

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

**NO. 1585**

**10 December 2021**

**NATIONAL CONSUMER COMMISSION**

I, **Thezi Mabuza**, the Acting Commissioner of the National Consumer Commission, hereby publish draft amendment of Motor Industry Code of South Africa, in terms of Section 82 (3) (a) of the Consumer Protection Act 68 of 2008.

Interested persons/groups/associations may submit their comments to the draft guidelines in writing not later than 30 days from the date of publication of the Code, quoting the following reference number **NCC/GN02/2021** to The National Consumer Commission, P.O. Box 36628, Menlo Park, 0102, for the attention of Mr Jabulani Mbeje or email to [J.Mbeje@thenc.org.za](mailto:J.Mbeje@thenc.org.za).

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**Ms Thezi Mabuza**

**Acting Commissioner**

**National Consumer Commission**



**GENERAL EXPLANATORY NOTE:**

[  ] Word/s that are between square brackets and in bold typeface, indicate deletions from the existing Codes

“  ” Word/s that are between inverted commas, indicate word/s substituting the deleted word/s

       Word/s that are underlined with a solid line, indicate insertions in the existing codes

**In terms of Section 82 (3) and (5) the South African Automotive Industry code is hereby amended as set out below**

**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 motor 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 .

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 motor 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.
- 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 —**distributor** 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. — **“vehicle”** means any device, structure or machine that travels on or off a public road and includes agricultural, recreational (i.e. quadbike), industrial or commercial vehicles, including but not limited to passenger vehicles, trucks, trailers, motorcycles, quad cycles, tricycles, whether self-propelled or not including an internal combustion engine for a boat

- 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.

### 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 noncompliance 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.
- 5.4. Where there is any non-compliance with the Code by an importer, distributor, manufacturer, retailer, franchisor, franchisee, supplier and/or intermediary (members) within the Automotive Industry and such non-compliance relates to the non-payment of a due funding contribution, any competent court in the district where MIOSA is situated, is vested with jurisdiction to adjudicate such non-compliance.

## 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**] “an alternative dispute resolution scheme accredited in terms of section 82(6) of the Act as the official ombudsman for the South African Automotive industry”.



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]** "10.3", each board member as well as the incumbent Ombud will have one vote;
- 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]** “ that specific” 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 9.3.1 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]** “mediation” 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]** “mediate” 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.

## **12A. Composition of the Board**

- 12A.1.1. The Board consist of at least six and no more than seven voting members appointed by the board on the basis of their knowledge, experience or qualifications relating to the functions of the Board.
- 12A.1.2. Before appointing the members of the Board contemplated in clause `12.1.1. the Board must invite nominations for membership of the Board and the notice must specify a period of at least 30 days for nominations to be submitted.
- 12A.1.3. When appointing the members of the Board, the Board must ensure that the Board is broadly representative of society, with due regard to race and gender
- 12A.1.4. If the Board receives no nominations or an insufficient number of nominations within the period specified in the invitation, the Board may appoint the required number of persons.
- 12A.1.5. A member of the Board contemplated in clause 12.1.1. holds office for the period determined by his or her appointment. Any person whose period of office has expired is eligible for reappointment.
- 12A.1.6. A person may not be appointed as member of the Board if that person-  
(i) is not a South African citizen and ordinarily resident in the Republic;  
(ii) is an rehabilitated insolvent;  
(iii) is disqualified under any law from practising that person's profession;  
(iv) has been convicted of an offence in the Republic, other than an  
offence committed prior to 27 April 1994 associated with political  
objectives, and sentenced to imprisonment without the option of a  
fine or, in the case of fraud or any other offence involving dishonesty,  
to a fine or imprisonment or both.  
(v) has been convicted of an offence in a foreign country and sentenced  
to imprisonment without the option of a fine or, in the case of fraud  
or any other offence involving dishonesty, to a fine or imprisonment  
or both; or  
(vi) has at any time been removed from an office of trust on account of  
breach of a fiduciary duty.
- 12A.1.7. A member of the Board must vacate office if the member-  
(i) resign by written notice addressed and delivered to the chairperson  
of the Board;  
(ii) cease to hold any qualification necessary for that member's  
appointment to the Board;  
(iii) is unable to perform his or her functions due to mental illness or  
severe or profound intellectual disability contemplated in the Mental  
Health Act, 2002 (Act No 17 of 2002);  
(iv) become subject of any disqualification contemplated in section 15;  
or (v) is removed from office by the Board, on good cause shown.
- 12A.1.8. The members of the Board must elect and appoint a chairperson from

among themselves. The chairperson holds office until such chairperson resigns or ceases to be a member of the Board. If the chairperson has been given leave of absence, the members of the Board must elect a person from among themselves to act as chairperson until the chairperson resigns or resumes duty or is removed from office.

### **12B Board's Meetings**

- 12B.2.1. The Board must hold at least four ordinary meetings every year.
- 12B.2.2. The Chairperson of the Board-  
 (i). may convene a special meeting of the Board; and  
 (ii). must convene a special meeting within 14 days of receiving a written request to do so, signed by at least two members of the Board.
- 12B.2.3. The request contemplated in subsection (ii) must clearly state the reason for the request.
- 12B.2.4. The Ombud may at any time request a meeting with the Board, should the need arise,
- 12B.2.4. The quorum for any meeting of the Board is a majority of the voting members of the Board in office at the time. A decision of the majority of the voting members of the Board at any quorate meeting constitutes a decision of the Board.
- 12B.2.5. A member of the Board who has any personal or financial interest and withdraw from the proceedings of the Board when that matter is considered.

### **12C. Powers, duties and functions of the Board;**

- (i) It is the duty of the board and the Board to act in the best interest of the Ombud in order to promote the spirit of good governance and social responsibility.
- (ii) The Board is required to act in the manner that efficiently fulfils the objectives of the Ombud and act in the manner that promote the values and principles of the Constitution.
- (iii) The Board should direct, govern and provide strategy in relation to the governance of the Ombud.
- (iv) The Board must provide a link between the Ombud and other stakeholders in order to identify and take into consideration the interest of all stakeholders.
- (v) The board should ensure that the Ombud is acts and is seen to be a responsible corporate citizen.
- (vi) The Board shall ensure that all members are responsible and take part in the development of strategy and such strategy must be set in accordance with objectives of the Ombud.
- (vii) The Board shall be responsible to identify risk and processes to mitigate such risk.
- (viii) Conflict of interest must be managed and the interest of the Ombud shall take precedence.
- (ix) The Board must ensure that there is an effective risk-based internal audit.

### 13. FUNDING THE MIOSA

The MIOSA:

- 13.1. Financial year will be from 1 March to 28 February of each year.
- 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]** "review" 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 7<sup>th</sup> (seventh) day of each month and the invoices are payable monthly in arrears on or before the 20<sup>th</sup> (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)]** "1 (one)" 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] "December" 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]** "December" of each year.
- 13.13. Approved financial statements will be made available to the mentioned all members by way of publishing the same in MIOSA's website, within one month of approval thereof

### **13A. INTERNAL DISPUTE RESOLUTION MECHANISM BETWEEN MIOSA AND ITS MEMBERS**

- 13A.1. In the case of a dispute arising between MIOSA and any of its members, the parties shall endeavour to resolve the dispute by negotiation. This entails that one party invites the other in writing to a meeting and to attempt to resolve the dispute within seven days from date of the written invitation.
- 13A.2. In the event the dispute is not resolved through that process, either party can request in writing that the parties attempt in good faith to resolve the dispute promptly by referring the dispute for mediation, and the parties shall ensure that they mediate in good faith.
- 13A.3. The parties shall agree on the name of the mediator who will facilitate resolution of their dispute. Should the parties not agree, the NCC shall be asked to propose the name of the mediator.
- 13A.4. If the dispute remain unresolved after it was referred for mediation, the parties can refer the matter for arbitration.
- 13A.5. The parties shall agree on the name of the arbitrator. If parties fail to agree on the name of the arbitrator, the dispute shall be referred to Association of Arbitrator who shall appoint one of their members.

### **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.
- 15.7. **[MIOSA shall sign a Stakeholder Compact Agreement annually with the NCC that will regulate monitoring process as envisaged by section 82 (7) of the CPA]**

## 16. REPORTS, STATISTICS AND AWARENESS

- 16.1. The MIOSA will, in terms of Section 82(5) and (7) of the Act, provide **[monthly]** "quarterly" 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)
- 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, [**including gender, province etc;**]
- 16.1.5.6. origin of complaint

16.1.6. Any other information agreed between the NCC and MIOSA

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]** “does not have powers to make a finding, besides mediation”.

## **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, **[including but not limited to]**-

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 I as defined in the Act.

## **21. PROCEDURE FOR [DETERMINATION] “MEDIATION” 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].**

- 21.1.1. Upon receipt of a complaint alleging any contravention of the provisions of the Code or CPA by anyone falling within its jurisdiction, MIOSA shall.
- 21.1.2. Advise the other party to the complaint that it has been requested to mediate in the matter.
- 21.1.3. Provide the other party to a complaint with the said complaint and request such party to respond to the complaint by presenting its version within 10 days of receipt of the request, except where an extension thereof has been granted by MIOSA, upon receipt of the request for extension of time
- 21.1.4. Where necessary provide the complainant with the copy of the response from the other party
- 21.1.5[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; ]**
- 21.1.5. Based on information presented, engage the parties for purposes of mediating and resolving the complaint.
- 21.3. In the event of the other party not responding to the request by MIOSA, then MIOSA must terminate its mandate and advise the complainant to refer the matter to the NCC. MIOSA shall keep records of all non-co-operative suppliers and submit such list to the NCC quarterly.
- 21.4. Where parties to the dispute cooperate with MIOSA and a settlement is reached, such settlement maybe recorded in writing, in the form of an order and if parties to the dispute consent to that order, MIOSA may submit it to the Tribunal or High Court to be made a consent order, in terms of the rules of such forum.
- 21.5. Where the dispute is not resolved, MIOSA shall terminate its mandate by written notice to the parties and advise the complainant to refer the complaint to the NCC .
- 21.6. The MIOSA will **[determine]** “mediate” 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 against]** “finalising its mediation of” the complaint.
- 21.7. The MIOSA will publish on its website summaries of matters resolved that will be in the interest of consumers and suppliers without naming the parties involved.

## **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. "The specialist authority or technical expert report will be at the expense of the party who has requested such services and shall be payable in advance before the specialist is instructed.

- 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, without having informed the NCC and the Minister in writing.
- 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 prejudicell 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**

<b>ASSOCIATION</b>	<b>INDUSTRY TYPE</b>
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 MIOSA", and provide reasons to the extent possible in writing.
- 4 "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".
- 5 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:
  - 5.1 the consumer shall file a complaint, in writing, with the office of the MIOSA by completing MIOSA's Assistance Form located on the MIOSA website and submitting the same either manually, facsimile, e-mail or pre-paid registered post or online, stating the nature of the complaint and dispute as well as the action required and expected outcome;
  - 5.2 copies of all relevant documentation shall accompany the complaint.
- 6 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] MIOSA**

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]** "mediation" on not less than 10 (ten) days prior written notice;
  - 12.2 attendance at the **[hearing]** "mediation" 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; 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]** "engage in mediation process on behalf of such party".
- 13 All **[decisions]** "recommendations" 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]** "recommendation" within 10 (ten) days of conclusion of the **[proceedings]** "mediation". The MIOSA is allowed to provide its **[decision]** "recommendation" in writing and deliver the findings to the parties' chosen addresses.
23. In promoting the spirit of the CPA, MIOSA shall draw the attention of the parties to the relevant applicable sections of the CPA, when making its recommendation.
24. The recommendations of MIOSA are not binding to the parties but such recommendations will guide the parties towards resolution of the dispute.
25. If ADR fails to resolve the dispute the MIOSA shall issue a certificate to that effect to the parties, who will then have a right to refer the dispute to the National Consumer Commission

### **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:

14.2.2.1 the MIOSA; or

14.2.2.2 other entity with jurisdiction.

**SCHEDULE-4:**

**COMPLAINT FORMS**



FOUNDER MEMBER OF  
ASSOCIATION OF

MOTOR INDUSTRY OMBUDSMAN  
OF SOUTH AFRICA

THE OMBUDSMAN  
SOUTH AFRICA

**NPC (Reg. No.**

**2001/004871/08)**

Tel: 0861 1 MIOSA (64672) TEL: 010 590 8378 Fax: 086 630 6141 E-mail:  
info@miosa.co.za

Suite 156, Private Bag X025, Lynnwood Ridge, 0040

**ASSISTANCE REQUEST FORM**

The Motor Industry Ombudsman of South Africa's (MIOSA) mandate consists of consequences flowing from problematic transactions whereby vehicles were sold, leased or repaired. To apply the South African

<b>Reference</b>  <i>office use only</i>	<b>No:</b>  <i>For</i>
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Automotive Industry Code of Conduct (Code), published on the 17<sup>th</sup> October 2014 in the Government Gazette No. 38107, which can be viewed on our website ([www.miosa.co.za](http://www.miosa.co.za)).

**WHERE DID YOU HEAR ABOUT THE MIOSA:** \_\_\_\_\_

**DATE SUBMITTED :** \_\_\_\_\_

**Details of Complainant:**

**1. a) If Complainant is an Individual:**

**TITLE** (Hon, Dr, Mr, Mrs, Miss, Ms): \_\_\_\_\_

**SURNAME:** \_\_\_\_\_

**FIRST NAMES:** \_\_\_\_\_

**b) Name of Individual/Organisation authorized to act on the Complainant's behalf (in terms of Section 4 of the Consumer Protection Act No. 68 of 2008) (Please attach an original or certified Power of Attorney, as well as the reason for your mandate):**

**TITLE** (Hon, Dr, Mr, Mrs, Miss, Ms): \_\_\_\_\_

**SURNAME:** \_\_\_\_\_

**FIRST NAMES:** \_\_\_\_\_

**2. Contact information of Complainant:**

DAYTIME TEL: ID Number:	CODE	FAX : CELL:	CODE
E-MAIL:			

Preferred means of contact: **(Please tick one)**

<input type="checkbox"/>	FAX	<input type="checkbox"/>	EMAIL
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**Complainant Initial:**

\_\_\_\_\_

**Confirmation of Jurisdiction and Undertaking**

I \_\_\_\_\_ (the complainant or representative of the complainant), confirm that I have given the Manufacturer/Importer/Dealer/Service Provider an opportunity to resolve the complaint before submitting this form to the **MIOSA**. When I did this I spoke to Mr/Ms of \_\_\_\_\_ on or about \_\_\_\_\_

I have applied to the MIOSA for assistance because: **(Please tick)**

- (a)  My complaint was not resolved by the Manufacturer/Importer/Dealer/Service Provider over \_\_\_\_\_ (period of time).
- (b)  The Manufacturer/Importer/Dealer/Service Provider rejected my complaint and I am unhappy with the result. **(Please attach a copy of the letter if any)**

**I confirm that my complaint is not: (Please tick)**

the subject of any legal proceedings. If I have consulted an Attorney it has only been to get advice or assistance in drafting my complaint.

**VEHICLE DETAILS**

MAKE:	
MODEL (YEAR):	
REGISTRATION NO.:	

ENGINE NO. (on license disc):			
VIN NO. (on license disc):			
GEARBOX: <i>(Please tick one)</i>	<input type="checkbox"/>	<b>MANUAL</b>	<input type="checkbox"/>
			<b>AUTOMATIC</b>
DATE OF PURCHASE & KILOMETRES:	<b>DATE</b>	<input type="text"/>	<b>KM</b>
DATE DISPUTE BEGAN & KILOMETRES:	<b>DATE</b>	<input type="text"/>	<b>KM</b>
KILOMETRES NOW:	<input type="text"/>		
IS SERVICE HISTORY UP TO DATE:	<input type="text"/>		
WAS VEHICLE UNDER WARRANTY AT TIME:	<input type="text"/>		
ROAD VEHICLE USED ON: <i>(Please tick one or both)</i>	<input type="checkbox"/>	<b>TAR</b>	<input type="checkbox"/>
			<b>DIRT</b>
FINANCED BY (FINANCIAL INSTITUTION):	<input type="text"/>		

<b>Complainant Initial:</b> _____
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**DETAILS OF WHOM COMPLAINT IS AGAINST**

NAME OF DEALERSHIP/SERVICE PROVIDER		<input type="text"/>	
COMPLAINT REFERENCE NUMBER: (if known)		<input type="text"/>	
SUBURB	<input type="text"/>	TOWN	<input type="text"/>
		PROVINCE	<input type="text"/>
TEL NO	CODE	<input type="text"/>	
FAX NO	CODE	<input type="text"/>	<b>OR</b>
E-MAIL	<input type="text"/>		
WHAT DID THEY SUGGEST:	<input type="text"/>		


**DETAILS OF COMPLAINT**

Please type or write legibly on a separate piece of paper **ALL** the relevant facts including dates, times, places and names, preferably in date order.

NO COMPLAINT CAN BE PROCESSED WITHOUT ALL THE INFORMATION REQUIRED. THE INFORMATION SUBMITTED WILL BE USED BY THE **MIOSA** IN THE RESOLUTION OF THIS DISPUTE SO MAKE SURE THAT ALL RELEVANT DOCUMENTATION IS SUBMITTED WITH THIS FORM. I/WE HEREBY EXPLICITLY GIVE THE **MIOSA** MANDATE TO FORWARD MY COMPLAINT AND ALL ATTACHED DOCUMENTATION TO THE MANUFACTURER/ IMPORTER/DEALER/SERVICE PROVIDER AND ALL NECESSARY AUTHORITIES AND/OR ORGANIZATIONS RELEVANT TO THIS COMPLAINT, FOR THEIR COMMENT, TO ASSIST IN RESOLVING MY COMPLAINT.

**Even if you have submitted a complaint letter, please summarise your complaint in the space below: This summary will be used by the MIOSA to arrive to a conclusion of the matter.**

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<b>Complainant Initial:</b> _____
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**Briefly state what outcome you hope to achieve**

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**TERMS AND CONDITIONS**

1. The **MIOSA** assists consumers to resolve their complaints by investigating and making a ruling or recommendation. This service is not the same as that provided by an attorney. **I/we agree not to hold the MIOSA or any of its staff liable for any loss or damage of any nature that I/we may suffer as a result of the MIOSA accepting and dealing with my complaint.**
2. The service provided by the **MIOSA** to consumers is free.
3. **Confidentiality Agreement**

My/our complaint and the documents that I/we submit to the **MIOSA** will be treated as confidential. The letters and documents sent to the **MIOSA** by the Manufacturer/Importer/Dealer/Service Provider will also be treated as confidential. The **MIOSA** has the right to decide which of the documents received by the **MIOSA** are disclosed to the Manufacturer/Importer/Dealer/Service Provider and to me. If I/we submit a document

that I/we do not want the Manufacturer/Importer/Dealer/Service Provider to see, I/we will mark it "**Confidential**".

Should my/our complaint be the subject of a court case or any other dispute resolving process, neither my representative nor I will subpoena the documents in my/our file, or the **MIOSA** or any member of his staff. Neither my representative nor I will order that any of these documents be disclosed in terms of any court rule unless ordered to do so by a court of law. I/we understand and comprehend the above and confirm that it is fair and reasonable in the circumstances to protect both myself/ourselves and the other party's rights to prevent prejudice in respect of our rights.

I/we authorise the Manufacturer/Importer/Dealer/Service Provider to disclose any information they may have that the **MIOSA** may require in the investigation of my/our complaint.

**By my signature below, I/we agree that my complaint shall be dealt with by the MIOSA on the above terms and conditions and according to the rules of the MIOSA. The information provided by me/us herein is, to the best of my knowledge, true and correct. I/we understand that the submission of a false claim may constitute the crime of fraud.**

Signed at \_\_\_\_\_ on the \_\_\_\_\_ Day of \_\_\_\_\_ (month) 20 \_\_\_\_\_ (year)

\_\_\_\_\_  
**Complainant or person authorized to act on  
the Complainant's behalf**

**Issued by the office of the Motor Industry Ombudsman of South Africa**

## **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 R 156,500,000.00 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.] All members of the automotive Industry are therefore obliged to pay their required contributions to the MIOSA**
- v. The MIOSA shall vastly expand its current infrastructure to meet the needs of Consumers in line with other Ombud MIOSA's 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. **The MIOSA shall review, in 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. Such review shall be done in consultation with its members**
- 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]

**SCHEDULE 5: Funding "of MIOSA" [from date of accreditation]:**

[From the first anniversary of the date of accreditation,] The MIOSA [will be] "is" 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**] "is" 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**] "is" 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.

**29. CONCLUSION**

This Code is called the MIOSA's Amendment Industry Code of 2021