardship or inconvenience to refer to the Participant before obtaining the CGSO's assistance, the CGSO may deal with the Complaint as if the Complainant has approached the Participant.

11.2.7.7 If the Complaint is one that appears to fall **within the CGSO's jurisdiction** and the Complainant **has already taken up the matter with the Participant,** the CGSO shall inform the Designated Officer, in writing, that a Complaint has been lodged with the CGSO and that the Participant shall have 15 (fifteen) Business Days from receipt of the communication to investigate and attempt to resolve the Dispute with the Complainant or to provide the CGSO with its reasons for repudiating the Complaint. The Participant may upon request and at the discretion of the CGSO, be permitted additional time to resolve the matter.

11.2.7.8 The CGSO will provide the Participant concerned with full details of the Complaint, including copies of the relevant documentation submitted to CGSO, to the extent the CGSO considers it necessary, by fax or email.

11.2.7.9 The Participant must acknowledge receipt of the notification within 2 (two) Business Days and may do so by letter delivered by hand, fax or email.

STAGE 3:
COMPLAINT RESOLUTION BY THE PARTICIPANT

11.3 Intervention by the Participant:

11.3.1 If a Complainant is referred to a Participant by the CGSO in terms of clause 11.2.7.6 above, the Participant shall:

11.3.1.1 contact the Complainant to clarify any issue, to ascertain the essence of the Complaint and to attempt to settle the Complaint to the reasonable satisfaction of the Complainant;

11.3.1.2 if able to resolve the Complaint, provide CGSO with reasonable proof that the Complaint has been settled and that any undertaking made by the Participant has been complied with;

11.3.1.3 undertake any investigation that is necessary; the level of investigation shall be commensurate with the seriousness, frequency of occurrence and severity of the Complaint;

11.3.1.4 if the Participant is unable to resolve the Complaint referred to it by the CGSO in terms of clause 11.2.7.6 it shall provide the CGSO with a report outlining the investigation that it undertook and the reasons that the matter was not resolved and its reasons for repudiating the Complaint;

11.3.1.5 if the participant fails to provide the report referred to in 11.3.1.4, this shall not prevent the CGSO from making a Recommendation based only on the information before it;

11.3.1.6 if the CGSO is of the view that the Participant has provided the assistance sought by the Complainant or provided an acceptable explanation for its conduct complained of, the CGSO may inform the Complainant and Participant of this fact and indicate that the file will be closed unless the Complainant challenges the view, or provides new information to CGSO within 10 (ten) Business Days;

11.3.1.7 during the times set in terms of clause 11.2.7.6 above, the CGSO may facilitate a settlement between the Participant and the Complainant if the CGSO considers that it would be appropriate and helpful to do so.

11.3.1.8 When dealing with Complaints, the Participant should make readily available to customers, complainants and other interested parties information concerning the

Internal Complaint-Handling Process, including the CGSO's brochures and the member's pamphlets, or electric-based information. Such information should be provided in plain language and, so far as it is reasonable, in formats accessible to all, so that no complainants are disadvantaged. The following are examples of such information:

. where Complaints can be made;

. how Complaints can be made;

. the Complaints process.

11.3.1.9 If the Participant is not able to resolve the matter within 15 (fifteen) Business Days or such extended period as agreed between the Parties, the Participant shall advise the Complainant of the right to refer the matter to the CGSO and provide the Complainant with the CGSO's contact details.

STAGE 4:
INVESTIGATION AND COMPLAINT RESOLUTION BY THE CGSO

11.4 Investigation by the CGSO:

11.4.1 The CGSO may, if it decides that it requires these for the purpose of arriving at the resolution of a matter:

11.4.1.1 require the Designated Official of the Participant to provide it with records of the transaction or process that gave rise to the Dispute, including:

11.4.1.1.1 sales records (including recorded transactions);

11.4.1.1.2 advertising copy;

11.4.1.1.3 inspection or repair records.

11.4.1.2 require, the Designated Officer of a Participant to provide it with a statement from any technical, legal, sales, marketing, complaints-handling and other personnel working on behalf of the Participant, as appropriate to the Complaint;

11.4.1.3 require comment or clarification from either the Complainant or the Participant (both Retailer and Manufacturer if considered appropriate) on any other matter, including information provided by the other Party;

11.4.1.4 require the Complainant or Participant, whichever is appropriate, to provide it with the Goods to which the Complaint or Dispute relates for inspection or testing, if the Goods are still available;

11.4.1.5 the CGSO may consult any person it considers suitably qualified to assist it in resolving the Complaint;

11.4.1.6 the Complainant or the Participant must make every effort to comply with the requests made by the Ombudsman with 10 (ten) Business Days, unless good cause can be shown.

11.5 Facilitation by the CGSO:

11.5.1 The CGSO may, in order to settle a Complaint speedily, make an assessment of its merits without doing an investigation and suggest to the Parties how the matter should be settled.

11.5.2 The CGSO may, after collecting relevant records and information, form an initial view on the matter with respect to the Participant's potential liability and the remedies, if any, it believes the Complainant is entitled to. The possible outcomes include:

11.5.2.1 resolving the matter as requested by the Complainant;

11.5.2.2 providing some but not all of the remedies requested; or

11.5.2.3 providing none of the remedies requested and advising the Complainant of other options available to the Complainant.

11.5.3 The CGSO shall communicate its view to the Participant and to the Complainant as soon as the decision is taken and invite their responses;

11.5.4 The Participant and the Complainant must advise the CGSO within 10 (ten) Business Days of receiving the said communication as to whether they accept the terms of the recommendation or not;

11.5.5 If the matter is resolved as a result of both Parties to the Dispute accepting the CGSO's proposed resolution, or acquiring the CGSO's assistance in arriving at a mutually acceptable compromise settlement, the resolution must be recorded and carried out. The CGSO may at the request of the Parties to a Dispute record the resolution of the Dispute in the form of an order in terms of section 70 (3) (*a*) of the CPA;

11.5.6 If a resolution is not agreed upon at this stage, the CGSO shall inform the Parties of further options available to them, including a Recommendation by the Ombudsman.

11.6 Mediation by the CGSO:

11.6.1 The CGSO may, without doing an investigation, in its discretion, mediate any matter that the Ombudsman believes is appropriate for mediation, taking into consideration the wishes of the Parties and the nature of the Complaint. The involvement of legal representatives shall not be permitted except at the discretion of the mediator.

11.7 Recommendation by Ombudsman:

11.7.1 The Ombudsman may, in any case where a matter has not been settled through Mediation or Facilitation, make a written recommendation setting out how the matter should be resolved and the reasons for the Recommendation. Where the matter has been referred to both the Retailer and Manufacturer, the Recommendation should state which of the two, if either, the Ombudsman consider to be liable;

11.7.2 Prior to making a Recommendation and subject to the considerations of Confidentiality, the Ombudsman shall, to the extent considered appropriate, permit each of the Parties to comment on the information provided to the CGSO by the other during the investigation, Mediation or Facilitation stage;

11.7.3 The Participant and the Complainant must advise the Ombudsman in writing within 10 (ten) Business Days from receiving the Recommendation whether they accept the terms of the recommendation or not;

11.7.4 Neither a Complainant nor Participant shall be bound to accept a Recommendation made by the Ombudsman, but if a Participant does not accept a Recommendation that has been accepted by the Complainant, the number of those cases and those details thereof that the Ombudsman considers appropriate shall be published in the CGSO's annual report and by other means that the Ombudsman considers appropriate;

11.7.5 If the Complainant rejects the Recommendation or fails to respond within the time limit set in 11.7.3, the Recommendation will fall away and the file may be closed;

11.7.6 If the matter is resolved as a result of both Parties to the Dispute accepting the Ombudsman's Recommendation, the CGSO may, at the request of the Parties to the Dispute, record the resolution of the Dispute in the form of an order in terms of section 70 (3) (*a*) of the CPA;

11.7.7 If both Parties accept the terms of the Recommendation, they must comply with its provisions within the period of time prescribed in the Recommendation. If either Party fails to comply, the CGSO shall inform the Parties of further options available to them, including a referral to the NCC or Tribunal, and the recording of the resolution of the Dispute in the form of an order and having made an order of court or the institution of legal proceedings, both of the last two mentioned options are at the Parties' own expense;

11.7.8 If a resolution is not agreed upon at this stage or if a Party fails to comply, the CGSO shall inform the Parties of the further options available to them, including a referral to the NCC and the institution of legal proceedings at the Parties' own expense, if so advised.

SECTION G

12. CONFIDENTIALITY

12.1 Subject to any other law, personally identifiable information shall be kept confidential by the CGSO and be protected, except to the extent that it is necessary to provide it to a Party for the sole purpose of resolving a Dispute, or unless disclosure is required by law, or consent for disclosure is obtained from the Party concerned.

12.2 If any Party to a Complaint supplies information to the CGSO and requests, in writing, that it be treated as Confidential Information, the CGSO shall determine whether the information should be treated as Confidential Information.

12.3 If the CGSO determines that the information should be treated as Confidential Information, the CGSO may nevertheless use the information to reach a decision adverse to the Party to whom the Confidential Information was denied.

12.4 If the CGSO determines the information should not be treated as Confidential Information, the CGSO shall inform the disclosing Party that the CGSO is not entitled to use the information to reach a decision adverse to the Party to whom the Confidential Information is denied, unless the objecting Party consents to that information being provided to the other Party.

12.5 Subject to the other provisions of this clause, as far as it is practical and at the sole discretion of the CGSO, all documentation should be provided to both Parties to a Dispute, provided that the CGSO may provide Parties with written notice indicating that the documents or information are available on request.

ANNEXURE A

MATTERS RELATING TO THE APPOINTMENT, TENURE AND POWERS OF THE OMBUDSMAN

1. APPOINTMENT OF THE OMBUDSMAN

1.1 The Board will appoint the Ombudsman whom is expected to have the following personal qualities, qualifications, skills or expertise to be eligible for appointment:

1.1.1 be independent;

1.1.2 be fit and proper person;

1.1.3 demonstrate high levels of competency, capability and financial soundness;

1.1.4 have sound leadership qualities;

1.1.5 be able to manage and lead a service-driven organisation;

1.1.6 have at least 10 (ten) years of experience in a senior executive role relating to alternative dispute resolution or an ombudsman office; or

1.1.7 be legally qualified and be admitted as an Attorney or Advocate; or

1.1.8 be qualified and experienced in economics, commerce and industry and public affairs.

1.2 No person who has been employed by a Participant within a 3 (three) year period prior to applying for the post of Ombudsman, may be appointed.

1.3 No person who has any direct or indirect business interest in any Participant may be appointed as Ombudsman.

1.4 The Process for the appointment of the Ombudsman shall be conducted in an open and transparent manner.

1.4.1 The Board shall appoint a special sub-committee for the Ombudsman's recruitment process. This sub-committee will be called the "Recruitment Committee". The Recruitment Committee shall consist of the chairperson of the board, one Industry representative, one consumer body representative and one association representative.

1.4.2 The Recruitment Committee shall advertise the position of Ombudsman at least two times in at least two national newspapers. A short list of the most suitable candidates will be compiled and such candidates will be interviewed by the Recruitment Committee. Once the Recruitment Committee has made a decision on the most suitable candidate it shall submit a fully motivated written recommendation in this regard to the Board. The Board will make their final decision on the appointment of the candidate by way of a majority vote.

1.4.3 The Ombudsman will be required to sign an employment contract stating the terms of his or her employment and same will be subject to an annual performance review.

1.5 The Ombudsman will be appointed for a fixed period of 3 (three) years. Once this 3 (three) year term has ended, the Ombudsman will be eligible for reappointment for a further 3 (three) years by majority vote of the Board. Should the Board decide to extend the Ombudsman's term for a further 3 (three) years, then no formal recruitment and application process needs to be followed. The decision as to whether or not to reappoint the Ombudsman must be communicated in writing to the Ombudsman at least 1 (one) year prior to the term of his or her office ending.

1.6 The Ombudsman may only be dismissed in accordance with the provisions of clause 8.3 of the Code.

1.7 Any decision to dismiss the Ombudsman must be taken by majority vote of the Board and the dismissal procedure must comply with clause 8.3 of the Code.

1.8 The Ombudsman will declare in writing to the Board should there be any actual or perceived conflict of interest which may exist or arise after or at the time of his or her appointment. This will include, but not be limited to, instances where an immediate family member such as parent, sibling or children of the Ombudsman are in the permanent employ of, or have business interests in a Participant.

1.9 There shall at all times be 1 (one) Ombudsman. If requested by the Ombudsman, the Board shall be entitled to appoint a deputy Ombudsman. The appointment and election of the deputy Ombudsman will take place by majority vote of the Board.

1.10 The Ombudsman may resign by giving 60 (sixty) days' written notice to the Board.

2. POWERS OF THE OMBUDSMAN

2.1 The Ombudsman is vested with the authority to bind the CGSO and only the Ombudsman is vested with the authority to make Recommendations relating to Complaints and Disputes.

2.2 The Ombudsman shall have the overall responsibility for the conduct of the day-to-day administration and business of the CGSO. In this regard the Ombudsman shall appoint employees and determine their terms and conditions of employment. The Ombudsman shall do anything that is necessary and expedient for the running of the CGSO, including issuing guidelines for the implementation and application of rules.

2.3 The Ombudsman shall be vested with the power to do what is necessary to give effect to the primary objectives of the CGSO. These powers will be exercised in accordance with the Terms of Reference and procedures determined by the Board and approved by the Minister. More particularly to:

2.3.1 prepare and submit to the Board an annual report detailing the activities and finances of the CGSO for the year under review;

2.3.2 prepare and submit reports to the Board on current matters and activities;

2.3.3 promote and publicise the services provided by the CGSO through the media and consumer bodies;

2.3.4 identify and bring to the attention of the Participants undesirable practices to which a Participant might be a party, and to report to the Board such matters where the Participant is unable or unwilling to take remedial action;

2.3.5 appoint personnel to ensure the efficient management of complaints;

2.3.6 enter into agreements of purchase and sale and letting and hiring of property reasonably required for the purpose of the functioning of the CGSO;

2.3.7 open bank and other accounts necessary for the CGSO to perform its functions;

2.3.8 make recommendations to the Board for any necessary amendments to the Code and MOI of the CGSO.

2.3.8.1 any amendments to the Code as accepted the Board shall be forwarded to the NCC, to enable it to act in terms of section 82 (5) (*c*) of the CPA.

3. THE OMBUDSMAN STAFF

The CGSO's staff members and any other persons conducting alternative dispute resolution on its behalf should ideally have, appropriate to the subject matter of the complaint and the level of the CGSO process at which they are rendering the service:

3.1 qualifications and experience in law, commerce, industry and dispute resolution;

3.2 knowledge of the technical aspects of the goods and services provided in the Industry or access to technical assistance or expertise in this regard; and

3.3 an understanding of the CPA.

ANNEXURE B

CGSO COMPLAINTS FORM

IF YOU REQUIRE ASSISTANCE IN COMPLETING THIS FORM OR WOULD PREFER TO TELL SOMEONE ABOUT YOUR COMPLAINT CALL 0860 000 272

1. Record Information (for official use)

Contact Method:	
Reference:	
Agent:	
Date:	
Time:	
Status:	
Voiced:	
Category:	
Sub-category:	
Other:	

2. Consumer Information (Please complete neatly)

Title:	
First Name:	
Surname:	
Identification Number:	
Cell Number:	
Work:	
Home:	
Fax:	
Email:	
Postal Address:	
Physical Address:	

3. Previous Complaint/s made to us by you

Previous Reference:	
Previous Complaint:	

4. Company/Participant Details

Supplier Company:	
Company Address:	

5. Details of Complaint

Details of Complaint: (date of purchase/agreement, what was the transaction, what went wrong and when did you notice?	
(Editorial Note: Wording as per original *Government Gazette*.)	
Nature of Complaint:	
Products available for collection/inspection:	
Details of steps taken by you to resolve Complaint:	

6. Documents

List of documents relevant to the Complaint (Fax or scan and send. Do not send originals unless requested)	

7. Miscellaneous

What outcome to the complaint do you hope to achieve?	

I agree that the information provided may be used and disclosed as necessary in the CGSO's processes for the purposes of an attempt to resolve my complaint.

GN 701 of 10 July 2015: Memorandum of agreement entered into between the National Consumer Commission and the Independent Communications Authority of South Africa (*Government Gazette* No. 38986)

(Editorial Note: The signed copy of this Memorandum is published in GN 596 of 10 July 2015, *Government Gazette* No.38982)

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

MEMORANDUM OF AGREEMENT

("MOA")

Entered into between

THE NATIONAL CONSUMER COMMISSION

("the Commission")

a juristic person established In terms of section 85 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) ("the CPA") as amended, herein duly represented by Mr Ebrahim Mohamed, in his capacity as the Commissioner of the Commission

And

THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

(Hereinafter referred to as "the Authority")

a juristic person established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) as amended ("the ICASA Act"), herein duly represented by a member of

Council in her capacity as the Councillor of the Independent Communications Authority of South Africa

WHEREAS, the key functions of the Authority are to, *inter alia,* regulate the electronic communications, broadcasting and postal services; issue licenses to providers of the aforesaid services; monitor the environment and enforce compliance with the licence terms and conditions and regulations; investigate and decide on disputes and complaints brought by industry or members of the public against licensees; plan, control and manage the radio frequency spectrum and to protect consumers;

AND WHEREAS, the Commission is mandated to, *inter alia*, enforce and carry out the functions assigned to it in terms of the CPA. The CPA seeks to promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose, to establish national norms and standards relating to consumer protection throughout the Republic of South Africa. It further seeks to provide for improved standards of consumer information, to prohibit certain unfair marketing and business practices, to promote responsible consumer behaviour and to promote a consistent legislative and enforcement framework relating to consumer transactions.

AND WHEREAS, the Commission and the Authority recognise that their respective mandates are mutually reinforcing and should thus encourage the optimal utilisation of the most effective remedies available between the two institutions, as the case may be;

AND WHEREAS, it is recorded that this MOA may be reviewed to accommodate developments incidental to matters that require co-operation between the two statutory bodies in the electronic communications, broadcasting and postal industries. The review will take into account prevailing legal precedents, legislative amendments, promulgation of regulations, and policy reviews, as the case may be.

THEREFORE, the Commission and the Authority agree as follows:

ARRANGEMENT OF REGULATIONS

1. BASIS OF THE MEMORANDUM

1.1 This MOA is entered into to establish the manner in which the Commission and the Authority will interact with each other to enable them to, *inter alia*:

1.1.1 establish and formalize a relationship between the Commission and the Authority on the uniform classification of complaints;

1.1.2 improve the complaints handling and referral processes;

1.1.3. release of joint statements on matters of collaboration affecting the interests of consumers;

1.1.4 liaise with each other on matters of common interest as contemplated in the CPA and the ICASA Act;

1.2 The Commission and the Authority may inform each other of any previous decision/judgment that either of them has previously taken/obtained in respect of the practice or conduct involving the same respondent, in so far as it pertains to consumer matters.

1.3 As contemplated in Section 3 of the CPA, the Commission exercises primary authority to promote and advance the social and economic welfare of consumers in South Africa, and the Authority exercises primary authority to ensure universal and affordable access to high quality electronic communications services, broadcasting services and postal services, to consumers.

2. GUIDELINES FOR INTERACTION BETWEEN THE COMMISSION AND THE AUTHORITY UNDER THIS MEMORANDUM

2.1 The Authority may ask for and receive advice from the Commission, in respect of consumer matters arising in the electronic communications, broadcasting and postal industries.

2.2 The Commission may ask for and receive advice from the Authority, in respect of proceedings which require consideration of regulatory aspects falling under the competency of the Authority.

2.3 All requests for advice or exchange of information by either regulatory authority must be submitted in writing.

2.4 The party seeking advice or information must indicate a reasonable deadline (not less than 14 working days) before or upon which the advice or information should be given.

2.5 When the Commission and the Authority consult each other under this MOA, they will do so at no cost to each other and with an acknowledgement of their respective areas of expertise.

2.6 In the interpretation of any terminology used in this MOA, any word or expression to which a meaning is assigned in the CPA, Postal Services Act (Act No.124 of 1998), Broadcasting Act (Act No. 4 of 1999), ICASA Act and the Electronic Communications Act (Act No. 36 of 2005) has the meaning assigned to it unless otherwise specified.

3. REFERAL OF COMPLAINTS

The Commission and the Authority will develop a common framework, within three (3) months of the signing of this MOA, within which referral of complaints between the two regulatory agencies will take place.

4. CLASSIFICATION OF COMPLAINTS

The Commission and the Authority will develop a common framework, within three (3) months of the signing of this MOA, for classification of consumer complaints in the ICT sector.

5. INSTITUTIONAL CONTACT PERSONS

For purposes of this MOA-

5.1. the **Head: Enforcement and Investigation** will be the main contact person at the Commission.

5.2. the **General Manager Compliance and Consumer** will be the main contact person at the Authority.

6. EXCHANGE OF INFORMATION

6.1 Subject to clause 7, the Commission and the Authority will endeavour to exchange information necessary to give effect to this MOA.

6.2 The preferred procedure for the exchange of information between the Commission and Authority is as follows-

6.2.1 wherein the Commission requires information from the Authority, the Commission will address a written request for information to the **Chief Operations Officer (COO)** of the Authority and also copy the contact person identified in terms of clause 5.

6.2.2 wherein the Authority requires information from the Commission, the Authority will address the written request for information to the **Deputy Commissioner** of the Commission and also copy the contact person identified in terms of clause 5.

6.3 The Commission and the Authority will keep records of the information exchanged between them.

7. CONFIDENTIALITY

7.1 The Commission and the Authority may share confidential information subject to their statutory confidential requirements.

7.2 The party providing confidential information pursuant to this MOA must clearly indicate what information is confidential to the requesting regulator.

7.3 The Commission and the Authority warrant that all information made available to them by the other party, including but not limited to any contracts signed, materials developed, trade secrets, financial and other details, assistance or advice given or requested, operating methods and costs, will be kept strictly confidential and shall not be divulged to any third party without prior written consent of the other party. Each party and their employees, contractors or service providers, must maintain the utmost secrecy in respect of all such information.

8. GENERAL PROVISIONS

8.1. The provision of, or request for information under this MOA may be denied:

8.1.1 where compliance would require the Commission or Authority to act in a manner that would violate the applicable law or the constitutional rights of the parties involved;

8.1.2 under circumstances where there is an imminent risk to national security; or

8.1.3 when compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

8.2. No provision of this MOA will give rise to a right on the part of any person, entity or organ of state other than the Commission and the Authority, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this MOA.

8.3. The provisions set out under clauses 6 and 7 must prevail with respect to any information provided or actions taken under this MOA prior to its termination.

9. NON-VARIATION

9.1 This MOA constitutes the whole of the agreement between the parties relating to the subject matter hereof.

9.2 No amendment or consensual cancellation of this MOA or any term of this MOA, including this clause will be binding unless recorded in a written document signed by duly authorised representatives of both regulators.

10. EFFECTIVE DATE OF THE MEMORANDUM

This MOA comes into force after:

10.1 it has been signed by persons authorised to act on behalf of both the regulators; and

10.2 signature by representatives of both parties.

11. DURATION OF THE MEMORANDUM

This MOA will remain in force until it is amended or terminated by both parties acting jointly.

12. DISPUTE RESOLUTION

In the event of any dispute or difference between the parties with regard to interpretation and/or implementation of any one or more of the provisions of this MOA, the dispute or difference must be resolved in a manner other than through resorting to judicial proceedings.

13. DOMICILIUM CITANDI ET EXECUTANDI

The regulators choose the following addresses as their respective *domicilium citandi et executandi* for purposes of this MOA:

THE NATIONAL CONSUMER COMMISSION

BUILDING 10

BERKELY OFFICE PARK

08 BAUHINIA STREET

TECHNOPARK

CENTURION

CONTACT PERSON:

THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

BLOCK B

PINMILL FARM

164 KATHERINE STREET

SANDTON

2146

CONTACT PERSON:

14. FORCE MAJEURE

14.1 If any party to this MOA is unable to perform any obligation(s) due to circumstances beyond its control, then the party concerned will be excused from the timeous performance of the obligation for the duration that the circumstances prevail, rendering the performance impossible.

14.2 Any party unable to perform its obligations due to circumstances in terms of clause 15.1, must inform the other party in writing of the circumstances within five (5) days of the occurrence thereof.

14.3 The Parties will do everything reasonably possible to prevent, avoid or limit the duration or effects of any circumstance in terms of clause 14.1. Upon removal of the circumstances giving rise to impossibility of performance, the party so prevented or delayed will forthwith give written notice to the other party.

14.4 For the purpose of this MOA *"Force Majeure"* will mean any circumstances beyond the reasonable control of the party concerned and includes but not be limited to war, revolution, riot, mob violence, sabotage, epidemic, accident, breakdown of machinery or facilities where such are not part of equipment or under control of either party.

14.5 The mere shortage of labour, materials or utilities will not constitute Force Majeure unless caused by circumstances which may be deemed to constitute Force Majeure.

15. SEVERABILITY

Each of the provisions of this MOA will be considered as separate terms and conditions and in the event this MOA is affected by legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions may be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof will remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not part thereof.

16. COSTS

Each Party to this MOA will be liable for its own costs in respect of, and incidental to, the negotiation and execution of this Agreement.

17. ENTIRE AGREEMENT

This MOA constitutes the entire agreement between the parties with regard to the matters dealt with in this MOA and no representations, terms conditions or warranties not contained in the MOA will be binding on the Parties.

18. VARIATION AND CANCELLATION

No agreement varying, adding to, or deleting from or canceling this MOA will be effective unless reduced to writing and signed by or on behalf of the Parties.

19. INDULGENCES

No indulgences granted by the parties may constitute a waiver of any of its rights under this MOA. Accordingly no party may be precluded as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

20. GORVENING LAW

The MOA is to be construed in accordance with the laws prevailing in the Republic of South Africa.

21. CESSION AND ASSIGENEMENT

The parties will not be entitled to cede and assign their rights and obligations in terms of this Agreement without the prior written consent of the other.

22. TERMINATION

Notwithstanding the provisions of clause 11, either Party has the right to terminate this MOA at any time by giving the other party 30 (thirty) business days written notice,

THUS DONE AND SIGNED IN PRETORIA ON THIS DAY OF 2015

(Signed)
Mr. Ebrahim Mohamed
Commissioner: National Consumer Commission

As witnesses:

1. (Signed)

2. (Signed)

THUS DONE AND SIGNED IN SANDTON ON THIS DAY OF JULY 2015

(Signed)
Ms. Nomvuyiso A. Batyi
Councillor

As witnesses:

1. (Signed)

2. (Signed)

RULES

GN 489 of 3 June 2011: National Consumer Commission Rules
(*Government Gazette* No. 34348)

DEPARTMENT OF TRADE AND INDUSTRY

I, Dr Rob Davies, the Minister of Trade and Industry hereby publish the rules regulating the functioning of the National Consumer Commission.

In term of section 120 (1) (*b*) of the Consumer Protection Act, 2008 (No. 68 of 2008) (the Act), the Minister of Trade and Industry may in consultation with the National Consumer Commission and by notice in the *Gazette*, make regulations for matters relating to the functions of the Commission.

(**Signed**)
Dr. Rob Davies, MP
Minister of Trade and Industry
The Department of Trade and Industry

NATIONAL CONSUMER COMMISSION RULES

REGULATING THE FUNCTIONS OF THE NATIONAL CONSUMER COMMISSION

TABLE OF CONTENTS

NATIONAL CONSUMER COMMISSION RULES

REGULATING THE FUNCTIONS OF THE NATIONAL CONSUMER COMMISSION

PART 1

GENERAL PROVISIONS

1. Short title.-These Regulations are the National Consumer Commission Rules.

2. Interpretation.-(1) A word or expression defined in the Act bears the same meaning in these Rules as in the Act.

(2) In these Rules-

(*a*) a reference to a section by number refers to the corresponding section of the Act;

(*b*) a reference to a rule by number refers to the corresponding item of these Rules; and

(*c*) a reference to a sub-rule or paragraph by number refers to the corresponding item of the rule in which the reference appears.

(3) In these Rules unless the context indicates otherwise-

(*a*) **"application"** means a request for an exemption submitted in terms of section 5 (3);

(*b*) **"certified copy"** means a copy of a document certified by a Commissioner of Oaths;

(*c*) **"Commission"** means the body established by section 85;

(*d*) **"Commissioner"** means the office holder appointed in terms of section 87;

(*e*) **"Consumer Tribunal Rules"** means the rules promulgated in terms of the Act and the National Credit Act, 2005 (Act No. 34 of 2005) for the regulation of procedures of the Tribunal;

(*f*) **"complaint"** means either-

(i) a matter initiated by the Commission in terms of section 71 (2); or

(ii) a matter that has been submitted to the Commission in terms of sections 71 (1);

(*g*) **"deliver"** depending on the context, means to serve, or to file, a document;

(*h*) **"file"**, when used as a verb, means to deposit with the Commission;

(*i*) **"public holiday"** means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994);

(*d*) **"serve"** means to deliver a document to a person other than the Commission;

(*j*) **"the Act"** means the Consumer Protection Act, 2008 (Act No. 68 of 2008); and

(*k*) **"Tribunal"** means the National Consumer Tribunal established by section 26 of the National Credit Act, 2005.

(Editorial Note: Numbering as per original *Government Gazette*.)

3. Office hours and address of Commission.-(1) The offices of the Commission are open to the public every Monday to Friday, excluding public holidays, from 08h30 to 16h30.

(2) Despite sub-paragraph (1)-

(*l*) in exceptional circumstances the Commission may with due notice to all interested parties accept documents for filing on any day and at any time; and

(*b*) the Commission must accept documents for filing as directed by either the Tribunal or a member of the Tribunal assigned by its chairperson.

(Editorial Note: Numbering as per original *Government Gazette*.)

(3) Subject to Rules 7 and 9, any communication to the Commission, or to a member of the staff of the Commission, may be-

(*a*) delivered by hand at-

National Consumer Commission

77 Meintjies Street

Sunnyside

the dti Campus

Block E, 3rd Floor

Republic of South Africa

(*b*) addressed by post to-

National Consumer Commission

P O Box 30251

Sunnyside

Pretoria

0132

Republic of South Africa

(*c*) transmitted by Fax on 0861 515 259.

(*d*) transmitted by electronic mail to ncc@thedti.gov.za.

4. Condonation of time limits.-On good cause shown, the Commissioner may condone late performance of an act in respect of which these Rules prescribe a time limit, other than a time limit that is binding on the Commission itself.

PART 2

DELIVERY OF DOCUMENTS

5. Delivery of documents.-(1) A notice or document that is required to be delivered may be served in any way permitted in the Act or these Rules.

(2) Subject to sub-rule (3), a document delivered by a method listed in rule 3 (*a*) to (*d*) will be deemed to have been delivered on the intended recipient on the date and at the time shown opposite that method, as indicated below-

Delivered by hand:	On the date of the receipt issued by the Commission
Addressed by post:	14 days after the date of posting
Transmitted by fax:	On the date of transmission to the Commission
Transmitted by email:	On the date of transmission to the Commission

(3) If, in a particular matter, it proves impossible to serve or deliver a document in any manner provided for in these Rules-

(*a*) if the Commission is required to serve the document, the registrar may apply to the Tribunal for an order of substituted service;

(*b*) in any other case, the person concerned may apply to the Tribunal for an order of substituted service.

(4) Subject to rule 3 (2), if the date and time for the delivery or service of a document is outside of the office hours of the Commission as set out in rule 3 (1), that document will be deemed to have been delivered on the next business day.

(5) Despite sub-rules (1) - (4), if, in terms of rule 9, a fee is required in respect of a document that has been filed, that document will be deemed to have been filed-

(*a*) on the date and at the time indicated in section 2 (6), if the filing fee is paid to the Commission within three business days of that date and time; or

(*a*) when the fee is paid to the Commission, if later.

(Editorial Note: Numbering as per original *Government Gazette*.)

(6) A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must accompany a cover message, in either case setting out-

(*a*) the name, address, and telephone number of the sender;

(*b*) the name of the person to whom it is addressed, and the name of that person's representative, if it is being sent to the representative of a person;

(*c*) the date and time of the transmission;

(*d*) the total number of pages sent, including the cover page; and

(*e*) the name and telephone number of the person to contact if the transmission appears to be incomplete or otherwise unsuccessful.

6. Issuing documents.-(1) If the Act or these Rules require the Commission to issue a document-

(*a*) the document will have been issued by the Commission when it has been served on any person to whom it is addressed; and

(*b*) the document may be served at any time of day, despite rule 3 (1).

(2) Rule 5 (4) does not apply to the service of a document issued by the Commission.

7. Filing documents.-(1) The Commission must assign distinctive case numbers to each complaint, application, notice, advisory opinion and order.

(2) The Commission must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.

(3) The Commission may refuse to accept a document subsequently filed in respect of the same proceedings that is not properly marked with the assigned case number.

(4) A person who files any document in terms of the Act or these Rules must provide to the Commission that person's-

(*a*) legal name;

(*e*) address for service;

(*b*) telephone number;

(*c*) if available, email address and fax number; and

(*d*) if the person is not a natural person, the name of the natural person authorised to deal with the Commission on behalf of the person filing the document.

(Editorial Note: Numbering as per original *Government Gazette*.)

(Editorial Note: Numbering as per original *Government Gazette*.)

(5) All supporting documents which are delivered or served shall be numbered appropriately to allow ease of reference.

8. Fees.-(1) The Commission may not charge a fee to any person for filing a complaint.

(2) The Commission may charge a fee of R1-00 excluding VAT per A4-size page or part thereof to any person wishing to copy a record in the possession of the Commission.

(3) The Commission may determine reasonable fees payable for non-binding advisory opinions.

9. Form of orders, notices and applications.-Whenever an order, notice or application is required in terms of a section of the Act, or an item of these Rules, the document must be in the form of the annexure prescribed in the Regulations to the Act.

10. Form of Orders and Notices of Referral.-Whenever the Commission is required, either in terms of the Act or these Rules, to publish a notice in the *Gazette*, that notice must contain at least the following information-

(*a*) the name of any supplier, or other person directly affected by the notice;

(*b*) the file number assigned by the Commission to the relevant matter;

(*c*) the provision of the Act or Rules in terms of which the notice is required;

(*d*) a brief and concise description of the nature of the relevant matter;

(*e*) if the notice invites submissions, the last date on which submissions may be received;

(*f*) if the notice reports a decision

(i) a brief and concise description of the nature of the relevant decision;

(ii) a statement indicating whether reasons for the decision have been published, and if so, how a copy of those reasons may be obtained; and

(iii) a statement of any right of review of, or appeal from, that decision, including the period during which a review or appeal may be lodged; and

(*g*) the name, address and contact numbers of the person in the Commission responsible for publishing the notice.

11. Form of Annual Report.-(1) The annual report to be submitted by the Commission in terms of sections 91 and 98 of the Act must be divided into the following parts-

(*a*) a statement of the progress achieved during the preceding year towards realisation of the purposes of the Act.

(*b*) the proceedings of the Commission, being a summary report of the Commission's work in relation to complaints, orders and notices.

(*c*) the administrative activities of the Commission, being a summary report concerning the Commission's management, staff, infrastructure, rules and related matters.

(*d*) the Commission's finances being audited financial statements and an audited report prepared by the auditor general.

(2) In addition to the matters required in terms of Part B of Chapter 5, each annual report must include a report on the following matters-

(*a*) the Commission's public awareness programs.

(*b*) relationships between the Commission and other regulatory authorities.

(*c*) relationships between the Commission and foreign agencies.

(*d*) research activities undertaken by the Commission and any proposals for law reform published by the Commission.

PART 3

ACCESS TO COMMISSION RECORDS

12. Restricted information.-(1) In the event of a conflict between these Rules and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the provisions of that Act prevail.

(2) For the purpose of this Part, the following five classes of information are restricted-

(*a*) Information that has been determined to be confidential information;

(*b*) The identity of a complainant, in the following circumstances-

(i) A person who provides information to the Commission may request that the Commission treat their identity as restricted information; but that person may be a complainant in the relevant matter only if they subsequently waive the request in writing.

(ii) If a person has requested in terms of sub-paragraph (i) that the Commission treat their identity as restricted information.

(*c*) Information that has been received by the Commission in a particular matter, other than that referred to in paragraphs (*a*) and (*b*) above, as follows-

(i) any other information received by the Commission during its investigation of the complaint, is restricted information until the Commission issues a referral or notice of non-referral in respect of that complaint.

(ii) An application and any information received by the Commission during its consideration of the application, or revocation of an exemption granted to the applicant, is restricted information.

(*d*) A document-

(i) that contains-

(*aa*) an internal communication between officials of the Commission, or between one or more such officials and their advisors;

(*bb*) an opinion, advice, report or recommendation obtained or prepared by or for the Commission;

(*cc*) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed on the Commission by law; or

(ii) the disclosure of which could reasonably be expected to frustrate the deliberative process of the Commission by inhibiting the candid-

(*aa*) communication of an opinion, advice, report or recommendation; or

(*bb*) conduct of a consultation, discussion or deliberation; or

(*cc*) the disclosure of which could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.

(*e*) Any other document to which a public body would be required or entitled to refuse access to in terms of the Promotion of Access to Information Act, 2000.

13. Access to information.-(1) In the event of a conflict between these Rules and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the provisions of that Act prevail.

(2) Any person, upon payment of the prescribed fee, may inspect or copy any Commission record-

(*a*) if it is not restricted information; or

(*b*) if it is restricted information, to the extent permitted, and subject to any conditions imposed, by

(i) this Rule; or

(ii) an order of the Tribunal, or a Court.

(3) In a particular complaint the Commission may release otherwise restricted information, other than confidential information, relating to a possible agreement of terms of an appropriate order, or the consent of a complainant for an order to include an award of damages, to the respondent.

(4) In addition to the provisions of sub-rule (1) and (2), the Commission may release restricted information to, or permit access to it by, only the following persons-

(*a*) the person who provided that information to the Commission;

(*b*) the supplier to whom the confidential information belongs; or (*c*) any other person, with the written consent of the supplier to whom the information belongs.

(5) When the Commission refers a matter to the Tribunal or supplies any other information to the Tribunal, the Commission must identify any information included in its submission as confidential information if it is such in terms of this Rule.

PART 4

COMPLAINT PROCEDURES

14. Withdrawal of complaints.-(1) At any time before the Commission has referred a complaint to the Tribunal, the complainant may withdraw the complaint.

(2) The Commission may continue to investigate a complaint after it has been withdrawn, as if the Commission had initiated it.

15. Multiple complaints.-(1) At any time after a complaint has been initiated by the Commission, or submitted by another person, the Commission may publish a notice disclosing an alleged prohibited practice and inviting any person who believes that the alleged practice has affected or is affecting a material interest of that person to file a complaint in respect of that matter.

(2) The Commission may consolidate two or more complaints under a common investigation if they concern the same supplier as potential respondent.

(3) If the Commission consolidates two or more complaints as permitted by sub-rule (2)-

(*a*) each of those complaints must continue to be separately identified by its own complaint number;

(*f*) each person who submitted one of those complaints to the Commission remains the complainant with respect to the complaint that they submitted; and

(*b*) after referring one of those consolidated complaints to the Tribunal, or issuing a notice of non-referral in respect of it, the Commission may continue to investigate any of the remaining consolidated complaints.

(Editorial Note: Numbering as per original *Government Gazette*.)

16. Consent agreements.-(1) If, at any time before issuing a Notice of Non-referral in the form of Annexure G of the Regulations or referring a complaint to the Tribunal, it appears to the Commission that the respondent may be prepared to agree to terms of a proposed order, the Commission-

(*a*) must notify the complainant, in writing, that a consent order may be recommended to the Tribunal; and

(*b*) invite the complainant to inform the Commission in writing within 10 business days after receiving that notice-

(i) whether the complainant is prepared to accept damages under such an order; and

(ii) if so, the amount of damages claimed.

(2) If the Commission and the respondent agree to the terms of an order, the Commission must-

(*a*) refer the complaint to the Tribunal;

(*b*) attach to the referral a consent agreement-

(i) setting out the section of the Act that has been contravened;

(ii) setting out the terms agreed between the Commission and the respondent, including, if applicable, the amount of damages agreed between the respondent and the complainant; and

(iii) signed by the Commission and the respondent indicating their consent to the consent agreement being made an order of the Tribunal; and

(*c*) serve a copy of the referral and consent agreement on the respondent and the complainant.

(3) A draft consent agreement must be submitted to the Tribunal in terms of this rule notwithstanding the refusal by a complainant to consent to including an award of damages in that draft agreement.

PART 5

EXEMPTIONS

17. Procedures relating to exemption applications.-(1) Upon receiving a request for an advice from the Minister regarding an application for exemption in terms of section 5 (3), the Commission, may-

(*a*) if the application is incomplete, advise the applicant of any further information required before the application will be considered; or

(*b*) if the application is not specific enough with respect to the industry or sub-industries to which the exemption would be applicable, require the applicant to more specifically state the exemption sought before the application will be considered.

(2) If the applicant-

(*a*) does not respond to the Commission within 20 business days after being served with a request for information in terms of paragraph (*a*) of sub-rule (1), the application will be deemed to have been abandoned by the applicant; or

(*b*) responds to the Commission, but does not, to the satisfaction of the Commission, meet the information requirements requested in terms of paragraph (*a*) of sub-rule (1), the Commission may again stipulate any further information, or clarification, required before the application will be considered, and the provisions of this sub-rule (2) (*a*) apply to such request.

(3) If an application is deemed to have been abandoned in terms of sub-rule (2), the Commission may close its file on that application without making a decision.

(4) Within a reasonable time after being furnished with the necessary information, the Commission must advise the Minister in accordance with the provision of section 5 (4) of the Act.

CONSUMER PROTECTION ACT
NO. 68 OF 2008

(Prior to amendment by Act No. 19 of 2014)

Section 71 (1)

(1) Any person may file a complaint concerning a matter contemplated in section 69 (1) (*c*) (ii) or (2) (*b*) with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with this Act.

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