

*Draft for public consultation - 28 October 2010*

to ..... (Physical Address), by filing it electronically at ..... (Website) or by e-mailing it to ..... (e-mail address).

- (2) The respondent must simultaneously lodge or serve copies of the documents contemplated in subregulation (1) in person or by registered mail to the other party, the relevant consumer court and the Commission.

**Application by respondent for matter referred to consumer court to be heard by Tribunal**

- 47.(1) For purposes of section 75(2) of the Act, a respondent in a matter referred to a consumer court may apply to the Tribunal for an order that the matter be referred to the Tribunal, by submitting the form contained in Annexure "H" to this Schedule, together with certified copies of any documents the Tribunal should consider as well as the document referring the matter to the consumer court, 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) The respondent must simultaneously lodge or serve copies of the documents contemplated in subregulation (1) in person or by registered mail to the complainant, the relevant consumer court and the Commission.

**Referral to Tribunal, whether by Commission or by complainant**

- 48.(1) For purposes of section 75(3) of the Act, the Commission or a complainant may refer a matter to the Tribunal, by submitting the form contained in Annexure "I" to this Schedule, together with certified copies of any documents the Tribunal should consider as well as the document referring the matter to the consumer court, 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) The Commission must simultaneously lodge or serve copies of the documents contemplated in subregulation (1) in person or by registered mail to the parties to the matter.

*Draft for public consultation - 28 October 2010*

- (3) The Commission or a complainant, as the case may be, must simultaneously lodge or serve copies of the documents contemplated in subregulation (1) in person or by registered mail with or on the other party to the matter and the Commission.

**Standards, procedures and related matters for Commission to follow in assessing applicant for accreditation as consumer protection group**

- 49.(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 the following list:
- (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;

*Draft for public consultation - 28 October 2010*

- (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) whether the applicant charges a consumer to take up a matter on his, her or their behalf, and if so, the amounts charged;
  - (j) 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.

*Draft for public consultation - 28 October 2010*

- (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 5 (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

*Draft for public consultation - 28 October 2010*

of Administrative Justice Act, 2000, and amend its data bases and website accordingly.

- (14) An accredited consumer protection group must annually on or before 31 January submit a full report to the Commission on its activities during the preceding year unless the accreditation was obtained less than 3 months before 31 January of the year in question.
- (15) An accredited consumer protection group may not charge a consumer any fee other than out of pocket expenses.

**Form, manner and fee to register business names**

- 50.(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 "J" 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 XXX 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).

**Notice to cancel registration**

- 51.(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 "K" to this Schedule, together with any documents he or she wishes to attach.

*Draft for public consultation - 28 October 2010*

- (2) The person to whom the business name is registered must within 30 (thirty) 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.

**Official languages to be used by Commission in documents**

52. 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.

**Compliance notice**

53. For purposes of section 100(1) of the Act, the Commission may issue a compliance notice in the form contained in Annexure "L".

**Objection to compliance notice**

54. For purposes of section 101(1) of the Act, a person may object to a compliance notice by submitting a completed form contained in Annexure "M" to the address stated in the compliance notice.

**Notice from the Chairperson: Civil actions**

55. For purposes of section 115(2)(b) of the Act, a person who is entitled to commence an action referred to in paragraph (a) of subsection (2) must, when instituting proceedings, file with the registrar or clerk of the court a notice from the Chairperson of the Tribunal in the form in Annexure "N" to this Schedule.

**List of contract terms which are presumed not to be fair and reasonable**

- 56.(1) For purposes of section 120(d) of the Act, a term of a consumer agreement between a supplier 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

*Draft for public consultation - 28 October 2010*

for purposes wholly or mainly unrelated to his or her business or profession is deemed 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) These regulations do 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 deemed to be unfair if it has the purpose and 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;
  - (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 non-performance or inadequate performance 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) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by the Act or other law;
  - (e) 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;
  - (f) 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;

*Draft for public consultation - 28 October 2010*

- (g) 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;
- (h) requiring any consumer who fails to fulfil his or her obligation to pay damages which significantly exceed the harm suffered by the supplier;
- (i) allowing the supplier to terminate the agreement at will where the same right is not granted to the consumer;
- (j) enabling the supplier to terminate an open-ended agreement without reasonable notice except where the consumer has committed a serious breach of agreement;
- (k) 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;
- (l) obliging the consumer to fulfil all his or her obligations where the supplier has failed to fulfil all his or her obligations;
- (m) 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;
- (n) restricting the consumer's right to re-sell the goods by limiting the transferability of any commercial guarantee provided by the supplier;
- (o) enabling the supplier to unilaterally alter the terms of the agreement including the characteristics of the product or service;
- (p) unilaterally amending terms of the agreement communicated to the consumer in a durable medium through on-line terms of the agreement which have not been agreed by the consumer;
- (q) permitting, or having the effect of permitting, the supplier, but not the consumer, to avoid or limit performance of the agreement;
- (r) permitting, or having the effect of permitting, the supplier, but not the consumer, to renew or not renew the agreement;
- (s) limiting, or having the effect of limiting, the supplier's vicarious liability for its agents;
- (t) 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



*Draft for public consultation - 28 October 2010*

performance made, or to demand unreasonably high reimbursement of expenditure;

- (u) permitting the supplier to impose on the consumer, without good reason, immediate payment of an excessive part of the price prior to performance of the agreement;
- (v) excluding or restricting the consumer's right to rely on the statutory defence of prescription;
- (w) 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);
- (x) modifying the normal rules regarding the distribution of risk to the detriment of the consumer;
- (y) allowing the supplier an unreasonably long time to perform;
- (z) forcing the consumer to indemnify the supplier against liability incurred by it to third parties;
- (aa) 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;
- (bb) 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;
- (cc) 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;
- (dd) 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.

*Draft for public consultation - 28 October 2010*

- (4)(a) Paragraph (i) 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 (k) 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 (o) 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 immediately;
  - (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 (h) and (t) 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.

*Draft for public consultation - 28 October 2010***ANNEXURES****Annexure A - Regulation 8(1)**

1. Textiles as listed in Chapter 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 63 of Jacobson's Harmonized Customs and Excise Tariff Book.
2. Clothing as listed in Chapter 61, 62 and 65 of Jacobson's Harmonized Customs and Excise Tariff Book.
3. Shoes and leather goods as listed in Chapter 42, 43 and 64 of Jacobson's Harmonized Customs and Excise Tariff Book.

**Annexure B - Regulation 9(2)**

1. Maize.
2. Soya bean.
3. Imported canola oil

**Annexure C - Regulation 42**

<b>National Consumer Tribunal</b>	
<b>Form - Direct Referral - section 69(a)</b>	
<p>Application for referral of matter by:</p> <ul style="list-style-type: none"> <li>• an individual; or <span style="float: right;"><input type="checkbox"/></span></li> <li>• an authorised person acting on behalf of another person who cannot act in his or her own name; or <span style="float: right;"><input type="checkbox"/></span></li> <li>• a person acting as a member of, or in the interest of, a group or class of affected persons; or <span style="float: right;"><input type="checkbox"/></span></li> </ul>	