



CONSUMER GOODS SERVICES OMBUD

Alternate Dispute Resolution under Consumer Protection Act

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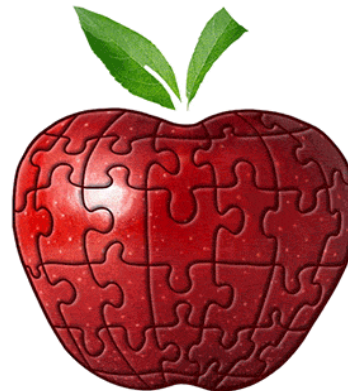


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Consumer Protection Act: Purpose

3(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****disadvantages**accessing supply of goods ..by consumers—
 - (i) who are **low-income persons**
 - (ii) who live in remote,areas or communities;
 - (iii) who arevulnerable 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**



Consumer Protection Act: Purpose

- (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;
- (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.**



Consumer Protection Act: Dispute Resolution

- **“goods”** includes anything marketed for human consumption;
- **“producer”**, with respect to any particular goods, means a person who—
 - (a) **grows**, ..., manufactures or otherwise **produces** the goods within the Republic, or causes this, **with the intention of supply**; or
 - (b) by applying a business name, **trade mark**, trade description or other visual representation on or in relation to the goods,
- **“supplier”** means a person who **markets any goods** or services;
- **“supply”** includes **sell in the ordinary course of business** for consideration;
- **“supply chain”**, with respect to any particular goods , means the **collectivity of all suppliers** who **directly or indirectly** contribute in turn to the ultimate **supply of those goods** to a consumer, whether as a **producer, importer, distributor or retailer** of goods.....



Consumer Protection Act: Dispute Resolution

- “**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**;

- **Consumer Goods and Services Ombud** is an accredited industry ombud



Consumer Protection Act: Dispute Resolution

Consumer Complaint Possibilities and Dispute Resolution Options

In house complaint handling protocol and system
Resolve **within 15 days or else it escalates**

ESCALATION TO WHERE?

- a. Provincial Consumer Protector **OR**
- b. Provincial Consumer Court **OR**
- c. National Consumer Commission **OR**
- d. Consumer Goods and Services Ombud **CGSO** (Accredited Ombuds)



Obligation to Register with CGSO

- Must a business already **regulated under another statute** or **voluntary body** also register with the CGSO, **pay it annual dues**, and have **complaints against it** adjudicated by the **Ombud**?
- **CONSUMER GOODS AND SERVICES OMBUD NPC and others v Voltex (Pty) Ltd and others under Northern Gauteng High Court Case No: 18096/17.**



Obligation to Register with CGSO

- **Who is a Participant of the CGSO Code?**
- **“Participants”** are defined in the Consumer Goods and Services Code of Conduct (hereinafter referred to as “the Code”) as an entity operating within **the Consumer Goods and Services Industry**, which is 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 4.1 and 4.4** of the Code.



Obligation to Register with CGSO

- **Who is excluded from operation of the CGSO?**
- Transactions fall under another Ombud under the CPA
- 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.
- **Equivalent protection of consumer rights is key!**



Obligation to Register with CGSO

- In most cases the extent of regulation by these public regulations is that a **non-compliant product may not be sold** or offered for sale.
- There is **no recourse provided** for **the consumer** in the event that a consumer is sold such a non-compliant product and the **consumers recourse hence lies in the Code and the Consumer Protection Act** as such.
- Hence, any business transacting in **consumer goods falls under the definition of a participant** unless one of the exclusions applies.



Obligation to Register with CGSO

- **Is participation voluntary?**
- Section 82 (1) (b) of the Consumer Protection Act states:
- ““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.”
- The Court ruled that : “ The Section does not stipulate that members of a particular industry must first agree to be bound by the industry code.” **It is mandatory to join and pay dues.**



Obligation to Register with CGSO

- **Is participation voluntary?**
- It is clear that the **purpose** of the CPA, and thus the **CGSO Code** accredited thereunder is for the **realisation of consumer rights** in any transaction between a **consumer and a supplier**.
- The **CPA** does provide **sanctions** for suppliers who are **not compliant with regulations and standards** related to their specific industries, but that is **not the main purpose** of the CPA or the CGSO Code.



Obligation to Register with CGSO

- **...but we are already regulated by DALLRD, PPECB, DoH?**
- Purpose of the CPA and the CGSO Code is to provide for **realisation of consumer rights** in any transaction between a **consumer and a supplier** which is quite **different** from the purpose and roles of **Assignees and Inspection Services** which specifically **do not do this**.
- **no authority** regarding **compensation** or **restitution** to **consumers**, - compliance with **compositional standards**
- **Fine** a supplier for **non-compliance**



What can the CGSO consider?

- **consider and assist** with the resolution of **consumer complaints** between a consumer and a supplier in terms of the **Code** and **not in terms** of a complaint with squarely falls under **APS Act and Dairy Regs** etc e.g. incorrect class designation or composition
- **Cannot deal** with matters which are already before another body e.g. Consumer Protector, Court, SAPS
- **Only** complaints **lodged by a Consumer** - but a Supplier can suggest to consumer to lodge with CGSO



Conclusion by High Court in Voltex matter

“ 72. In conclusion I am of the view that a proper case has been made out by the applicants for a declaratory order

72.1

72.2 The **code is not irrational or unreasonable**;

72.3 The power to **levy a fee** is not ultra vires the Ministers' powers under the CPA.

72.4 The decision is not vitiated by irrelevant considerations;

72.5 The power to **levy a fee is necessary and incidental**;

72.6 The **code is mandatory** for all suppliers belonging to the **industry;**”



Duty to Register

A business **transacting directly or indirectly with consumers** in the consumer goods and services industry e.g. **members of the MPO** and which is **already regulated** under **FCD Act** and **Agricultural Products Standards Act** or a body such as the **DSA** must :

- **register with the CGSO**
- **pay** it annual **dues**, and
- have **consumer complaints against it** adjudicated by the **CGSO Ombud**



CGSO Slides

- Participants shall **contribute to the funding** of the operations of the CGSO using the payment of a **joining fee** an **annual levy** and (if necessary) **a special levy**
- In determining the **joining fee, annual levy, and special levy**, the Board may have regard to the **relative market share** of the Participants in each Sector Industry Category, the anticipated number of complaints to be dealt with by the CGSO annually, and the costs of operating the CGSO



CGSO Slides

- With reasonable notice to the Participants, **a special levy** may be raised when deemed necessary by the Board to provide **for un-anticipated expenditure** incurred by the CGSO due to **increased caseloads** or any other reason acceptable to the Board.
- 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 agreed to render dispute resolution services.



CGSO FUNDING MODEL

STRUCTURE & GROUP CATEGORIES		2023	Joining Fee	% Basis of Calculation (Average)
		Annual Fee		
Group 1+ /Super Group	Above R5 bil	180 000	45 000	0,004%
Group 1	Above R3 bil to R5 bil	160 000	40 000	0,004%
Group 2	Above R1 bil to R3 bil	90 000	22 500	0,004%
Group 3	Above R500 mil to R1 bil	35 000	8 750	0,005%
Group 4	Above R100 mil to 500 mil	5 500	1 375	0,004%
Group 5	Above R50 mil to R100 mil	3 500	875	0,005%
Group 6	Above R1 mil to R50 mil	1 680	420	0,005%
Group 7	Less than R1 mil	-	0	





FUNDING MODEL OVERVIEW

PREVIOUS FUNDING MODELS				REVISED FUNDING MODEL		
		2013-2017	2018-2020	New Structure		2021
				Super Group	R5bn and Above	R180,000
Group 1	R3bn and above	R250,000	R200,000	Group 1	R3bn to R5bn	R160,000
Group 2	Above R1bn to R3bn	R200,000	R120,000	Group 2	Above R1bn to R3bn	R90,000
Group 3	Above R500m to R1bn	R50,000	R40,000	Group 3	Above R500m to R1bn	R35,000
Group 4	Above R5m to R500m	R3,000	R3,360	Group 4	Above R100m to R500m	R5,500
Group 5	Above R1m to R5m	R1,500	R1,680	Group 5	Above R50m to R100m	R3,500
Group 6	Less than R1m	NIL	NIL	Group 6	Above R1m to R50m	R1,680
				Group 7	Less than R1m	NIL





Questions?

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