

**DEPARTMENT OF TRADE AND INDUSTRY
NOTICE 534 OF 2016**

NATIONAL CONSUMER COMMISSION

I, Mr. Ebrahim Mohamed, the Commissioner of the National Consumer Commission, hereby publish a proposed industry code and ombudsman scheme for public comment in terms of section 82(3)(a) of the Consumer Protection Act 68 of 2008(Act No. 68 of 2008).

The proposed industry code was received from the Funeral Regulatory Authority (FIRA). The code incorporates the recognition of an ombudsman scheme for alternative dispute resolution of complaints. In accordance with section 82(3)(a) and (b) of the Act No. 68 of 2008, the National Consumer Commission is required to publish the proposed industry code for public comment and consider any submissions made during the public comment period.

The National Consumer Commission is also required to consult with the relevant industry and relevant accredited consumer protection groups. The Commission is empowered to revise the proposed industry code and then make recommendations to the Minister of Trade and Industry for accreditation of the industry codes and the ombudsman scheme.

The general public, industry groups and any other interested party are accordingly invited to submit written comments, quoting the following reference

number **(NCC/GN/FRA1/16)** to: The National Commissioner, National Consumer Commission c/o Mr. Jeremiah Modiba, 8th Bauhinia Street, Building No. 12, Berkley Office Park, Techno Park Centurion 0157 or email: j.modiba@thencc.org.za. On or after the 29th September 2016 physical address to which comments are to be delivered is, the National Consumer Commission at the South African Bureau of Standard (SABS), Building A Bulawayo, 1 Dr Lategan Street, Groenkloof, Pretoria.

The commentary period will run for thirty (30) business days effective from the date of publication.



Mr. E Mohamed

Commissioner: National Consumer Commission

Date: 19./August 2016



F I R A

“ For the People, By the People, To the People”

FUNERAL INDUSTRY REGULATORY
AUTHORITY

FUNERAL INDUSTRY CODE OF CONDUCT

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**THE SOUTH AFRICAN FUNERAL INDUSTRY
CODE OF CONDUCT**

Following years of research and consultation with key industry stakeholders, it has become evident that the funeral industry in South Africa cannot be left unregulated, as it is currently. Left to its devices, the funeral industry will continue exposing the general public to unnecessary health hazards and exploitation.

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1. PART A

1.1. Introduction

Purpose of the Code is to regulate relations between persons conducting business within the funeral industry and to provide for a scheme of alternative dispute resolution between consumers and participants, and between participants in the industry, and to create an Industry Ombud to provide alternative dispute resolution services.

The Funeral Industry Code of Conduct ("Code") and the application for accreditation as office of the South African Funeral Industry Regulatory Authority Ombud ("FIRA") are the Industry Code and Ombud Scheme for the Funeral Industry set up in accordance with and applying for accreditation in terms of section 82 of the Consumer Protection Act 68 of 2008.

The Code and the FIRA were established to guide Industry as to what is considered the minimum standards of conduct expected when engaging with Consumers and to assist in resolving Disputes that arise between Consumers and Industry in terms of the CPA.

In light of the Code being recognised under the CPA, the Code shall be enforceable against Funeral Industry Participants. This Code shall be enforceable by the FIRA in line with the Terms of Reference herein. A failure to comply with this Code amounts to a contravention of section 82 (8) of the CPA. Any provision of this Code that is inconsistent with the CPA is invalid.

The Code is an industry code and it applies to the entire Funeral Industry as defined in this Code of Conduct irrespective of whether such persons are members of any funeral industry association. The Code relates to the conduct for the supply of services and goods by the Funeral Industry to Consumers within the Republic of South Africa, and focuses on consumer protection, fair and equitable business practices that encourages fair play and open communication between industry participants and consumers as a means of avoiding disputes.

2. **PART B**

2.1. **Definitions**

In this Code, unless inconsistent or otherwise indicated by the context, the following words and expressions will have the meanings set out below:

- 2.1.1. “**ADR**” means Alternative Dispute Resolution;
- 2.1.2. “**Board**” means the board of the FIRA incorporated under the Companies Act 71 of 2008 as an NPC as more fully dealt with in terms of the FIRA’s Memorandum of Incorporation which can be found on the FIRA’s website;
- 2.1.3. “**the Act**” means The Consumer Protection Act 68 of 2008 and the Regulations thereto, as amended from time to time;
- 2.1.4. “**the Code**” means The South African Funeral Industry Code of Conduct;
- 2.1.5. “**FIRA**” means the Funeral Industry Regulatory Authority;
- 2.1.6. “**FIRA Ombud**” means the office of the Funeral Industry Regulatory Authority and shall be termed “**FIRA**”;
- 2.1.7. “**Complaint**” means an expression of dissatisfaction made by the Consumer to a Participant related to its Service and/or Goods or the complaints-handling process pursued or alternatively embarked on thus far by the Consumer;
- 2.1.8. “**Complainant**” means the Consumer or Consumer’s representative (which may not be a “legal practitioner”), including an accredited, recognised Consumer Protection Group referred to in section 78 (1) of the CPA, making a complaint in respect of any Services or Goods provided by the Participant concerned;
- 2.1.9. “**Confidential information**” has the meaning given to it in terms of Consumer Protection Act Regulations, Regulation 43 (1) as published in Government Gazette 34180 which includes any information containing or consisting of:
- 2.1.9.1. Trade secrets;
- 2.1.9.2. Financial, commercial, scientific or technical information, if disclosure of the information is likely to cause harm to the commercial or financial interest of a person; or
- 2.1.9.3. Information supplied in confidence by a person, if the disclosure of the information could reasonably be expected to:

- a) Put that person at a disadvantage in contractual or other negotiations; or
 - b) Prejudice that person in commercial competition.
- 2.1.10. **“Consumer”** has the meaning given to it in terms of section 1 of the Consumer Protection Act 68 of 2008;
- 2.1.11. **“Consumer Protection Group”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.12. **“Consumer services and goods”** means the services and goods provided to the Consumers by all Participants within the Industry, including but not limited to Companies, Distributors, Funeral Service Providers, Importers, Manufacturers, Suppliers, and their staff and agents;
- 2.1.13. **“Days”** means business days which is any other day than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 2.1.14. **“Designated Officer”** means a person responsible for the complaint resolution within the Participant's organisation as identified by the Participant and communicated to FIRA;
- 2.1.15. **“Display”**, when used-
- a) in relation to any goods, means placing, exhibiting or exposing those goods before the public in the ordinary course of business in a manner consistent with an open invitation to members of the public to inspect, and select, those or similar goods for supply to a consumer; or
 - b) in relation to a price, mark, notice or other visual representation, means to place or publish anything in a manner that reasonably creates an association between that price, mark, notice or other visual representation and any particular goods or services;
- 2.1.16. **“Dispute”** means a disagreement, arising from a Complaint submitted to a Participant in relation to services and/or goods provided to a Consumer of that Participant, which have not been resolved by the Parties;
- 2.1.17. **“Distributor”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.18. **“Facilitate, Facilitation and Facilitated Settlement”** means a Dispute resolution method in which the Dispute resolver, being the FIRA, communicates its initial position to the Parties and a

- settlement is sought through making one or more offers or counter offers;
- 2.1.19. **“Goods”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.20. **“Importer”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.21. **“Industry”** means the South African Funeral Industry;
- 2.1.22. **“Internal Complaints-Handling Process”** means a complaints-handling process as adopted by a particular Participant;
- 2.1.23. **“Juristic Person”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.24. **“NCC”** means the National Consumer Commission;
- 2.1.25. **“Manufacturer”** includes a producer or importer and it means a person who: – 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 by applying a personal or business name, trademark, trade description or other visual representation on or in relation to the goods;
- 2.1.26. **“Mediation”** means the active participation of a Dispute resolver, being the FIRA, intended to assist the Parties to identify the issues, to generate options, to consider alternatives and to endeavour to reach an agreement;
- 2.1.27. **“Minister”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.28. **“MOI”** means the Memorandum of Incorporation, including the schedules attached thereto, as amended from time-to-time, under which the office of the FIRA is established and as published on the FIRA's website;
- 2.1.29. **“Ombud with Jurisdiction”** has the meaning given to it in terms of section 1 of the CPA;

- 2.1.30. **“Participant”** means any entity operating within the Industry bound by the Code unless expressly excluded by clause 2.3.2 hereof;
- 2.1.31. **“Parties”** means the Consumer and Participant;
- 2.1.32. **“Person”** includes Juristic Person;
- 2.1.33. **“Producer”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.34. **“Recommendations”** means a Dispute resolution method in which the Parties are given written suggestions on how factual, legal and other issues should be resolved, on possible outcomes and how they can be achieved;
- 2.1.35. **“Service”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.36. **“Service Provider”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.37. **“Supplier”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.38. **“Supply Chain”** has the meaning given to it in terms of section 1 of the CPA;
- 2.1.2. Unless the context clearly indicates otherwise:
- 2.1.2.1. all words and expressions will have such meaning as may be given to them in the CPA unless expressly defined or referenced in this Code.
- 2.1.2.2. all references to:
- 2.1.2.2.1. a singular noun will be deemed to include the plural and vice versa;
- 2.1.2.2.2. a masculine gender will be deemed to include the other genders and vice versa.
- 2.1.2.3. the provisions of any law will be deemed to include amendments or substitutions thereof that will be effected from time-to-time; all section headings and arrangements contained in this Code are intended for reference purposes only and will not affect or be taken into account in the interpretation of any of the paragraphs or sections to which they relate.

2.2. Purpose and Objectives of the Funeral Industry Code of Conduct

- 2.2.1. By regulating interaction between Participants conducting business within the Funeral 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, as described in section 82 (6) of the CPA should there be a Dispute between Participants and Consumers.
- 2.2.2. The Purpose of the Code is to:
- 2.2.2.1. Improve Consumer awareness and information and encouraging responsible and informed consumer choice and behaviour through constant and effective Consumer and Industry awareness;
 - 2.2.2.2. Promote Consumer confidence, empowerment, and the development of a culture of Consumer responsibility, through individual and group education, vigilance, advocacy and activism;
 - 2.2.2.3. Provide for an accessible, consistent, harmonised, effective, and efficient system of redress for Consumers;
 - 2.2.2.4. Thoroughly educate Consumers as to their rights and redress available to them should a Participant breach the CPA or the Code;
 - 2.2.2.5. Raise the standards of good conduct in the Industry without endangering the vitality and growth of business;
 - 2.2.2.6. Generate growth in the Industry by increasing the level of certainty for all Participants;
 - 2.2.2.7. Offer guidance to Participants in the Industry as to the implementation of and the compliance with the CPA and what constitutes fair business practices to be followed when operating within the Industry; and
 - 2.2.2.8. Provide for a scheme of alternative dispute resolution as described in section 82 (6) of the CPA.
- 2.2.3. The Participants within the Industry are required to pursue the objectives as set out in section 3 of the CPA, especially to:
- 2.2.3.1. Reduce and ameliorate any disadvantages experienced by Consumers in accessing the supply of any Goods and Services;
 - 2.2.3.2. Promote fair business practices;
 - 2.2.3.3. Protect Consumers from:

- 2.2.3.3.1. Unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and
- 2.2.3.3.2. Deceptive, misleading, unfair or fraudulent conduct.
- 2.2.4. Provide for a consistent, accessible and efficient system of consensual resolution of Disputes arising from consumer transactions.

2.3. Application, Scope and Type of Participant

- 2.3.1. The Code applies to all Participants, unless they are regulated elsewhere by other public regulation, 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) of the CPA.
- 2.3.2. Participants within the Funeral Industry for the purposes of this Code means:
Any-
 - 2.3.2.1. service provider or affiliated person that provides the following services and/or goods in connection with the burial or cremation of a dead person –
 - 2.3.2.1.1. sale of Coffin or Casket;
 - 2.3.2.1.2. removal of a dead person from place of death;
 - 2.3.2.1.3. storage of a dead person;
 - 2.3.2.1.4. completion and registration of death at a fee without informing the Consumer of the option that it is a free service rendered by the Department of Home Affairs;
 - 2.3.2.1.5. local and international repatriation of a dead person;
 - 2.3.2.1.6. arranging and/or facilitating the funeral or cremation of a dead person;
 - 2.3.2.1.7. preparation a dead person for funeral or cremation;
 - 2.3.2.1.8. conducting a funeral or cremation of a dead person;
 - 2.3.2.1.9. preparation of a burial site for the burial of a dead person;
 - 2.3.2.1.10. that takes responsibility in a transaction with the Consumer to

- deliver additional goods and services in conducting the funeral or cremation of a dead person;
- 2.3.2.1.11. sale of Artificial Flowers;
- 2.3.2.1.12. sale of Tombstones;
- 2.3.2.2. manufacturer that manufactures the following goods used within the funeral industry, but not limited to –
- 2.3.2.2.1. artificial Flowers;
- 2.3.2.2.2. coffins and/or Caskets;
- 2.3.2.2.3. coffin and/or Casket trimmings, handles and shrouds;
- 2.3.2.2.4. coffin and/or Casket display stands;
- 2.3.2.2.5. church trolleys;
- 2.3.2.2.6. grave-site equipment;
- 2.3.2.2.7. hearse manufactures and/or rebuilders;
- 2.3.2.2.8. mortuary equipment;
- 2.3.2.2.9. tombstones;
- 2.3.2.2.10. urns;
- 2.3.2.3. company or supplier that supplies the following goods and/or services within the funeral industry –
- 2.3.2.3.1. coffins and/or caskets;
- 2.3.2.3.2. crematorium;
- 2.3.2.3.3. decorators;
- 2.3.2.3.4. local and international repatriations;
- 2.3.2.3.5. tombstones;
- 2.3.2.3.6. urns;
- 2.3.2.4. person that takes the responsibility in a transaction with a Consumer to rent the following goods and services used in connection with the burial or cremation of a dead person –
- 2.3.2.4.1. busses;
- 2.3.2.4.2. catering equipment;
- 2.3.2.4.3. catering services;
- 2.3.2.4.4. chairs;
- 2.3.2.4.5. family car(s);
- 2.3.2.4.6. flowers;
- 2.3.2.4.7. limousine(s);
- 2.3.2.4.8. portable or mobile toilet facilities;
- 2.3.2.4.9. tent(s);
- 2.3.3. It is mandatory for all Participants above to comply with the provisions of this Code, to register with the FIRA in accordance with the procedures provided on the FIRA website from time-to-time, and contribute towards the funding of the FIRA in

accordance with the funding model as set out in clause 3.1 below.

- 2.3.4. This Code shall not be construed as to diminish a Consumers rights under the CPA or any other law but it shall enhance the Consumers rights to be equivalent to or better than the provisions of the CPA.

2.4. Participants Obligations

- 2.4.1. To consumers, participants have an ethical obligation to the public to offer their services and to operate their businesses in accordance with the highest principles of honesty, fair dealing and professionalism:

Participants shall -

- 2.4.1.1. not engage in any unprofessional conduct which is likely to defraud or deceive the consumer;
- 2.4.1.2. not engage in false or misleading advertising;
- 2.4.1.3. not personally or through an agent or employee solicit deceased human remains, whether the solicitation occurs after death or while death is imminent; provided, however, that general advertising directed to the public at large would not constitute a violation of this section;
- 2.4.1.4. not pay or offer to pay a commission or anything of value to third parties, such as medical personnel, nursing home and hospice organizations or employees, clergy, government officials or others, to secure deceased human remains for funeral or disposition services;
- 2.4.1.5. not be convicted of any offense or any crime involving immoral conduct;
- 2.4.1.6. not offer to sell or arrange the sale of funeral goods or services on a prepaid basis in violation of any applicable laws or regulations.

- 2.4.2. To Families, participants have an ethical obligation to serve each family in a professional and caring manner, being respectful of their wishes and confidences, being honest and fair in all dealings with them, and being considerate of those of lesser means:

Participants shall -

- 2.4.2.1. provide funeral services to families without regard to religion, race, colour, national origin, sex, sexual orientation or disability;
- 2.4.2.2. comply with all applicable laws or regulations relating to the pre-arrangement, pre-payment or pre-financing of funeral services or merchandise;
- 2.4.2.3. release deceased persons to the custody of the person or entity who has the legal right to effect a

- release without requiring payment prior to the release.
- 2.4.2.4. not use any funeral merchandise previously used and sold without prior permission of the person selecting or paying for the use of the merchandise.
 - 2.4.2.5. comply with the set laws and by-laws;
 - 2.4.2.6. protect confidential information pertaining to the deceased or the family of the deceased from disclosure;
 - 2.4.2.7. carry out all aspects of the funeral service in a competent and respectful manner;
 - 2.4.2.8. properly account for and remit any monies, documents, or personal property that belongs to others that comes into the participants possession;
 - 2.4.2.9. not engage in any unprofessional conduct of a character likely to deceive, defraud or harm the families they serve in the course of providing professional services.
- 2.4.3. To the deceased, participants have an ethical obligation to care for each deceased person with the highest respect and dignity, and to transport, prepare and shelter the remains in a professional, caring and conscientious manner –
- 2.4.3.1. all deceased persons shall be treated with proper care and dignity during transfer from the place of death and subsequent transportation of the remains;
 - 2.4.3.2. only authorized personnel of the funeral undertaker or those persons authorized by the family shall be in attendance during the preparation of the remains;
 - 2.4.3.3. only allow embalmers, apprentices and interns, who are licensed to the extent required by law, to embalm human remains;
 - 2.4.3.4. not transport, hold or carry out the disposition of human remains without all permits and authorizations required by law;
 - 2.4.3.4. not violate any statute, ordinance, or regulation affecting the handling, custody, care or transportation of human remains;
- 2.4.4. To the NCC, participants have a legal obligation to maintain strict compliance with the letter and spirit of the Consumer Protection Act and regulations that impact the consumer and the funeral industry.

2.5.1. Consumer and Industry Awareness

- 2.5.1.1. The Participants under this Code are required to:
- 2.5.1.1.1. Establish an effective Internal Complaints-Handling Process that is accessible and understandable to all Consumers, which process includes but is not limited to:
 - 2.5.1.1.1.1. state the contact details of the Participant's responsible office to receive and deal with complaints;
 - 2.5.1.1.1.2. process of internal complaints-handling, how and where Consumer should lodge complaint;
 - 2.5.1.1.1.3. possible outcome of such a complaint should be stated upfront by the Consumer;
 - 2.5.1.1.1.4. turn around period for dealing with such a complaint; and
 - 2.5.1.1.1.3. in the event where the dispute remains unresolved after expiry of such turn around period, where and how the complaint is to be escalated to the Funeral Industry Ombuds office.
 - 2.5.1.2. Display prominently on all their trading premises by means of the FIRA sign, contact details and on their website, a prescribed notice that states that they are a Participant to this Code and are bound by it.
 - 2.5.1.3. The prescribed notice must provide Consumers with the contact details of the Office of the Ombud and the Participant and/or his staff shall notify the Consumer of their right to refer Complaints to the Office of the Ombud in the event that they are unsatisfied with the Participant's Internal Complaints-Handling Process.
 - 2.5.1.4. Ensure that a copy of this Code and/or summary hereof and their Internal Complaints-Handling Process is made available to any Consumer upon request and/or the Consumers are directed as to where to obtain a copy of the Code and/or their Internal Complaints-Handling Process.
 - 2.5.1.5. Ensure that the relevant staff and agents of a participants' business have adequate knowledge of the CPA and the Regulations issued thereunder, including the provisions of the Code and their own Internal Complaints- Handling Process, and follow it in the day-to-day running of the business.

- 2.5.1.6. Provide, where possible, relevant information reasonably required by FIRA and/or the NCC on any aspect of their business for the purposes of assisting in the resolution of individual Complaints, subject to considerations of confidentiality, as set out under in this Code.
- 2.5.1.7. Endeavour to resolve Complaints and Disputes in accordance with the law, the spirit and provisions of this Code and the CPA, and with regards to their own Internal Complaints-Handling procedures.
- 2.5.1.8. Ensure that they, their staff members and their agents refrain from influencing or attempting to influence or harassing the FIRA, staff of the FIRA or any Consumer.
- 2.5.1.9. Co-operate with all reasonable requests made by the Office of the Ombud in a timely manner. Any failure to cooperate with the Office of the Ombud may be taken into consideration by the NCC and the Tribunal when issuing a compliance notice or proposing or determining an administrative fine.
- 2.5.1.10. The Office of the Ombud will determine a strategy for fostering awareness of the Code and the contents thereof by way of: information brochures, guidelines and workshops, and guidance regarding compliance particularly aimed at smaller Participants as agreed to and as can reasonably be funded from time-to-time by the Office of the Ombud, which includes the following:
- 2.5.1.10.1. information brochures, guidelines and workshops;
 - 2.5.1.10.2. the display of the Code on the FIRA website (especially designed for mobile phone for easy access) and other social networking sites;
 - 2.5.1.10.3. the publication of relevant matters on the FIRA website;
 - 2.5.1.10.4. the facilitation of induction workshops for new employees in the Industry, on the principles and procedures contained in the Code; and
 - 2.5.1.10.5. partnering with the Provisional Consumer Protection Authorities and other relevant bodies on awareness campaigns.
- 2.5.1.11. The FIRA will produce annual reports on the implementation and application of the Code. These reports will be made available to all interested parties, including but not limited to Participants, Consumers, the NCC and the Minister.
- 2.5.1.12. The application of the Code will be reviewed annually by the Board to ensure that the standards of the Code meet identified objectives and consumer expectations. The review report will be

made available to the NCC and the Minister, and be made available on the FIRA website.

2.5.2. Data Collection

- 2.5.2.1. Ensure, where possible, that Participants keep proper records for a minimum of 3 (three) years of the Complaints that are received with the following details captured:
- 2.5.2.1.1. details and nature of the complaint;
 - 2.5.2.1.2. the business unit, division, branch and/or brand that the Complaint is against;
 - 2.5.2.1.3. the type of Complaint;
 - 2.5.2.1.4. the number of similar Complaints;
 - 2.5.2.1.5. details of how the Complaint was resolved;
 - 2.5.2.1.6. the time taken to deal with the Complaint;
 - 2.5.2.1.7. the type of remedy provided;
 - 2.5.2.1.8. details of why the Complaint was not resolved;
 - 2.5.2.1.9. details of potential remedies offered but not accepted by the Consumer; and
 - 2.5.2.1.10. recording that a Consumer was referred to the FIRA for assistance in resolving the Complaint if the Complaint remained unresolved.

2.5.3. Monitoring

- 2.5.3.1. The FIRA will, in terms of Section 82 (5) and (7) of the Act, provide monthly reports on:
- 2.5.3.1.1. management accounts;
 - 2.5.3.1.2. trends;
 - 2.5.3.1.3. statistics;
 - 2.5.3.1.4. systemic issues;
 - 2.5.3.1.5. general case information on:
 - 2.5.3.1.5.1. number of cases referred to office of the ombud;
 - 2.5.3.1.5.2. number of cases considered and closed;
 - 2.5.3.1.5.3. number of cases resolved;
 - 2.5.3.1.5.4. turn-around times for case closure;
 - 2.5.3.1.5.5. consumer details;
 - 2.5.3.1.5.6. origin of complaint.
- 2.5.3.2. The data captured in 2.5.2.1 above shall be used, where possible, to highlight recurring complaints that have arisen and this feedback, where possible, is to be shared with management, staff and Industry in an attempt to continually uphold compliance with the CPA, this Code and Internal Complaint-Handling Process.

2.5.4. Accountability

- 2.5.4.1. The Office of the Ombud will produce quarter and annual reports on the operation of the Code, allowing for periodic assessment of its effectiveness. These reports will be readily available to all stakeholders and interested parties.

2.5.5. Review

- 2.5.5.1. The FIRA will annually provide the NCC with:
- 2.5.5.1.1 An annual Report on the general functionality of the Code, its successes and operation, as well as the methods used by the FIRA to monitor the effectiveness of the Code;
 - 2.5.5.1.2. Annual Financial Statement, approved by the auditors of the FIRA.

2.5.6. Performance Indicators

- 2.5.6.1. Our core business is to guide Industry as to what is considered the minimum standards of conduct expected when engaging with Consumers and to assist in resolving Disputes that arise between Consumers and Industry in terms of the CPA. Complaints will be treated with the highest standard of customer service including courtesy, timeliness, confidentiality and impartiality and will be adjudicated fairly. We will seek to investigate/mediate and resolve all complaints equitably, with consistency and without delay.
- 2.5.6.1.1. Timeliness - To redress complaints as promptly as possible to facilitate resolution, having regard to the varying complexity of individual cases, which can have implications for individual timescales:
- 2.5.6.1.1.1. Initial Contact
 - a) a written response will be issued to all telephone and written enquiries within 3 working days.
 - 2.5.6.1.1.2. Mediation and Investigation
 - a) On receipt of completed claim form from the Complainant, mediation shall be offered to both parties to the dispute within 3 working days. If parties are agreeable to mediation, it shall be held as soon as practicable for both parties with a view to it being held no later than 30 days from receipt of agreement of both parties;
 - b) Where the offer of Mediation is not accepted, we will endeavour to complete the investigation within 20 weeks of commencement of formal investigation;

- c) We will revise timeframes where appropriate and communicate such changes to all stakeholders.
 - 2.2.6.1.1.3. Adjudication and Conclusion - The work rate for the processing of cases should aim to deal with all admissible complaints in a timely manner and prevent the accumulation of a backlog of cases. The targets outlined below are based on our experience to date.
 - a) We aim to resolve cases every month in excess of new complaints received;
 - b) 100 to 150 findings will be issued monthly;
 - c) 400 cases (minimum) finalised on a monthly basis.
- 2.5.6.1.2. Effective Organisation of Complaints - To maintain and develop an effective casework management system.
 - a) Our electronic Case Management System will be constantly modified to enable us to track and monitor progress in dealing with complaints;
 - b) Ensure adherence to time specifications for submissions by both complainants and participants;
 - c) Communicate progress to complainants during investigations;
 - d) Review case targets/progress monthly;
 - e) Review our processes regularly to increase efficiency and create extra capacity.
- 2.5.6.1.3. Make Sound Decisions - On complaints that are consistent with the CPA and are regarded as appropriate and fair by complainants and participants.
 - a) Issue findings based on thorough analysis of facts and act in a manner consistent with the CPA;
 - b) Resolve cases prior to Findings and where possible, encourage settlement at all stages, without regard to technicality or legal form;
 - c) Promote and facilitate settlement of cases at all stages;
 - d) Enhance case management system to promote consistency and high standards of decision making.
- 2.5.6.1.4. Website - To maintain and update our website to maximise access to the Office of the Ombud and the dissemination of information on complaints procedures.
 - a) Website constantly reviewed to ensure that it is current;

- b) Promote and encourage the use of the online complaint form, guide for complaints and information leaflets;
 - c) Publish case studies and complaints trends on a regular basis;
 - d) Publish news updates and press releases promptly.
- 2.5.6.1.5. Consumer Groups - To identify interested consumer groups nationwide for presentations and information programmes.
- a) Maintain a network of consumer organisation contacts nationwide;
 - b) Provide presentations to maximise information output to consumer and industry groups.
- 2.5.6.1.6. Educate Participants - To inform participants of their role and responsibilities.
- a) Meet with and make presentations to participants on request;
 - b) Arrange sector appropriate presentations for participants in their own regions;
 - c) Staff to be available to any participant that wishes to arrange a meeting;
 - d) Meet with individual participants to promote better complaint handling and early resolution of complaints.
- 2.5.6.1.7. Accessible Service - To make the FIRA, and information about the service it provides, easily accessible to all consumers.
- a) Produce Complaint Form, Guide for Complainants and Information Leaflet in relevant languages, as required, for users of service;
 - b) Update and simplify Complaint Form where appropriate and ensure online access;
 - c) Update Guide for Complaints and Information Leaflet to reflect new procedural timeframes or changes in procedures;
 - d) Identify community groups and representative bodies for information programmes about the role of the FIRA;
 - e) Allow the acceptance of oral submissions and tape recorded complaints from consumers where appropriate;
 - f) Make available Audio Visual Guide and Information Leaflet and explanation of Complaint Form;
 - g) Produce in a large font print, the Complaint Form, Guide for Complaints and Information Leaflet for the visually impaired.

- 2.5.6.1.8. Customer Service - Review any complaints about customer service and take necessary remedial action.
- a) All the complaints about the FIRA or its staff members are directed to the Head of Administration who refers the matter to members of the management team as required and agrees a course of action and response.
- 2.5.6.1.9. Human Resource Management - To manage the human resource function of the FIRA in a professional manner, and to promote good internal communications between management and staff.
- a) An internal induction training programme has been developed to ensure that newly appointed or seconded staff are fully trained on commencing employment;
 - b) Fill promotional posts by competitive interview;
 - c) Brief all new and seconded staff on the Code of Conduct, CPA, Customer Service, internet and email policy;
 - d) Brief staff monthly to keep them informed of developments and other matters which may impact on them.
- 2.5.6.1.10. Training and Development - To support and encourage continued staff training and development.
- a) Identify gaps in key skills and knowledge and provide appropriate training.

3. PART C

3.1 Sustainable Funding Model

- 3.1.1. The estimated cost/budget for the effective nationwide operation of the proposed Ombuds Scheme, following accreditation, is an amount of R 15,210,000.00 (fifteen million two hundred and ten thousand rand) for the first financial year.
- 3.1.2. The FIRA propose a monthly contribution fee of R 300.00 (three hundred rand) as participant contribution for the upkeep of the scheme.
- 3.1.3. The FIRA aims to achieve a minimum of 65% (sixty five per centum) of a set monthly target of 1000 (one thousand) participants to contribute the monthly levy to an independent entity, for the upkeep of the scheme.
- 3.1.4. The set monthly target of 1000 (one thousand) above is based on a 15% (fifteen per centum) participant contribution of an estimated 80 000 (eighty thousand) participants within the funeral industry, as set out in clause 2.3.2
- 3.1.5. The FIRA/Office of the Ombud will from date of accreditation:
- 3.1.5.1. 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.
 - 3.1.5.2. invoice the participants of the Funeral Industry monthly on or before the 7th (seventh) day of each month and the invoices are payable monthly in arrears on or before the 20th (twentieth) day of each month.
 - 3.1.5.3. must deposit all funds in an account opened with a bank registered under the Banks Act, 1990 (Act No. 94 of 1990).
 - 3.1.5.4. 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.
 - 3.1.5.5. 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 FIRA 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 FIRA's bank accounts will at all times require the approval of 2 (two) of the directors of the FIRA.
- 3.1.5.6. 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.
- 3.1.5.7. through the Ombud, submit an annual budget to the Board on 1 November of each year which budget will include, without limitation, the budget for:
- 3.1.5.7.1. awareness;
 - 3.1.5.7.2. remuneration of the staff, including directors;
 - 3.1.5.7.3. operating capital in respect of normal business activities;
 - 3.1.5.7.4. capital in respect of training for staff;
 - 3.1.5.7.5. unforeseen contingencies;
 - 3.1.5.7.6. marketing in order to promote the FIRA.
- 3.1.5.8. Board must consider the proposed budget and furnish the FIRA with an approved budget by 31 January of each year.

4. **PART D**

4.1. **Dispute Resolution/Complaints Handling**

Stage 1: Laying the Complaint

4.1.1. Referral to Participant:

4.1.1.1. Refer Complaint: A Complainant may first refer the matter in dispute to the Participant to be dealt with, in accordance with the Participant's Internal Complaints-Handling Process. Should the Consumer initiate his or her Complaint at the FIRA, without having referred it to the Participant first, the FIRA shall refer the Consumer back to the Participant;

4.1.1.2. Time Limits for Logging the Complaint: The Complainant must refer the Complaint to the Participant as soon as practically possible after the Complainant has become aware of it.

Stage 2: Referral to the Office of the Ombud

4.1.2. Complaining to the FIRA:

4.1.2.1. Referral to FIRA: A Complainant who referred a Complaint to the Participant concerned, and who is dissatisfied with the manner in which the Participant is dealing with it, or how it has been dealt with, or the outcomes thereof, may, if a matter is not resolved by the Participant within 15 Business Days or such extended period as agreed between the Parties, refer the Complaint to the FIRA within a reasonable time in the form. The Complaint form may be submitted by hand, mail, fax, email or in any other format acceptable to the FIRA at the following addresses:
Physical Address: FIRA, 17 Muller Street, Southernwood, East London;
Postnet Suite 179, Private Bag X3, Beacon Bay, 5241; or
Fax: 086 537 2428; or
Email: johanr@fira.co.za

4.1.3. Time Limits for Complaining: The Complainant must refer the Complaint to the FIRA as soon as is reasonably possible and within the time limits specified.

4.1.4. Acceptance of Complaint: The Complaint with the supporting information shall be recorded and issued a unique identifiable code. The recordal should identify the remedy sought by the Complainant and any other information necessary for the effective handling of the Complaint. Receipt of each Complaint

shall be acknowledged within 2 (two) business days either via email, fax or telephone call to the Complainant.

- 4.1.5. Initial Assessment of the Complaint: After receipt, each Complaint shall be initially assessed to ascertain whether it falls within the jurisdiction of the FIRA. It will also be assessed in terms of severity, safety implications, complexity, impact and the need and the possibility of immediate action.
- 4.1.6. Time Limits of Complaint Resolution: The FIRA shall make every effort to resolve all Complaints within 60 (sixty) business days of receipt by it, failing which it will refer the Complaint to the NCC or motivate to the NCC for an extension of this time limit.
- 4.1.7. Tracking the Complaint: The Complaint shall be tracked from the time of receipt through the entire process until the matter has either been finalised by the FIRA, or the Consumer has been referred to the NCC or elsewhere. An up-to-date status report shall be made available to the Complainant upon request and at regular intervals, at least at the time of pre-set deadlines.
- 4.1.8. Processing of Complaint: Referral:
- 4.1.8.1. When the FIRA receives a Complaint that does not fall within the FIRA's jurisdiction, the FIRA shall decide which other body (including the NCC), if any, would be best able to assist the Complainant and shall inform the Complainant either by fax, telephone or email;
- 4.1.8.2. The discretion to refer the Complaint to alternative bodies vests in the FIRA. If it decides to do so, the Office of the Ombud will give the Complainant a copy of the referral letter which it sends to such alternative body. Once the decision has been made to refer the Complaint, it must be referred to the relevant body within 2 (two) Business Days of it being received by the FIRA;
- 4.1.8.3. If the Complaint is one that appears to fall within the FIRA's jurisdiction and the Complainant has not taken the matter up directly with the Participant as a first step in trying to resolve the matter, the FIRA will advise the Complainant to refer the matter to the Participant to give the Participant the opportunity to resolve the Complaint. Alternatively, the FIRA may directly refer the matter to the Participant with the permission of the Complainant;
- 4.1.8.4. Any Complainant who is advised to refer the matter to the Participant will also be informed that he or she can again approach the FIRA, if the Complaint is not resolved to the satisfaction of the

- Complainant within 15 (fifteen) Business Days or such extended period as agreed between the Parties;
- 4.1.8.5. If it would, in the FIRA's opinion, with particular reference to section 3 (1) (b) of the CPA (vulnerable consumers), cause a Complainant undue hardship or inconvenience to refer to the Participant before obtaining the FIRA's assistance, the FIRA may deal with the Complaint as if the Complainant has approached the Participant;
- 4.1.8.6. If the Complaint is one that appears to fall within the FIRA's jurisdiction and the Complainant has already taken up the matter with the Participant, the FIRA shall inform the Designated Officer, in writing, that a Complaint has been lodged with the FIRA and that the Participant shall have 15 (fifteen) Business Days from receipt of the communication to investigate and attempt to resolve the Dispute with the Complainant or to provide the FIRA with its reasons for repudiating the Complaint. The Participant may upon request and at the discretion of the FIRA, be permitted additional time to resolve the matter;
- 4.1.8.7. The FIRA will provide the Participant concerned with full details of the Complaint, including copies of the relevant documentation submitted to FIRA, to the extent the FIRA considers it necessary, by fax or email;
- 4.1.8.8. The Participant must acknowledge receipt of the notification within 2 (two) Business Days and may do so by letter delivered by hand, fax or email.

Stage 3: Complaint Resolution by the Participant

- 4.1.9. If a Complainant is referred to a Participant by the FIRA in terms of clause 4.1.8.3 above, the Participant shall:
- 4.1.9.1. contact the Complainant to clarify any issue, to ascertain the essence of the Complaint and to attempt to settle the Complaint to the reasonable satisfaction of the Complainant;
- 4.1.9.2. if able to resolve the Complaint, provide FIRA with reasonable proof that the Complaint has been settled and that any undertaking made by the Participant has been complied with;
- 4.1.9.3. undertake any investigation that is necessary; the level of investigation shall be commensurate with the seriousness, frequency of occurrence and severity of the Complaint;
- 4.1.9.4. if the Participant is unable to resolve the Complaint referred to it by the FIRA in terms of clause 4.1.2.1 it shall provide the FIRA with a report outlining the

- investigation that it undertook and the reasons that the matter was not resolved and its reasons for repudiating the Complaint;
- 4.1.9.5. if the participant fails to provide the report referred to in 4.1.9.4, this shall not prevent the FIRA from making a Recommendation based only on the information before it;
- 4.1.9.6. if the FIRA is of the view that the Participant has provided the assistance sought by the Complainant or provided an acceptable explanation for its conduct complained of, the FIRA may inform the Complainant and Participant of this fact and indicate that the file will be closed unless the Complainant challenges the view, or provides new information to FIRA within 10 (ten) Business Days;
- 4.1.9.7. during the times set in terms of clause 4.1.9.6 above, the FIRA may facilitate a settlement between the Participant and the Complainant if the FIRA considers that it would be appropriate and helpful to do so;
- 4.1.9.8. When dealing with Complaints, the Participant should make readily available to customers, complainants and other interested parties information concerning the Internal Complaint-Handling Process, including the FIRA's brochures and the member's pamphlets, or electronic-based information. Such information should be provided in plain language and, so far as it is reasonable, in formats accessible to all, so that no complainants are disadvantaged. The following are examples of such information:
- 4.1.9.8.1. where Complaints can be made;
- 4.1.9.8.2. how Complaints can be made;
- 4.1.9.8.3. the Complaints process.
- 4.1.9.9. If the Participant is not able to resolve the matter within 15 (fifteen) Business Days or such extended period as agreed between the Parties, the Participant shall advise the Complainant of the right to refer the matter to the FIRA and provide the Complainant with the FIRA's contact details.

Stage 4: Investigation and Complaint Resolution by the FIRA

- 4.1.10. The FIRA may, if it decides that it requires these for the purpose of arriving at the resolution of a matter:
- 4.1.10.1. require the Designated Official of the Participant to provide it with records of the transaction or process that gave rise to the Dispute, including:
- 4.1.10.1.1. sales records (including recorded transactions);

- 4.1.10.1.2. advertising copy;
 - 4.1.10.1.3. inspection or repair records.
 - 4.1.10.2. require, the Designated Officer of a Participant to provide it with a statement from any technical, legal, sales, marketing, complaints-handling and other personnel working on behalf of the Participant, as appropriate to the Complaint;
 - 4.1.10.3. require comment or clarification from either the Complainant or the Participant on any other matter, including information provided by the other Party;
 - 4.1.10.4. the FIRA may consult any person it considers suitably qualified to assist it in resolving the Complaint;
 - 4.1.10.5. the Complainant or the Participant must make every effort to comply with the requests made by the Ombudsman with 10 (ten) Business Days, unless good cause can be shown.
- 4.1.11. Facilitation by the FIRA:
 - 4.1.11.1. The FIRA may, in order to settle a Complaint speedily, make an assessment of its merits without doing an investigation and suggest to the Parties how the matter should be settled.
 - 4.1.11.2. The FIRA may, after collecting relevant records and information, form an initial view on the matter with respect to the Participant's potential liability and the remedies, if any, it believes the Complainant is entitled to. The possible outcomes include:
 - 4.1.11.2.1. resolving the matter as requested by the Complainant;
 - 4.1.11.2.2. providing some but not all of the remedies requested; or
 - 4.1.11.2.3. providing none of the remedies requested and advising the Complainant of other options available to the Complainant.
 - 4.1.11.3. The FIRA shall communicate its view to the Participant and to the Complainant as soon as the decision is taken and invite their responses;
 - 4.1.11.4. The Participant and the Complainant must advise the FIRA within 10 (ten) Business Days of receiving the said communication as to whether they accept the terms of the recommendation or not;
 - 4.1.11.5. If the matter is resolved as a result of both Parties to the Dispute accepting the FIRA's proposed resolution, or acquiring the FIRA's assistance in arriving at a mutually acceptable compromise

- settlement, the resolution must be recorded and carried out. The FIRA may at the request of the Parties to a Dispute record the resolution of the Dispute in the form of an order in terms of section 70 (3) (a) of the CPA;
- 4.1.11.6. If a resolution is not agreed upon at this stage, the FIRA shall inform the Parties of further options available to them, including a recommendation by the Ombudsman.
- 4.1.12. Mediation by the FIRA:
- 4.1.12.1. The FIRA may, without doing an investigation, in its discretion, mediate any matter that the Ombudsman believes is appropriate for mediation, taking into consideration the wishes of the Parties and the nature of the Complaint. The involvement of legal representatives shall not be permitted except at the discretion of the mediator.
- 4.1.13. Recommendation by Ombudsman:
- 4.1.13.1. The Ombudsman may, in any case where a matter has not been settled through Mediation or Facilitation, make a written recommendation setting out how the matter should be resolved and the reasons for the recommendation;
- 4.1.13.2. Prior to making a recommendation and subject to the considerations of Confidentiality, the Ombudsman shall, to the extent considered appropriate, permit each of the Parties to comment on the information provided to the FIRA by the other during the investigation, Mediation or Facilitation stage;
- 4.1.13.3. The Participant and the Complainant must advise the Ombudsman in writing within 10 (ten) Business Days from receiving the recommendation whether they accept the terms of the recommendation or not;
- 4.1.13.4. Neither a Complainant nor Participant shall be bound to accept a recommendation made by the Ombudsman, but if a Participant does not accept a recommendation that has been accepted by the Complainant, the number of those cases and those details thereof that the Ombudsman considers appropriate shall be published in the FIRA's annual report and by other means that the Ombudsman considers appropriate;
- 4.1.13.5. If the Complainant rejects the recommendation or fails to respond within the time limit set in 4.1.13.3, the recommendation will fall away and the file may be closed;

- 4.1.13.6. If the matter is resolved as a result of both Parties to the Dispute accepting the Ombudsman's recommendation, the FIRA may, at the request of the Parties to the Dispute, record the resolution of the Dispute in the form of an order in terms of section 70 (3)(a) of the CPA;
- 4.1.13.7. If both Parties accept the terms of the recommendation, they must comply with its provisions within the period of time prescribed in the recommendation. If either Party fails to comply, the FIRA shall inform the Parties of further options available to them, including a referral to the NCC or Tribunal, and the recording of the resolution of the Dispute in the form of an order and having made an order of court or the institution of legal proceedings, both of the last two mentioned options are at the Parties' own expense;
- 4.1.13.8. If a resolution is not agreed upon at this stage or if a Party fails to comply, the FIRA shall inform the Parties of the further options available to them, including a referral to the NCC and the institution of legal proceedings at the Parties' own expense, if so advised.

5. PART E

5.1. The purpose of establishing an Ombud scheme

- 5.1.1. The purpose of this Industry Code is to establish an Ombud scheme as FIRA, a newly created Non Profit Company (NPC) formed for purposes of operating the office of the Ombud to:
- 5.1.1.1. receive complaints about alleged acts, omissions, maladministration, improprieties, and systemic problems within the Ombudsman's jurisdiction as defined in the legislative enactment establishing the scheme;
 - 5.1.1.2. exercise discretion to accept or decline to act on a complaint;
 - 5.1.1.3. operate by fair and timely procedures to aid in the just resolution of a complaint or problem;
 - 5.1.1.4. gather or demand relevant information;
 - 5.1.1.5. resolve issues at the most appropriate level of the entity;
 - 5.1.1.6. function by such means as:
 - 5.1.1.6.1. conducting an inquiry;
 - 5.1.1.6.2. investigating and reporting findings;
 - 5.1.1.6.3. facilitating, negotiating, and mediating;
 - 5.1.1.6.4. making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have the authority to act upon them;
 - 5.1.1.6.5. identifying complaint patterns and trends;
 - 5.1.1.6.6. educating;
 - 5.1.1.6.7. issuing public reports annually;
 - 5.1.1.6.8. initiate litigation to enforce or protect the authority of the office as defined by the legislative enactment, as otherwise provided by these standards, or as required by law.

5.2. Powers of the Ombud Scheme

- 5.2.1. The Ombudsman is vested with the authority to bind the FIRA and only the Ombudsman is vested with the authority to make recommendations relating to Complaints and Disputes.
- 5.2.2. The Ombudsman shall have the overall responsibility for the conduct of the day-to-day administration and business of the FIRA. 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 the FIRA, including issuing guidelines for the implementation and application of rules.

5.2.3. The Ombudsman shall be vested with the power to do what is necessary to give effect to the primary objectives of the FIRA. 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:

- 5.2.3.1. prepare and submit to the Board an annual report detailing the activities and finances of the FIRA for the year under review;
- 5.2.3.2. prepare and submit reports to the Board on current matters and activities;
- 5.2.3.3. promote and publicise the services provided by the FIRA through the media and consumer bodies;
- 5.2.3.4. 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;
- 5.2.3.5. appoint personnel to ensure the efficient management of complaints;
- 5.2.3.6. enter into agreements of purchase and sale and letting and hiring of property reasonably required for the purpose of the functioning of the FIRA;
- 5.2.3.7. open bank and other accounts necessary for the FIRA to perform its functions;
- 5.2.3.8. make recommendations to the Board for any necessary amendments to the Code and MOI of the FIRA:
 - 5.2.3.8.1. 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.

5.3. Independence of Office of Ombud for Industry

5.3.1. The Ombud acts independently and objectively in resolving disputes within the industry and is not influenced by anybody in making decisions.

- 5.3.2. The Ombud enjoys security of tenure and can only be dismissed on the grounds of incompetence, gross misconduct, or inability to effectively carry out his/her duties.
- 5.3.3. The independence of the Ombud is further assured by the fact that the Ombud and staff are:
- 5.3.3.1. entirely responsible for the handling and determination of Industry related complaints arising from complaints and disputes between, consumers and participants, participants and participants.
 - 5.3.3.2. accountable only to the Board; and
 - 5.3.3.3. adequately resourced to carry out their respective functions.
- 5.3.4. The criteria to be used in resolving disputes includes:
- 5.3.4.1. the law, especially the CPA and the Funeral Industry Code of Conduct (in all cases where there is a conflict between the interpretation of the CPA and the Code, the CPA shall prevail);
 - 5.3.4.2. applicable industry codes, guidelines and industry best practices;
 - 5.3.4.3. fairness in all circumstances.
- 5.3.5. The office of the Ombud shall:
- 5.3.5.1. act honestly, independently and objectively;
 - 5.3.5.2. have regard to fairness, justice, equity and the provisions of the CPA and the Code;
 - 5.3.5.3. balance the rights of the Consumers on the one hand and the rights of the Participant and Industry on the other hand; and
 - 5.3.5.4. avoid discriminating against anyone on the grounds contemplated in section 9 (3) of the Constitution of the Republic of South Africa 1996 (Act 108 of 1996) and section 8 of the CPA.

5.4. Process for Appointment Office of Ombud for Industry

- 5.4.1. The Board will appoint the Ombudsman whom is expected to have the following personal qualities, qualifications, skills or expertise to be eligible for appointment:
- 5.4.1.1. be independent;
 - 5.4.1.2. be fit and proper person;
 - 5.4.1.3. demonstrate high levels of competency, capability and financial soundness;
 - 5.4.1.4. have sound leadership qualities;
 - 5.4.1.5. be able to manage and lead a service-driven organisation;

- 5.4.1.6. have at least 10 (ten) years of experience in a senior executive role relating to alternative dispute resolution or an ombudsman office; or
 - 5.4.1.7. be legally qualified and be admitted as an Attorney or Advocate; or
 - 5.4.1.8. be qualified and experienced in economics, commerce and industry and public affairs.
- 5.4.2. The Process for the appointment of the Ombudsman shall be conducted in an open and transparent manner:
- 5.4.2.1. The Board shall appoint a special sub-committee for the Ombudsman's recruitment process. This sub-committee will be called the "Recruitment Committee". The Recruitment Committee shall consist of the chairperson of the board, one Industry representative, one consumer body representative and one association representative.
 - 5.4.2.2. The Recruitment Committee shall advertise the position of Ombudsman at least two times in at least two national newspapers. A short list of the most suitable candidates will be compiled and such candidates will be interviewed by the Recruitment Committee. Once the Recruitment Committee has made a decision on the most suitable candidate it shall submit a fully motivated written recommendation in this regard to the Board. The Board will make their final decision on the appointment of the candidate by way of a majority vote.
 - 5.4.2.3. The Ombudsman will be required to sign an employment contract stating the terms of his or her employment and same will be subject to an annual performance review.
- 5.4.3. No person who has been employed by a Participant within a 3 (three) year period prior to applying for the post of Ombudsman, may be appointed.
- 5.4.4. No person who has any direct or indirect business interest in any Participant may be appointed as Ombudsman.
- 5.4.5. The Ombudsman may resign by giving 60 (sixty) days' written notice to the Board.

5.5. Administrative Matters

- 5.5.1. The Ombudsman may only be dismissed in accordance with the provisions of clause 5.3.2 of the Code; any decision to dismiss the Ombudsman must be taken by majority vote of the Board and by dismissal procedure which are in line with fair administrative procedures provided for by the Promotion of Administrative Justice Act (PAJA).
- 5.5.2. 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.
- 5.5.3. The Ombudsman will declare in writing to the Board should there be any actual or perceived conflict of interest which may exist or arise after or at the time of his or her appointment. This will include, but not be limited to, instances where an immediate family member such as parent, sibling or children of the Ombudsman are in the permanent employ of, or have business interests in a Participant.
- 5.5.4. There shall at all times be 1 (one) Ombudsman. If requested by the Ombudsman, the Board shall be entitled to appoint a deputy Ombudsman. The appointment and election of the deputy Ombudsman will take place by majority vote of the Board.
- 5.5.5. Staff of Office of Ombud should ideally have:
- 5.5.5.1. qualifications and experience in law, commerce, industry and dispute resolution;
 - 5.5.5.2. knowledge of the technical aspects of the services and goods provided in the Industry or access to technical assistance or expertise in this regard; and
 - 5.5.5.3. an understanding of the CPA.
- 5.5.6. The Complaint form may be submitted by hand, mail, fax, email or in any other format acceptable to the FIRA at the following addresses:

Physical Address: FIRA, 17 Muller Street,
Southernwood, East London;
Postnet Suite 179, Private
Bag X3, Beacon Bay, 5241; or
Fax: 086 537 2428; or
Email: johanr@fira.co.za

- 5.5.7. The Office of the Ombud will determine a strategy for fostering awareness of the Code and the contents thereof by way of: information brochures, guidelines and workshops, and guidance regarding compliance particularly aimed at smaller Participants as agreed to and as can reasonably be funded from time-to-time by the Office of the Ombud, which includes the following:
- 5.5.7.1. information brochures, guidelines and workshops;
 - 5.5.7.2. the display of the Code on the FIRA website (especially designed for mobile phone for easy access) and other social networking sites;
 - 5.5.7.3. the publication of relevant matters on the FIRA website;
 - 5.5.7.4. partnering with the Provisional Consumer Protection Authorities and other relevant bodies on awareness campaigns.
- 5.5.8. In accordance to the Promotion of Access to Information Act 2 of 2002, provide access to information, to give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith.
- 5.5.9. Subject to any other law, personally identifiable information should be kept confidential and protected, except to the extent that it is necessary to provide to a Party for the sole purpose of resolving a dispute, unless disclosure is required by law, or consent for disclosure is obtained from the Party concerned. This will especially apply to staff of the Office of the Ombud and non-compliance is subject to employment law ground for summary dismissal.
- 5.5.10. From the date of accreditation and the Code becoming a Regulation of the Consumer Protection Act 68 of 2008, it will be a legal requirement for all Participants as defined in clause 2.3.2 to register and contribute to the Office of the Ombud, and a register of known Participants to whom the Code applies be available on the Office of the Ombud website.
- 5.5.11. An annual Report on the general functionality of the Code, its successes and operation, as well as the methods used by the

Office of the Ombud to monitor the effectiveness of the Code will be provided to the NCC and published on the Office of the Ombud website.

- 5.5.12. The Ombud, as accounting officer, must ensure that proper accounting records for the recording of all the FIRA's transactions are kept, which records will:
- 5.5.12.1. be kept at the main offices of the FIRA regarded as such from time to time by the Board;
 - 5.5.12.2. 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;
 - 5.5.12.3. ensure that financial statements consists of a balance sheet reflecting the financial position of the FIRA at the end of the financial year, are prepared by a firm of auditors appointed by the board of the FIRA as soon as possible after the financial year end, but not later than 90 (ninety) days after the financial year end; and
 - 5.5.12.4. 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;
 - 5.5.12.5. the Board will, within one month of the finalization of the financial statements, meet to consider, provide comment and/or approve such financial statements;
 - 5.5.12.6. 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.
- 5.5.13. Complainants and Participants agree not to hold the Ombud or any of its staff members liable for any loss or damage of any nature that they may suffer as a result of the Office of Ombud accepting and dealing with complaints.
- 5.5.14. Any influencing or attempt to influence or harassing the Ombud or staff of the Office of the Ombud or any Consumer by a Participant, their staff members and their agents, will be reported to the Commissioner of the NCC.
- 5.5.15. The Funeral Industry Code of Conduct does not amend, repeal or diminish any other right a consumer may have in law.

