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## GENERAL NOTICE

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### NOTICE 438 OF 2011

### NATIONAL CONSUMER COMMISSION

I, Mamodupi Mohlala, Commissioner of the National Consumer Commission, hereby publish draft Service Delivery Standards for Advisory Opinions and Clarifications for the National Consumer Commission, in terms of the Consumer Protection Act, 2008 (Act No. 68 of 2008) for public comment.

Interested persons may submit their comments on the draft guidelines in writing on or before **30 July 2011**; submissions must be forwarded to: The National Commissioner, National Consumer Commission c/o Ms Karin Coode, P O Box 30251 Sunnyside, Pretoria, 0132 or per fax to (012) 394 2541 or email to [ccoode@thedti.gov.za](mailto:ccoode@thedti.gov.za).

Kindly provide the name, address, telephone, fax numbers and or email address of the person or organization submitting the comments.



Ms. M MOHLALA

COMMISSIONER: NATIONAL CONSUMER COMMISSION

## NATIONAL CONSUMER COMMISSION GUIDELINES FOR ADVISORY OPINIONS AND CLARIFICATIONS

### Core Values

The National Consumer Commission (NCC) strives towards offering services that will meet the standards that are acceptable to both stakeholders and the National Consumer Commission (NCC). In requesting advisory opinions or related services, stakeholders can expect the following in dealing with the Commission:

***Respect and politeness:*** Stakeholders can expect professional treatment at all times in dealing with the NCC.

***Confidentiality:*** We will treat all information with high confidentiality in recognition of the need for anonymity by the parties and the sensitive nature of such information.

***Efficiency:*** We commit to providing advisory opinions that are based on thorough research and sound consultation processes, and within the set time frames.

***Fairness and Impartiality:*** We will strive to provide our service to all our stakeholders without any discrimination or bias, regardless of the role stakeholders play in a market. We will ensure that we remain objective and impartial at all time in dealing with our stakeholders.

***Credibility:*** We promise to offer a service of high standard and quality, which stakeholders can rely on without any question or doubt. Should you have any doubts regarding the conclusion arrived at, you must indicate that to the staff member dealing with the matter within the given time so that we can review our service, given the doubts raised, if necessary.

***Consistency:*** We will ensure consistency in our services at all times by taking into account policies adopted in the NCC, precedent set by the decisions made in the Tribunal and the Courts, approaches adopted by other international authorities and previous opinions issued.

We also rely on sound internal procedures in providing this service in an attempt to ensure that views are consistent both internally and externally.

**Clarity:** We will endeavor to provide clarity to you in what we do, how we do it, what is required from you and who to contact in the NCC for further assistance.

**Accessibility:** We will always be ready and available to assist all stakeholders who require our services, wherever, within the available resources and reasonable time. Our stakeholders are welcome to visit our offices, or contact us by telephone, fax, email or letter.

**Responsiveness:** We will continue to listen to your needs and to seek your views, and act on them in order to offer you the best services.

**Timeliness:** The Commission will deal with all requests timely in recognition of the flexibility and comfort required by the parties and the urgency of the request submitted to the NCC. This is also in recognition of repercussions that may be suffered by the parties due to delays. We therefore commit to ensuring that unnecessary delays are avoided.

**Discipline and Motivation:** We will ensure that our staff members are continuously trained to improve their effectiveness in identifying and dealing with your needs and problems. All requests will be dealt with in a professional manner and with courtesy.

We commit to listening to your needs and continually review and improve our service standards based on your needs and the available resources in responding to such needs.

## **VOLUNTARY COMPLIANCE**

### **Range of services offered**

In order to ensure that the NCC achieves its mandate regarding compliance, the compliance unit utilizes the following compliance tools:

- Non binding Advisory opinions
- Clarifications;
- Telephonic responses;
- Meetings/ Workshops/ Seminars
- Information disseminations (Media releases/ Information Circulars)

A fee is charged for the provision of non binding Advisory opinions. No fees are charged for other voluntary compliance services offered.

### **STANDARDS:**

#### **Advisory Opinions:**

Section 96 (b) (i) of the CPA enables the NCC to promote public awareness of consumer matters by providing guidance to the public by "issuing explanatory notices outlining its procedures or its non-binding opinion on the interpretation of any provision of the act.

An Advisory opinion refers to an official response to an enquiry regarding the Act and Regulations administered by the NCC. The provision of an advisory opinion is based entirely on the facts provided by the parties requesting it, taking into account relevant case law both locally and internationally, the policies of the NCC and previous opinions issued. Should the NCC require any further information in respect of a request, such may be requested from the parties.

The NCC will only formulate an opinion on the basis of a disclosed set of facts. Should the facts change in any way, the opinion will vary accordingly. If additional or new facts are presented to the NCC in respect of the same matter after an advisory opinion has been issued,

which may alter the opinion issued, such will be dealt with as a new request and the necessary procedure for requesting an advisory opinion will apply.

In the case of the NCC, an advisory opinion would thus be letters from the Commission stating its view about the application of the Act to certain facts presented by external parties. The Commission views the provision of advisory opinions as one of the effective ways of promoting voluntary compliance with Act by firms.

### ***Non-binding nature of advisory opinions***

While advisory opinions seek to clarify the views of the NCC in respect of specific issues, they are not binding on the NCC or the parties that request such opinions.

However, they offer an indication of the position the NCC is likely to take in respect of specific transactions, agreements and practices, and if based on accurate facts, offer the necessary guidance and clarity to the parties requesting them.

The provision of advisory opinions assists the NCC in that it informs most of its decisions and policy-making processes. Thus, parties need not agree with the NCC view and the Consumer Tribunal ("the Tribunal") may provide a view that is different from the Commission's in its ruling on any matter.

### ***Confidentiality***

The NCC treats all information relating to the request with high confidentiality, and if published by the NCC for external purposes, all the names of the parties and the commercially sensitive information will be omitted.

To ensure that such requests remain confidential, the NCC will not contact any third party for further information or verification of any information relating to the request. Furthermore, no press statements or releases will be issued in this respect, unless the issue has been made public through the media by the parties or any other person, and the NCC is required to respond to issues raised in that regard.

***Time frames and turnaround times***

The Act does not set any time frames for the provision of advisory opinions. However, based on the experience of providing this service in terms of the Unfair Business Practices Act and benchmark studies to the Competition Commission and others we have ascertained that the turnaround time depends on the complexity of the request. The complexity of the matter is determined as follows:

**Non-complex Advisory Opinion**

A non-complex advisory opinion is the one that deals with a practice, conduct or agreement and/or transaction where:

- Parties have submitted all the relevant information required to issue an advisory opinion;
- There is sufficient precedent set, policy positions adopted by the Commission and previous opinions to formulate an opinion.

**Complex Advisory Opinion**

A complex opinion refers to a requests that deals with a practice, conduct or agreement and/or transaction where parties have provided the relevant information; but the request deals with a new issue where little or no precedent exists, the Commission has not adopted an interpretation and/or where a legal opinion may be required and/or where the time required to review the material submitted by the party will substantially exceed the turnaround time set.

If the Commission establishes that a request is complex, it will inform the parties requesting such an opinion of the classification within five (5) days electronically or by fax. This will not affect the maximum turnaround time established in respect of specific requests for opinions.

The calculation of days in respect of the maximum turnaround time refers to business days, which excludes public holidays, Saturday and Sunday. This calculation will exclude the first day (day on which the request is lodged) and include the last day (day on which the opinion is issued) of the request.

The date of lodgment of a request for an advisory opinion will be the date on which the Commission receives the request in writing with all the relevant information. The maximum turnaround time in respect of advisory opinions will thus be as follows:

Service provided: Advisory Opinion	Maximum turnaround time
Non-Complex	10 business days
Complex	20 business days

These time frames will be reviewed from time to time taking into account views of stakeholders, the cost of providing the service and best practice internationally.

### ***Fee payable***

- A fee of R3 000 is payable on request of an advisory opinion requested from a professional association or industry or businesses with an annual turnover or asset value exceeding the R2 million threshold as determined in the regulations.
- The fee is not based on the area of the Act, classification or the complexity of the request and is thus charged in the same manner to all requests for advisory opinions.
- It is not possible for the Commission to exempt any party from paying such fee, or to offer any discounts in this regard.
- If an advisory opinion has been issued and new information is provided by the parties in the same matter and such information may alter the opinion issued, such will constitute a new request for an advisory opinion, and the advisory opinion fee will be payable accordingly.
- Parties requesting an advisory opinion must pay the filing fee for such request on or prior to the date of filing such request with the Commission.
- Where parties deposit the fee into the Commission's bank account or make an electronic transfer of such fee in favour of the Commission, a deposit slip or proof of electronic transfer must form part of the filing for a request for an advisory opinion.
- Parties must ensure that the required fee is paid in time, as the Commission will not deal with a request that has not been paid for.

The Commission will not refund fees for advisory opinions except in the following instances:

- Where a double payment has been made in respect of the same request;
- Where the Commission upon review of the matter, is of the view that it does not constitute a request for an advisory opinion; or
- Where parties withdraw the request within two (2) days after it has been filed with the Commission, but before a response is issued by the Commission;

A refund on a fee in respect of an advisory opinion on the basis of the above situations will only be done on request by the parties or on proper motivation by the Divisional Manager of the Division.

### ***Procedure for advisory opinions***

#### **1. Lodgment/Filing of a request for an advisory opinion**

- All requests for advisory opinions must be done in writing and contain all the necessary information required to provide an advisory opinion and marked in bold as: **REQUEST FOR AN ADVISORY OPINION**.
- Requests for advisory opinions can be lodged with the NCC by hand delivery, fax, or mail to the Commission's Registry at the following addresses and fax numbers to the attention of the Head of Corporate Compliance: Compliance Division:
  - Delivery by hand to: 3rd Floor, Block E, 77 Meinjies Street, Sunnyside
  - Posted to: National Consumer Commission, Private Bag X 84, Pretoria, 0001
  - Transmitted by Fax: +27 0861 515 259
  - Emailed to: [ncc@thedti.gov.za](mailto:ncc@thedti.gov.za)

#### **2. Registration of the request for an advisory opinion**

- Upon receipt of the request for an advisory opinion, the NCC Registry will register it as a case on the Commission's Case Management System ("CMS"), and assign a case number to it immediately.
- No requests will be registered and scanned as cases on the Commission's CMS before payment, or proof thereof is received by the Commission.
- The Commission's Registry will issue a letter acknowledging receipt of the advisory opinion to the parties immediately upon receipt thereof.



- The letter of acknowledgement of receipt will state the name of the parties requesting an advisory opinion, their telephone and fax numbers, postal address and the case number allocated to the request by the Commission.
- Where an advisory opinion is hand delivered to the Commission's Registry, the letter acknowledging receipt thereof will be handed to the person delivering the request immediately upon receipt.
- Where the request is faxed or emailed or posted to the Commission, such acknowledgement of receipt will be sent to the parties by fax or email or post where necessary within twenty-four (24) hours of receiving such request.
- Parties must quote the case number assigned to a particular request in all follow-up correspondence as reference.

### 3. Case Allocation

- After the request for an advisory opinion has been properly registered on the CMS, the case will be made available to the Compliance Division of the NCC immediately for allocation to the relevant staff member.
- The NCC may, depending on the complexity of the matter, assign a team to work on the request.
- The NCC will within five (5) days determine whether the case is complex or not. If it is decided that the request is complex, the staff member assigned to deal with the request will inform the parties concerned electronically or by fax.

### ***Formulation of an advisory opinion***

- The advisory opinion will be formulated using the standard format adopted by the NCC in issuing advisory opinions.
- The NCC will consider relevant case law, both local and international, policies adopted by the Commission and previous opinions issued by the NCC in formulating the opinion.
- The NCC will adhere to sound internal procedures adopted regarding internal consultation with relevant Divisions before the opinion is finally issued. All opinions will be issued after review and approval of the Commissioner or Deputy Commissioner of the NCC.
- The NCC may, depending on the nature of the request, seek a legal opinion externally before an advisory opinion is issued to the parties requesting it.

- The NCC may at anytime during the formulation of the advisory opinion request the parties to provide further information or clarity on the matter either in writing or by requesting a meeting with the parties.
- Parties may also at anytime during the formulation of the advisory opinion provide further information in writing, if necessary, or request a meeting to provide such information or clarity on the matter.
- The NCC and the parties may communicate with one another telephonically or by e-mail during the process of formulating the advisory opinion. The NCC will register all correspondence in respect of the request on the CMS.
- The NCC will insert notes on any telephone conversations, e-mails and/or meetings held in respect of the request on the CMS immediately for proper recording.

### ***Issuing an advisory opinion***

All advisory opinions issued will represent the view of the NCC on the facts given by the parties and will be approved by the Manager: Compliance, Education and Awareness and will be ratified by the Deputy Commissioner or Commissioner.

An advisory opinion issued must be faxed or e-mailed to the applicant, and the original copy of the response must be sent by registered post to the parties requesting such opinion. The NCC will keep record of all outgoing advisory opinions for reference purposes. A copy of the NCC's response on the request will be registered on the CMS immediately.

If the NCC does not receive any follow-up correspondence on the matter within five (5) days after issuing such opinion, the matter will be considered closed.

### ***Review Mechanisms***

- Where the parties are in disagreement with the views contained in the opinion issued, they must within five (5) days indicate the reasons for their disagreement in writing to the NCC addressed to the Manager: Advocacy, Education and Awareness. The NCC will review the reasons or arguments and indicate to the parties within five (5) days if the opinion of the NCC will be changed as a result of the parties' arguments or reasons.

- The NCC or the parties may request a meeting to obtain or provide further clarity, as the case may be. If, after the above process, the parties and the NCC are still in disagreement, parties or the NCC may approach the Tribunal to rule on the matter. Negotiations in this regard will always be conducted in good faith and in the spirit of compliance and openness.

### **Other voluntary compliance related services**

Related services refer to those services provided by the NCC, which are directly or indirectly related to the provision of a particular advisory opinion. The NCC commits itself to the following standards in respect of these related services, which are identified as follows:

#### **1. Telephonic communication**

In respect of telephone communication with our stakeholders, we commit to the following:

- The NCC or the parties may contact one another telephonically to get clarity in respect of any area of the request for an advisory opinion.
- Staff members will conduct all telephone conversations in a professional and respectful manner and with politeness, patience and courtesy.
- The NCC staff members will attempt to respond to all issues raised telephonically appropriately, where necessary, will ask the parties to provide information in writing in order to provide a proper and well informed response.
- If the relevant staff member is not in the office at any given time, he/she will ensure that his or her voicemail is activated or that his or her calls are transferred to another staff member to assist stakeholders.
- Where a message is left for a particular staff member to call a stakeholder back, he/she will ensure that the call is returned immediately after receiving such message.
- The relevant staff member will record all telephone enquiries in respect of an advisory opinion on the CMS.

#### **2. Meetings**

In respect of meetings with our stakeholders, we commit to the following:

- The NCC or the parties in respect of a particular advisory opinion may, where necessary, request a meeting to obtain or provide further clarity on the request

- The NCC staff members will ensure that they are always well prepared, on time, and properly dressed for a meeting (tie and jacket for males).
- All meetings will be conducted in a flexible manner, in the spirit of compliance and with openness and objectivity prevailing at all times.
- The relevant staff member will arrange and schedule the meeting after consultation with the parties concerned to determine availability and suitability of the date, time and venue of the meeting.
- The relevant staff member will ensure that, all the persons who are required to attend such meeting from the NCC side, are invited and confirmed prior to the meeting and will inform the parties of the delegates if requested to do so by the parties.
- The relevant staff member will ascertain the number and names of external persons who will attend the meeting prior the date of the meeting in order to make the necessary logistical arrangements for the meeting.
- Where a meeting is requested by the parties, the relevant staff member will obtain the relevant information and issues to be discussed at the meeting, from the parties in time to prepare for the meeting. Parties must ensure that this information is forwarded timely to allow for proper preparation for the meeting.
- Where a meeting is requested by the NCC, the relevant staff member will forward the issues for which the meeting is requested to the parties in time to allow them to prepare responses to such issues.
- The Chairperson of the meeting may be decided at the meeting to ensure that all parties participate in how the meeting will be conducted. This will also minimize concerns of impartiality or bias on the part of the Chairperson, which may arise in meetings.
- The content of all meetings will be recorded in a numbered Investigator's Book, assigned to the relevant staff member. Notes of such meeting will be recorded on CMS.

### **3. Clarifications**

In respect of written clarifications to stakeholders, the following pertains:

- A written clarification refer to correspondence by stakeholders requesting clarity on any area of the Act, and such request does not constitute a request for an advisory opinion or advance ruling on a particular matter. This is also not binding on the NCC or the parties

- The NCC will respond to all clarification requests within five (5 business) days of receipt. The turnaround time will be calculated in the same manner as for advisory opinions.
- The response will be done in a general business letter format and must be on the official letterhead of the NCC and be sent to the parties by fax or electronically.
- The response in respect of the request for clarification will be registered and scanned on the CMS for record purposes.
- Where parties have submitted a request for clarification and upon review of the matter, the Commission finds that it constitutes a request for an advisory opinion, parties will be informed accordingly and must thus follow the necessary process for advisory opinions.

#### ***4. Compliance programmes***

A good corporate compliance programmes can help to identify the boundaries of permissible conducts, as well as identifies situations where it would be advisable to seek legal advice. A pre-emptive identification of areas of potential risk can save time and money, preserve goodwill and from the NCC perspective could be ideal mechanisms to promote compliance.

These programmes are internal to the various organizations. The NCC could assist firms in providing some generic guidelines for such programmes and providing advice on the establishment of such programmes. Furthermore the Compliance and Education Division may audit these programmes periodically to ensure that they meet the standards in the new Commission. Process and standard:

- Industry would request the NCC assistance in writing.
- NCC would acknowledge receipt within 24 hours of receipt.
- The NCC would evaluate the request and notify the requesting party of the decision, conditions, criteria, etc. in writing within 10 working days.
- If the NCC will assist, standards in terms of meetings, workshops, etc. will apply.

#### ***5. Information Dissemination***

##### **Media Releases**

The media release must adhere to the following standards:

- Must be clear and concise:

- Targeted at particular stakeholders;
- Clearly articulate the intention and purpose of the regulation;
- Provide assistance with the awareness and implication of the legislation;
- Have impact on the intended stakeholders (through requests advisory opinions, clarification and telephonic enquiries and number of articles published by media houses).
- Approved by the Commissioner in writing.

### **Information Circulars/ Practice notes/ Fact sheets**

Information Circulars refer to the efforts undertaken by the office to highlight the existence, application and compliance with the act and regulations administered by the office of consumer protection.

The information circular must adhere to the following standards:

- Must be clear and concise;
- Targeted at a particular stakeholders;
- Clearly articulate the intention and purpose of the regulation;
- Provide assistance with the awareness and implication of the legislation;
- Have impact on the intended stakeholders( through requests advisory opinions, clarification and telephonic enquiries)

The circulars must be signed by the Manager.

### **6. Meetings/ Business contacts**

Business education, especially in the first 12 months after establishment of the NCC is critical. This is primarily achieved through conferences, seminars, workshops and presentations to industry associations and business as well as other interactions such as information contacts; semi-formal visits by a compliance official to inform a business/ industry body representative about the Act and the regulations and visits by industry.

The same standard of professionalism will apply. The Director will be informed of all such contacts. Process if request received from stakeholder:

**Complaints**

Any person, who is not satisfied with the service offered by the NCC in respect of Compliance services, be it regarding the standards set or the commitment made by the Commission in providing these services, parties must forward their concerns to:

**KARIN COODE**

**MANAGER: COMPLIANCE, EDUCATION AND AWARENESS**

**TEL: 012 3941541**

**FAX: 012 3942541**

**E-MAIL: [ccoode@thencc.co.za](mailto:ccoode@thencc.co.za)**

The Manager will ensure that all concerns are addressed timely and that necessary steps to remedy the situation are taken.

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