

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

**NOTICE 866 OF 2022**

**NATIONAL CONSUMER COMMISSION**

I, **Thezi Mabuza**, the Acting Commissioner of the National Consumer Commission, hereby publish draft amendment of Goods and Services Industry Code, 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/GN01/2022** 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**



No. R. 271

## GENERAL EXPLANATORY NOTE:

[        ] Words that are between square brackets and in bold typeface, indicate deletions from the existing codes

\_\_\_\_\_ Words that are underlined with a solid line, indicate insertions in the existing codes

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### SCHEDULE A

## CONSUMER PROTECTION ACT, 2008 AMENDMENT OF CONSUMER CONSUMER GOODS AND SERVICES INDUSTRY CODE

1. In this schedule, "Industry Code" means the Consumer Goods and Services Industry Code governing the procedures, processes and structure in terms of which CGSO and Industry participants are required to apply when dealing with consumer complaints in the field of supply of goods and services.
2. In terms of Section 82 (3) and (5) the Consumer Goods and Services Industry Code is hereby amended as set out in the schedule below:
  1. **Deletion of the definition of the word manufacturer provided for in terms of 3.1.24 of the CGSO's code**
    - (a) **["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"]**.

**2. Amending para 4.1. to read as follows:**

The Code applies to all [participants] suppliers of goods and services excluding suppliers falling under automotive industry of South Africa or [referred herein after as Participants] unless they are regulated elsewhere by other public regulation, and such public regulation covers all prohibited conducts as stipulated in the CPA or 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) (a) of the CPA.

**3. Inserting paragraph 4.2(a) in Section 4 of the Code**

4.2.(a) Failure to co-operate with the CGSO may result into harsher administrative fine, should the complaint be referred to the Tribunal by the National Consumer Commission.

**Section E**

**4. Inserting a new paragraph, as paragraph 9.3, that read as follows:**

9.3 The Accounting Authority of CGSO

9.3.1. The Ombudsman or a duly delegated individual is the accounting authority of the CGSO and shall

be responsible for the due, proper and diligent implementation of financial management systems

and controls including ensuring that proper accounting records are kept which includes

(a) All income and expenditure of the CGSO;

- (b) All revenue collected by the CGSO; and
- (c) All assets and the discharge of all liabilities of the CGSO.

9.3.2. CGSO shall monitor and keep record of all non-complying suppliers and such record shall be provided to the NCC on a quarterly basis for the NCC to consider further steps to be taken.

9.3.3. CGSO shall sign a Stakeholder Compact Agreement with the NCC that will regulate monitoring process as envisaged by section 82 (7) of the CPA.

## **5. Insertion of a new paragraph providing for governance to be paragraph 9.A**

### **9. A. Powers, duties and functions of the Board;**

- (i) It is the duty of 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 acts impartially and is seen to be a responsible corporate citizen.

- (vi) The Board shall endeavour to 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.
- (x) The Board must ensure that proper and sound system is put in place to ensure that there is appropriate financial reporting.

**6. Insertion of the new paragraph providing for internal dispute resolution mechanism, as paragraph 9.B**

**30. INTERNAL DISPUTE RESOLUTION BETWEEN CGSO AND ITS MEMBERS**

9. B.1. In the case of a dispute arising between CGSO 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.

9. B.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.

9. B.3. If the dispute remains unresolved after it was referred for mediation, the parties can refer

the matter for arbitration or court at their own costs. The arbitrator's decision shall be final and binding between the parties.

9. B.4. The Parties shall agree to the name of an arbitrator, failing which, the parties shall refer the matter to Arbitration Foundation of South Africa who shall nominate an arbitrator among its panel of arbitrators, to preside in that dispute.

9. B.5. The arbitrator shall have powers to make an order as to costs thereof.

## CONCLUSION

7. This notice is called the CGSO's Amendment Industry Code of 2020, and contains proposed amendments of the CGSO's Industry Code.

## Annexure A

### 8. Insertion of the following sentence at the end of clause 1.4.3. as follows:

1.4.3 The Ombudsman will be required to sign an employment contract stating the terms of his or her employment contract and same will be subject to an annual performance review. Employment contract can either be full time or part time

### 9. Insertion of the following sentence at the end of clause 1.5 as follows;

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. However, the Ombud may not serve more than two terms.

**10. Deletion of the words between the word, “The” and “Ombudsman in clause 2.1 as follows**

- 2.1 The ~~[Ombudsman is vested with the authority to bind the CGSO and only the]~~ Ombudsman is vested with the power to make Recommendations relating to Complaints and Disputes.

**11. Deletion of the last sentence in clause 2.2 and replacing the same as follows:**

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 CGSO, including issuing guidelines for the implementation and applicability of the rules]~~ The Ombudsman, on approval of the Board, may delegate these responsibilities including those outlined in section 5.4 below to the CEO

**12. Deletion of clause 2.3 and substitution thereof with the new clause as follows:**

- 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:~~

- 1.3.1 prepare and submit to the Board an annual report detailing the activities and finances of the CGSO for the year under review;
- 1.3.2 prepare and submit reports to the Board on current matters and activities;
- 1.3.3 promote and publicise the services provided by the CGSO through the media and consumer bodies
- 1.3.4 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
- 1.3.5 appoint personnel to ensure the efficient management of complaints;
- 1.3.6 enter into agreements of purchase and sale and letting and hiring of property reasonably required for the purpose of the functioning of the CGSO;
- 1.3.7 open bank and other accounts necessary for the CGSO to perform its functions;
- 1.3.8 make recommendations to the Board for any necessary amendments to the Code and MOI of the CGSO.
  - 1.3.8.1 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.]

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.

**13. Insertion of the new paragraph as clause 2.4 as follows;**

- 2.4. 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. More particularly to:

- 2.4.1. Prepare and submit to the Board an annual report detailing the activities and finances of \_\_\_\_\_ the CGSO for the year under review;
- 2.4.2. prepare and submit reports to the Board on current matters and activities relating to \_\_\_\_\_ complaints;
- 2.4.3. promote and publicise the services provided by the CGSO through the media and \_\_\_\_\_ consumer bodies;
- 2.4.4. 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;
- 2.4.5 appoint personnel to ensure the efficient management of complaints;
- 2.4.6. enter into agreements of purchase and sale and letting and hiring of property reasonably required for the purpose of the functioning of the CGSO;
- 2.4.7. open bank and other accounts necessary for the CGSO to perform its functions;
- 2.4.8 make recommendations to the Board for any necessary amendments to the Code and MOI of the CGSO.
- 2.4.8.1 any proposed 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.

4.5. The Ombudsman shall have powers to delegate its powers/ functions upon Board's approval.

**NB: The Code shall be re-numbered accordingly to accommodate the amendments .**