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## GENERAL NOTICE

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### NOTICE 1099 OF 2010

#### **THE CONSUMER PROTECTION ACT, 2008 (ACT NO. 68 OF 2008)**

I, Dr Rob Davies, Minister of Trade and Industry, pursuant to the signing of the Consumer Protection Act, 2008 by the President, hereby give notice in terms of section 120 (2)(a) of the Consumer Protection Act, 2008, as follows:

1. The proposed Consumer Protection Regulations, 2010 are hereby published for public comment with effect from date of publication to 31 January 2011.
2. Members of the public are hereby requested to send their comments to [cparegs@thedti.gov.za](mailto:cparegs@thedti.gov.za) or Fax (012) 394 2383. For more information please contact Mr. Ntutuzelo Vananda at 012 394 1383.



**DR ROB DAVIES, MP**

**MINISTER OF TRADE AND INDUSTRY**

DATE: 23/11/2010

*Draft for public consultation - 28 October 2010*

**GOVERNMENT NOTICE  
DEPARTMENT OF TRADE AND INDUSTRY**

**No. R. ....**

**[Day][Month][Year]**

**Consumer Protection Act Regulations**

I, Dr Rob Davies, Minister of Trade and Industry, in terms of and under section 120(1)(a) and (e)(ii) of the Consumer Protection Act, 2008 (Act No. 68 of 2008), read together with the respective sections indicated in the regulations below, do hereby make the regulations set out in the schedule hereto.

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**Short title and definitions**

1.(1) These regulations are the Consumer Protection Act Regulations.

(2) In these regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Consumer Protection Act, 2008, has the same meaning, and -

**"Department"** means the Department of Trade and Industry; and

**"the Act"** means the Consumer Protection Act, 2008 (Act No. 68 of 2008).

*Draft for public consultation - 28 October 2010***Franchise agreements**

2. (1) This regulation must be read together with section 7 of the Act.
- (2)(a) Every franchise agreement must contain the exact text of section 7(2) of the Act at the top of the first page of the franchise agreement, together with a reference of the section and the Act.
- (b) Every franchise agreement must contain, as a minimum, the contents provided for in subregulation (3).
- (c) Any provision provided for in these regulations that are not included in a franchise agreement are deemed to be included in that franchise agreement, and where applicable, on the terms and conditions which are reasonable in the sector or industry to which that franchise agreement pertains.
- (d) A franchise agreement must contain provisions which prevent -
- (i) the unreasonable overvaluation of fees, prices or other direct or indirect consideration;
  - (ii) conduct which is unnecessary and unreasonable in relation to the risks to be incurred by one party; and
  - (iii) conduct that is not reasonably necessary for the protection of the legitimate business interests of the franchisor, franchisee or franchise system.
- (e) A franchise agreement must contain clauses stipulating that -
- (i) a franchisor is not entitled to any undisclosed direct or indirect benefit or compensation from suppliers to its franchisees or the franchise system, unless the fact thereof is disclosed in writing with an explanation of how it will be applied; and
  - (ii) the general principles of honesty, fairness, reasonability and equity must guide the interpretation of the franchise agreement and relationship between the parties.
- (f) The franchisor and franchisee of a franchise agreement in force on the date of commencement of these regulations which does not meet the requirements of these regulations must within 6 (six) months of the date of commencement sign an annexure to that franchise agreement, or at the choice of the franchisee enter into a new franchise agreement, to ensure that the franchise agreement which henceforth regulates their legal relationship meets such requirements, but -

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- (i) subregulation (b) does not apply to existing franchise agreements which are amplified by an annexure;
  - (ii) subregulation (c) does not apply where a new franchise agreement is entered into as contemplated in this subregulation.
- (g) Any provision in a franchise agreement in conflict with this regulation is void to the extent of such a conflict.
- (3) A franchise agreement must as a minimum contain the following specific information –
- (a) the name and description of the goods and/or services which the franchisee is entitled to provide, produce, render or sell;
  - (b) the obligations of the franchisor;
  - (c) the obligations of the franchisee;
  - (d) a description of the applicable franchise business and system,
  - (e) the direct or indirect consideration payable by the franchisee to the franchisor;
  - (f) the territorial rights, if any, granted to the franchisee;
  - (g) a description of the site or premises and location from which the franchisee is to conduct the franchise business and a copy of the signed lease if the franchisor is the lessor, or a copy of the signed sublease if the franchisor sublet to the franchisee, or a copy of the lease in respect of the site or premises the franchisor has selected to be leased by the franchisee from a third party;
  - (h) the conditions under which the franchisee or his, her or its estate may transfer or assign the rights and obligations under the franchise;
  - (i) a description of the trade mark or any other intellectual property owned by the franchisor, or otherwise licensed to the franchisor which is, or will be used in the franchise, and the conditions under which they may so be used;
  - (j) if the agreement is related to a master franchise, the franchisor's identity and details of the rights obtained by the master franchisee from the franchisor;
  - (k) particulars of the initial and ongoing training and assistance provided by the franchisor, and the time frames within which such training and education must be provided by the franchisor;
  - (l) the duration and the terms of the renewal of the franchise agreement;



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- (m) if the franchise agreement provides that a franchisee must directly or indirectly contribute to an advertising, marketing or other similar fund, the franchise agreement must -
- (i) specify the amount, or if expressed as a percentage, the method of calculation of such contribution;
  - (ii) stipulate that within 3 (three) months after the end of the last financial year, the franchisor will provide a franchisee with a copy of an audited financial statement which reflects the fund's receipts and expenses for the last financial year, including amounts spent, and the method of spending on advertising and/or marketing of franchisees and the franchise system's goods and services, but it must relate to intellectual property and/or system branding,
  - (iii) stipulate that, in addition to subparagraph (ii), the franchisor must for every 3 (three) months period make financial management accounts relating to the funds available to franchisees;
  - (iv) stipulate that moneys in the fund may not be spent on advertising and marketing of the franchisor's franchises for sale;
  - (v) be accompanied by a certificate of a registered accountant or accounting officer, as the case may be, confirming that the fund's account has been audited and that the statements to the best of his or her knowledge provide a true reflection of the matters stated in this subregulation (m);
  - (vi) stipulate that a franchisee can request a copy of the statement and certificate issued in terms of or statements or audited for purposes of paragraph (v), and that the franchisor must within 14 (fourteen) days of such request provide such copies;
  - (vii) contain a clause that any contribution to such a fund will be deposited in a separate bank account and used only for purposes of the fund;
  - (viii) contain a clause specifying the franchisor's contribution to such fund, if any; and
  - (ix) a clause providing that the franchisor and or franchisor associated franchised businesses do not enjoy any direct or indirect benefit not afforded to independent franchisees;
- (n) the effect of the termination or expiration of the franchise;

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- (o) extension or renewal terms, or whether there is no option to renew or extend the agreement;
- (p) a written explanation of any terms or sections not fully understood by the prospective franchisee upon the prospective franchisee's written request;
- (q) the franchisor's legal name, trading name, registered office and franchise business office, street address, postal address, e-mail address, telephone number and fax number;
- (r) the name, identity number, cellular telephone number, e-mail address, town of residence, job titles and qualifications of the franchisor's executive officers;
- (s) except where the franchisor is a company listed on a stock exchange, details of any proprietor, member or shareholder if they are different from the persons referred to in paragraph (r);
- (t) particulars of any restrictions to be imposed on the franchisee;
- (u) the nature and extent of the franchisor's involvement or approval in the process of site selection;
- (v) a summary of the terms and conditions relating to termination, renewal, goodwill and assignment of the franchise;
- (w) a summary of the main obligations of the franchisor in respect of initial and ongoing training to be provided;
- (x) a description of how any deposits paid by the prospective franchisee deposited into a separate bank account will be dealt with;
- (y) full particulars of the financial obligations of the franchisee in terms of the franchise agreement or otherwise related to the franchised business including -
  - (i) the initial fee payable to the franchisor on the signing of the franchise agreement, including the purpose for which it is to be applied;
  - (ii) the funds required to establish the franchised business including, purchase or lease of property, site conversion costs, décor and signage, equipment, furniture, hiring and training of staff, opening stock, legal and financial charges, as may be applicable;
  - (iii) the initial working capital setting out the basis on which it is calculated;
  - (iv) the total investment required including at least, the upfront fee, establishment costs, initial working capital and any other funding;

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- (v) a clear statement as to whether or not any expenses, any salary/wages of employees of the franchised business and the costs of servicing loans are included in the purchase price.
- (vi) the amount of funding that is available from the franchisor, if any, and the applicable conditions;
- (vii) the total amount that the franchisee must contribute towards the necessary funding before borrowing; and
- (viii) ongoing amounts payable to the franchisor, with details as to -
  - (aa) whether the amounts are fixed or variable;
  - (bb) whether all or part of the amounts are built into the cost of goods or services that must be purchased from the franchisor or other preferred suppliers;
  - (cc) the dates, or intervals, at which the amounts fall due (e.g. three months after trading by the franchisee commences); and
  - (dd) if any fee is payable in respect of management services provided by the franchisor, details of such services.

**Disclosure document for prospective franchisee**

- 3.(a) Every franchisor must provide a prospective franchisee with a disclosure document, dated and signed by an authorised officer of the Franchisor, at least 14 days prior to the signing of a franchise agreement, which as a minimum must contain -
- (i) a viability statement given by the franchisor's owners, directors or principals, as the case may be, containing key financial information regarding the turnover and net profit of the franchisor;
  - (ii) the number of individual outlets franchised by the franchisor;
  - (iii) a description of the growth of the franchisor's turnover, net profit and the number of individual outlets, if any, franchised by the franchisor during the period of 12 (twelve) months prior to date on which the prospective franchisee receives a copy of the disclosure document;
  - (iv) a formula and a calculation that the franchisee may use to calculate the maximum selling price of the franchised business, should the franchisee wish to sell its business in the future, and the factors and assumptions on which it is based;

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- (v) a statement to the effect that any deposits paid by the prospective franchisee will be deposited into a separate bank account and dealt with as provided for in the franchise agreement;
  - (vi) a statement by certifying that there have been no significant or material changes in the company's or franchisor's financial position since the date of the accounting officer or auditor's certificate and the company or franchisor has reasonable grounds to believe that it will be able to pay its debts as and when they fall due;
  - (vii) written projections in respect of levels of potential sales, income, gross or net profits or other financial projections for the franchised business or franchises of a similar nature with particulars of the assumptions upon which these representations are made.
- (b) Each page of the disclosure document contemplated in subregulation (a) above must -
- (i) be qualified in respect of the assumptions contained therein; and
  - (ii) carry a statement to the effect that such projections in no way represent any form of guarantee or undertaking by the franchisor to the franchisee or any third party that any figures set out therein will be achieved.
- (c) The disclosure document contemplated in subregulation (a) above must be accompanied by a certificate on an official letterhead from a person eligible in law to be registered as the accounting officer of a close corporation, or the auditor of a company, as the case may be, certifying that -
- (i) the business of the franchisor is a going concern; and
  - (ii) to the best of his or her knowledge, the assets of the franchisor's business exceed its liabilities;
  - (iii) to the best of his or her knowledge the franchisor is able to meet its current and contingent liabilities;
  - (iv) the franchisor is capable of meeting all of its financial commitments in the ordinary course of business as they fall due; and
- the franchisor's audited annual financial statements for the most recently expired financial year have been drawn up -
- (aa) in accordance with generally accepted accounting principles;
  - (bb) except to the extent stated therein, on the basis of accounting policies consistent with prior years;
  - (cc) in accordance with the provisions of the Companies Act (No. 71 of 2008), and all other applicable laws; and

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- (dd) fairly reflect the financial position, affairs, operations and results of the franchisor as at that date and for the period to which they relate.
- (d) The disclosure document contemplated in subregulation (a) above must be accompanied by -
- (i) a list of current franchisees, if any, and of outlets owned by the franchisor, stating, in respect of any franchisee -
    - (aa) the name under which it carries on business;
    - (bb) the name of its representative;
    - (cc) its physical address; and
    - (dd) its e-mail and cellular telephone number, together with a clear statement that the prospective franchisee is entitled to contact any of the franchisees listed, or alternatively to visit any outlets operated by a current franchisee to assess the information disclosed by the franchisor and the franchise opportunity offered by it;
  - (ii) an organogram depicting the support system in place for franchisees;
  - (iii) a copy of the most recent black economic empowerment rating certificate of the franchisor issued by an accredited agency, or, if the franchisor does not comply with applicable black economic empowerment requirements, the franchisor must disclose its strategy in respect of black economic empowerment, setting out the time period within and the manner in which it intends to compliance with such requirements.

**Mechanisms to block direct marketing communication**

4. (1) For purposes of section 11(1) of the Act, if a consumer has -
- (a) in writing informed any other person; or
  - (b) placed any communication or sign on a postal box or other container for mail, indicating that he or she does not wish to receive any material related to direct marketing, no person may place or attach any such material, in whichever physical format, in or on or near the postal box, container or premises of the consumer.
- (2) The phrase "no junk mail" or any translation thereof in an official language of the Republic is sufficient to meet the requirements of subregulation (1).

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- (3) For purposes of section 11(6) of the Act, the following principles are required as a minimum for the operation of a registry contemplated in subsection (3) of section 11:
- (a) the registry must accommodate all persons in the Republic and cover the whole geographical area of the Republic;
  - (b) the registry must at all times be accessible to all persons in the Republic in order to register a pre-emptive block via a postal address, physical address, facsimile number, website or e-mail address, without payment of any fee, but the consumer must pay the cost of the type of communication of his or her choice to the provider of the means of communication chosen by the consumer;
  - (c) a consumer may register -
    - (i) his or her name, identification number, passport number, telephone number, facsimile number, e-mail address, postal address, physical address, a website uniform resource locator ("URL");
    - (ii) other global address for any website or web application or site on the World Wide Web;
    - (iii) any combination of the media or addresses contemplated in paragraphs (i) and (ii);
    - (iv) a pre-emptive block for any time of the day or any day of the year; or
    - (v) a comprehensive prohibition for any medium of communication, address or time whatsoever,in his or her sole discretion, as the factor which triggers the pre-emptive block contemplated in section 11(3) of the Act;
  - (d) the administrator of the registry may not under any circumstances whatsoever provide, sell, or otherwise dispose of any information contemplated in subregulation (c) to anyone, including any organ of state, except with the written and express permission of the consumer concerned, by order of a court of law or the operation of law;
  - (e) the administrator of the registry may on receipt of a written application only confirm whether or not a pre-emptive block has been registered in respect of a particular name, identity number, fixed line telephone number, cellular telephone number, facsimile number, pager number, physical address, postal address, e-mail address, website uniform resource locator (URL) or global positioning system co-ordinates submitted by the direct marketer, and may not provide any

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- detail to the direct marketer in respect of any such name, number, address, URL or co-ordinate ;
- (f) a direct marketer must without exception assume that a comprehensive pre-emptive block has been registered by a consumer unless the administrator of the registry has in writing confirmed that a pre-emptive block has not been registered in respect of a particular name, identity number, fixed line telephone number, cellular telephone number, facsimile number, pager number, physical address, postal address, e-mail address, website uniform resource locator (URL) or global positioning system co-ordinates submitted by the direct marketer for purposes of subregulation (e);
  - (g) the administrator of the registry must provide a consumer with a copy of an application contemplated in subregulation (e) as well as a copy of the administrator's reply, the identity and registered address of the direct marketer who has submitted that application, and the name and contact details of the responsible person contemplated in subregulation (h);
  - (h) every direct marketer must register with the administrator of the registry as such, and must supply his, her or its postal and physical business address, telephone number, facsimile number, e-mail address, and the name of a person who is responsible for any applications to be lodged under this regulation, and the telephone number, facsimile number, e-mail address of that responsible person;
  - (i) every direct marketer must annually on the date of registration in writing confirm the details contemplated in subregulation (h);
  - (j) the registry may not accept an application from a direct marketer who has not been registered by the administrator as a direct marketer as provided for in subregulation (h) or confirm the details as contemplated in subregulation (i);
  - (k) the administrator of the registry must refuse to provide confirmation as contemplated in subregulation (e) if a direct marketer has contravened section 11 of the Act or this regulation or the rules of the registry, as the case may be;
  - (l) the administrator of the registry must at any time allow an employee of the Commission or an employee of the Department authorised in writing by the Director-General or a Deputy Director-General of the Department to inspect any records relating to the registry, and allow him or her to make excerpts or copies of such records;

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- (m) the prohibition contained in subregulation (e) does not apply in respect of information requested by a consumer him or herself;
  - (n) the administrator of the registry must pro-actively and to the satisfaction of the Commission put in place sufficient security arrangements to prevent the manipulation, theft or loss of data in the registry;
  - (o) the administrator of the registry must pro-actively put in place screening and validation processes in respect of any person applying to register as a direct marketer;
  - (p) the administrator of the registry must comply with any law providing for the protection of personal information or the protection of privacy;
  - (q) for purposes of consumers under the age of 18 (eighteen) years, only his or her parent or legal guardian may act on his or her behalf in respect of these regulations, despite that consumer's requests or approvals given to a direct marketer; and
  - (r) the administrator of the registry must from time to time in all official languages conduct a public information campaign as required and approved by the Commission.
- (4) In the event that the Commission recognises a registry as authoritative as contemplated in section 11(3) of the Act, the Commission must enter into an agreement with the administrator of that registry *inter alia* to -
- (a) expressly agree and confirm that the Commission, despite anything to the contrary, remains the sole custodian of all information collected and that the administrator has no rights or legitimate expectations whatsoever in respect of the use, disposal, retention or publication of all information whatsoever collected by the administrator of the registry during the period of the agreement, and that the Commission at all times ultimately remains in control of the registry;
  - (b) ensure full compliance with the Act, this regulation and all other relevant law;
  - (c) ensure, with appropriate sanction, that the administrator of the registry or any of its shareholders, members, affiliates or interested parties may not financially or otherwise in any way whatsoever benefit from administering the registry other than receiving payment from the Commission for rendering that service;
  - (d) ensure the operation of, to the satisfaction of the Commission, screening and validation processes in respect of any person -
    - (i) applying to register as a direct marketer;



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- (ii) employed or engaged by the administrator to work with information collected in the registry;
- (e) ensure that appropriate and effective mechanisms, procedures and processes are continuously maintained by the administrator to ensure the availability, safety, retention and physical and moral integrity of all information collected and administered by the administrator, to the satisfaction of the Commission;
- (f) provide the Commission and the Department with full and immediate access to the whole of the registry, and the premises and apparatus in or on which it is retained or backed up;
- (g) provide that the Commission may at any time in its sole discretion and for any reason whatsoever without notice terminate the agreement;
- (h) provide that the administrator of the registry must immediately upon termination of the agreement, in respect of all information whatsoever collected by the administrator of the registry during the period of the agreement to the Commission, as directed by the Commission, -
  - (i) surrender all information whatsoever that it has collected during the period of the agreement to the Commission in any format directed by the Commission;
  - (ii) fully and in the utmost good faith co-operate with the Commission to ensure the uninterrupted availability of the registry to the general public and to direct marketers;
- (i) prohibit the retention by the administrator of copies of any information collected by it in any format whatsoever;
- (j) provide for adequate controls and oversight mechanisms;
- (k) provide for verifiable service levels and standards;
- (l) provide for appropriate and effective sanctions should applicable law and the agreement in any way not fully be complied with by the administrator of the registry;
- (m) provide for effective mechanisms for the general public to report problems with the administration of the registry to the Commission;
- (n) provide for the way in which the administrator may publish and market the recognition of its registry as authoritative; and
- (o) provide for any other matter the Commission deems necessary or expedient.

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- (5) Nothing in this regulation should be interpreted as restricting the Commission's responsibility for or accountability in respect of the registry.

**Prohibited time for contacting consumers**

5. For purposes of section 12(2) of the Act, the following are days, dates, public holidays or times of days when a supplier may not engage in any direct marketing directed to a consumer at home:
- (a) Sundays or public holidays contemplated in the Public Holidays Act, 1994 (Act No. 36 of 1994);
  - (b) Saturdays before 09h00 and after 12h00; and
  - (c) all other days between the hours of 19h00 and 08h00 the following day.

**Maximum duration for fixed-term consumer agreements**

6. (1) For purposes of section 14(4)(a) of the Act, the maximum period of a fixed-term consumer agreement is 24 months from the date of signature by the consumer, subject to subregulation (3) and unless differently provided for by regulation in respect of a specific type of agreement, type of consumer, sector or industry.
- (2) For purposes of section 14(3), a reasonable credit or charge as contemplated in section 14(4)(c) may not exceed 10% of the amount which would have been payable by the consumer for the remainder of the intended fixed term, excluding interest, if any.

**Threshold for pre-authorisation of repair or maintenance services**

7. For purposes of section 15(5) of the Act, the threshold for pre-authorisation of repair or maintenance services generally is R 1.00 (One Rand) excluding value-added tax, unless differently provided for by regulation in respect of a specific type of agreement, type of consumer, sector or industry.

*Draft for public consultation - 28 October 2010***Product labelling and trade descriptions: textiles, clothing, shoes and leather goods**

8. (1) In order to assist consumers in making informed decisions or choices, for purposes of section 24(4) of the Act and subject to subregulation (2), the importation into or the sale in the Republic of the goods specified in Annexure A, irrespective of whether such goods were manufactured or adapted in the Republic or elsewhere, is prohibited unless –
- (a) a trade description, meeting the requirements of section 22 of the Act, is applied to such goods in a conspicuous and easily legible manner stating clearly-
    - (i) the country in which they were manufactured, produced or adapted;
    - (ii) in the event of a textile manufacturer, importer or seller operating in the Republic using imported greige fabric to produce dyed, printed or finished fabric in the Republic, that such fabric has been dyed, printed or finished in South Africa from imported fabric; and
    - (iii) that a locally manufactured product using imported material must state “Made in South Africa from imported materials”;
  - (b) such goods conform to the South African national standards for fibre content and care labelling in accordance with the provisions of Government Notice No. 2410 of 2000, published in the *Gazette* of 30 June 2000;
  - (c) if after such goods have been reconditioned, adapted, rebuilt or remade, whether in the Republic or elsewhere, a trade description is applied to such goods in a conspicuous and easily legible manner stating clearly that such goods have so been reconditioned, adapted, rebuilt or remade, as the case may be;
  - (d) if the goods were wholly assembled or made in the Republic, a trade description is applied to such goods in a conspicuous and easily legible manner stating “Made in South Africa.”; or
  - (e) goods are correctly labelled.
- (2) This regulation does not apply to -
- (a) textiles so small in size that labelling is not reasonably possible;
  - (b) second-hand clothing imported for charity purposes; or
  - (c) goods where the number of goods imported by a natural person does not exceed 1000 (one thousand);
- but does apply to goods imported for marketing purposes.

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- (3) This regulation does not amend or repeal or detract from any other regulation made under or in terms of any legislation.

**Product labelling and trade descriptions: genetically modified organisms**

9. (1) In this regulation, "genetically modified organism" means a genetically modified organism as defined in section 1 of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), and "genetically modified" has a corresponding meaning.
- (2) For purposes of section 24(6) of the Act, this regulation applies to all goods listed in Annexure B which contain more than 5 % of genetically modified organisms, irrespective of whether such making or manufacturing occurred in the Republic or elsewhere, and to marketing material in respect of such goods.
- (3) Any goods to which subregulation (2) applies may not be produced, supplied, imported, exported, packaged, sold, distributed or marketed unless a notice meeting the requirements of section 22 of the Act is applied to such goods or marketing material, as the case may be, in a conspicuous and easily legible manner and size stating, without change, that the goods "Contains at least 5% genetically modified organisms".
- (4) If goods listed or contemplated in Annexure B are intentionally and directly produced using genetic modification processes, the goods or marketing material, as the case may be, must be labelled, meeting the requirements of section 22 of the Act, without change, as "Produced using genetic modification".
- (5) A notice meeting the requirements of section 22 of the Act stating "Genetically modified content is below 5%" may be applied to goods listed or contemplated in Annexure B if less than 5% of the ingredients or components from which it is made or manufactured consist of a genetically modified organism.
- (6) If it is impossible or not feasible to test goods listed or contemplated in Annexure B for the presence of genetically modified organisms or ingredients, a notice meeting the requirements of section 22 of the Act must be applied to such goods or marketing material, as the case may be, in a conspicuous and easily legible manner and size, must be labelled "May contain genetically modified ingredients".
- (7) This regulation does not amend or repeal or detract from any other regulation applying to product labelling and trade descriptions of genetically modified organisms

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made under or in terms of any other legislation, nor do any such regulations detract from or prejudice this regulation.

**Disclosure of reconditioned or grey market goods**

**10.(1)** The notice contemplated in section 25(2) of the Act and meeting the requirements of section 22 of the Act must be applied -

(a) in a place on the goods and the marketing material of the goods where a consumer is likely to see that notice; and

(b) in an easily legible size and manner,

to the goods and all forms of advertising or promotion, including in-store promotions, packaging, websites and brochures, when these goods are advertised or promoted, stating clearly that they have been reconditioned, rebuilt or remade, as the case may be.

(2) The supplier must when selling the goods to the consumer -

(a) expressly draw his or her attention to the notice prescribed in subregulation (1); and

(b) in plain language explain the meaning of the notice to the consumer.

**Exemption from keeping sales records**

**11.(1)** In this section, "hawker" means a natural person lawfully engaged in the selling of goods on the street or in public places or spaces in respect of which all members of the public enjoy unrestricted and unconditional access subject only to law.

(2) For purposes of section 26(4) of the Act, any person trading as a hawker is hereby exempted from the application of subsections (2) and (3) of section 26 of the Act.

*Draft for public consultation - 28 October 2010***Information to be disclosed by intermediary**

12.(1) For purposes of section 27(3)(a) of the Act, an intermediary must disclose to a person contemplated in subparagraphs (i) and (ii) of paragraph (a) of subsection (1) of section 27, the information provided for in subregulation (2) in accordance with the provisions of subregulations (3) and (4), but this regulation does not detract from the provisions of any other applicable law.

(2) An intermediary must -

- (a) disclose his, her or its full names, physical business address, postal address, and all other relevant contact details;
- (b) provide his or her identity number, or if the intermediary is a juristic person, its relevant registration number;
- (c) if the intermediary is a juristic person, the contact details of its public officer;
- (d) specify the exact service to be rendered by the intermediary;
- (e) disclose the intermediary fee to be charged including the basis for calculating the fee, which may not be more than the fee prescribed in applicable legislation, if any;
- (f) inform the consumer of any other costs the intermediary is entitled to recover from the consumer, and under what circumstances;
- (g) specify the frequency with which the intermediary will in writing account to the consumer in respect of his, her or its mandate, which may not be less than once a month;
- (h) specify how, when and how often any amount owing to the consumer will be paid to the consumer;
- (i) disclose any information, at any relevant time, which may be relevant to the consumer when deciding whether to acquire the service rendered by the intermediary, or whether to continue with an existing service;
- (j) disclose commission, consideration fees, charges or brokerages payable to the intermediary by any other person;
- (k) provide details of any code of conduct or other standard applicable to the intermediary or the service being rendered or to be rendered, as the case may be;
- (l) disclose whether he or she or it has ever -
  - (i) been found guilty of any offence involving dishonesty;

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- (ii) been placed under sequestration, liquidation or judicial management;  
and
  - (m) disclose any other information which he or she may reasonable be aware of  
and which may be relevant.
- (3) Information provided to a consumer by an intermediary –
- (a) must be provided timeously so as to afford the consumer reasonably sufficient  
time to make an informed decision;
  - (b) which pertains to the financial aspects of the transaction, must be in writing,  
and if provided electronically, in an electronic format specified by the  
consumer, which must be a generally available format;
  - (c) must be in a clear and readable print size, spacing and format;
  - (d) must be provided in plain language, avoid uncertainty and confusion and must  
not be misleading;
  - (e) must be adequate and appropriate in the circumstances, taking into account  
the level of knowledge of the consumer;
  - (f) regarding all amounts, sums, values, charges, fees or remuneration, must be  
reflected in specified monetary terms, but where that is not reasonably  
determinable, the basis of calculation must be adequately described;
  - (g) need not be duplicated to the same consumer, unless material or significant  
changes affecting the consumer occur or become relevant at any given time;
  - (h) must be clearly distinguishable from marketing or promotional material and set  
out the applicable rights and responsibilities of the consumer clearly with  
avoidance of unclear technical or legal language and, where the latter must  
necessarily be used, with proper explanations thereof.
- (4) An intermediary must immediately in writing disclose to a consumer the existence of  
any circumstance or any personal interest in the relevant service or goods which  
gives rise or may give rise to an actual or potential conflict of interest, or perception of  
conflict of interest, in relation to the intermediary, and the intermediary must take all  
reasonable steps to ensure fair treatment of the consumer.

**Records to be kept by intermediary**

- 13.(1) For purposes of section 27(3)(b) of the Act, an intermediary must for a period of three  
years retain a copy of -

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- (a) any information contemplated in subregulations (2) and (3) of regulation 12;
  - (b) any written instruction given or sent by a consumer to the intermediary;
  - (c) if applicable, maintain a record of advice furnished to a consumer which must reflect the basis on which the advice was given, and in particular-
    - (i) a brief summary of the information and material on which the advice was based;
    - (ii) the products which were considered;
    - (iii) the products recommended with an explanation of why the product or products were recommended.
- (2) An intermediary must take all reasonable steps to keep all records and documentation safe from destruction, and must if records are lost or destroyed, make a statement under oath or affirmation explaining the reasons for or the circumstances of the loss or the destruction.
- (3) An intermediary may keep records in an appropriate electronic or recorded format, which must be easily accessible and readily reducible to written or printed form.

**Promotional competitions**

- 14.(1) For purposes of section 36(11) of the Act, a promoter of a promotional competition requiring a consumer to enter the competition by way of a short message service ("SMS") or multimedia messaging service ("MMS"), or any other application providing communication by way of a mobile telephone or similar device using full duplex two-way radio telecommunications over a cellular network of base stations, may not charge a fee for that service or application exceeding the minimum fee normally payable by the general public on the network or via the service provider chosen by the consumer in respect of an ordinary SMS or MMS.
- (2) Any provision in the rules of a promotional competition requiring the prize winner to -
  - (a) permit the use of his or her image in marketing material; or
  - (b) participate in any marketing activity,without affording him or her the opportunity to decline an invitation to do so or informing him or her of the right to decline such an invitation, is null and void.
- (3) The monetary threshold of prizes for the purpose of excluding competitions with low-value prizes from the definition of "promotional competition" for purposes of section 36(11)(a) is R 1.00 (One Rand).



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- (4) The promoter must ensure that a chartered accountant, registered auditor, admitted attorney or commissioner of oaths conducts the competition and must be reported on through the promoter's internal audit reporting procedures.
- (5) For purposes of section 36(11)(b) of the Act and subject to subregulation (3), a promoter must, for a period of at least five years, retain -
- (a) full details of the promoter, including identity or registration numbers, as the case may be, addresses and contact numbers;
  - (b) the rules of the promotional competition;
  - (c) a copy of the offer to participate in a promotional competition contemplated in section 36(5);
  - (d) the names and identity numbers of the persons responsible for conducting the promotional competition;
  - (e) a full list of all the prizes offered in the promotional competition;
  - (f) a representative selection of materials marketing the promotional competition;
  - (g) a list of all instances when the promotional competition was marketed, including details on the dates, the medium used and places where the marketing took place;
  - (h) the names and identity numbers of the persons responsible for conducting the selection of prize winners in the promotional competition;
  - (i) in the case of a prize exceeding R 1.00 (One Rand) in value, determined by reference to what a consumer would in the ordinary course of business pay to purchase the prize, an acknowledgment of receipt of the prize signed by the prize winner, and his or her identity number, and the date of receipt of the prize;
  - (j) declarations by the persons contemplated in paragraph (d) made under oath or affirmation that the prize winners were to their best knowledge not employees, agents or consultants of the promoter or marketing service providers in respect of the promotional competition, or the spouses, life partners, business partners or immediate family members;
  - (k) a copy of the report contemplated in subregulation (6).
- (6) For purposes of section 36(11)(b) of the Act, a promoter must compile a full report on the conduct and outcome of a promotional competition, detailing as a minimum -
- (a) the basis on which the prize winners were determined;

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- (b) the summary describing the proceedings to determine the winners, including the names of the persons participating in determining the prize winners, the date and place where that determination took place and whether those proceedings were open to the general public;
  - (c) whether an independent person oversaw the determination of the prize winners, and his or her name and identity number;
  - (d) the means by which the prize winners were announced and the frequency thereof;
  - (e) a list of the names and identity numbers of the prize winners;
  - (f) a list of the dates when the prizes were handed over or paid to the prize winners;
  - (g) in the event that a prize winner could not be contacted, the steps taken by the promoter to contact the winner or otherwise inform the winner of his or her winning a prize; and
  - (h) in the event that a prize winner did not receive or accept his or her prize, the reason for his or her not so receiving or accepting the prize, and the steps taken by the promoter to hand over or pay the prize to that prize winner, and must record the name, identity number and contact details of the person compiling the report and the date thereof.
- (7) A promoter must upon request in writing by the Commission forthwith at his, her or its own expense submit any of the documents or materials contemplated in subregulations (5) and (6) so requested to the Commission.

**Cautionary statement for alternative work schemes**

15. For purposes of section 37(2)(a) of the Act, any advertisement promoting any alternative work scheme contemplated in section 37 (1) of the Act must -
- (a) without detracting from any other provision applicable to advertising or promotion;
  - (b) in a legible size and manner and in a prominent place where it is likely to be seen by a consumer; and
  - (c) without change,
- contain the following notice:

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“Results, examples and testimonials promised or contained in this advertisement may be out of the ordinary and should not be taken to provide guarantees with regard to the availability of work, business, projected income or any other benefit promised or implied. There is no guarantee whatsoever that you will achieve the results or outcomes promised or implied in this advertisement. You are strongly urged to ascertain or obtain, at your own cost, assistance to ascertain the probable results or outcomes based on realistic facts and assumptions and all currently relevant and applicable circumstances.”

**Interpretation: Fraudulent Schemes and Offers**

16. Regulations 17 to 22 must be read together with sections 42(8) and 51 of the Act.

**Speculative Software**

- 17.(1) In this regulation, unless the context indicates otherwise -

“**consumer**” means any natural person to whom speculative software is offered, supplied or made available;

“**person**” excludes the Johannesburg Securities Exchange;

and

“**speculative software**” means software which claims to assist consumers to understand securities and exchanges and to trade profitably in securities on exchanges and/or software which claims to predict the outcome of horse races, and this software is available on 3½-inch floppy disks, compact disks or via the internet.

- (2) No person may offer or sell speculative software to consumers unless the following statements are included, without alteration in an agreement entered between a consumer and a supplier:
- (a) “I, (initials and surname of the consumer) understand that I am entitled to cancel this contract within five days of the date on which I signed this contract excluding the day of signature as well as Saturdays, Sundays and public holidays. This cancellation must be conveyed in writing by me and must be received by the supplier or any employee of the supplier, within the five-day period, at the physical address of the supplier. ‘In writing’ includes the use of

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any electronic means to transmit messages, provided a hard copy of the message can be reproduced without alteration by the supplier.”;

- (b) (i) “I prefer to pay the purchase price in a once-off payment, whether by cash, cheque or a debit on my credit card.”;
- (ii) “I prefer to make monthly repayments on my debit card. I understand that should I select this option, the supplier will be credited with the full purchase price, and that I will have to make monthly repayments, including interest at the prevailing interest rates, to the bank.”

*(delete the option which is not applicable).*

- (c) “The terms, conditions and costs involved for both options were explained to me and a copy of the contract, which include the statements above as well as the signed statement by the supplier that I will be refunded the money paid by me should I cancel this contract within five days, was handed to me.”;

(signature of the consumer).

- (d) “I have not made any verbal promises to the consumer which are not printed in any official literature of the firm. Upon termination of the contract by the consumer as set out above, I shall, within five days as defined above, refund all payments made by the consumer or reverse any credit transaction.”

(signature of the supplier or authorised agent)”

**Prohibition on intermediary arranging transport contracts**

**18.** No person may enter into or act upon any agreement for the use of a truck, minibus or any other vehicle, whereby a person, the client, gives or pays to or on behalf of another person, the intermediary, a remuneration of whatever nature, whether goodwill or any other form of consideration, and the intermediary undertakes to arrange transport contracts, whether of cargo or passengers, for execution by the client, unless that agreement expressly -

- (a) prohibits any advance payment by the client to the intermediary; and
- (b) provides that payment by the client to the intermediary in respect of the agreement may be made only from profits generated by the execution of transport contract concerned.

*Draft for public consultation - 28 October 2010***Public property syndication schemes**

19.(1) In this regulation, unless the context indicates otherwise-

**"promoter"** means a company and its directors, close corporation and its members, partnership and its partners, trust and its trustees and all other persons who are actively involved in the forming and establishment of a public property syndication scheme, and a reference to a company and its directors also refers to a close corporation and its members, or to a trust and its trustees, or to a partnership and its partners or to a sole proprietorship, or their representatives;

**"prescribed information"** means the prescribed information contemplated in subregulation (4)(b);

**"public property syndication scheme"** means the assembly of a group of investors invited, by word of mouth or through the use of electronic and print media, radio, television, telephone, newspaper and magazine advertising, brochures and direct mail, to participate in such schemes by investing in entities, which could be companies, close corporations, trusts, partnerships or individuals, whose sole asset or assets are commercial, retail, industrial or residential properties, and, where investors share in the profits and losses in these properties and or enjoy the benefits of net rental growth therefrom through proportionate share of income;

and

**"valuer"** means a professional valuer or professional associated valuer registered in terms of section 20(a) of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), with at least five years' experience in the field of attending to valuations of properties.

(2) Promoters may not -

- (a) withhold the prescribed information, in part or otherwise, from investors or potential investors in a public property syndication scheme; or
- (b) include any term, condition or provision in the disclosure document that excludes, limits or purports to exclude or limit the legal liability of the syndication promoter towards the investor in respect of any malicious, intentional, fraudulent, reckless or a grossly negligent act of the syndication promoter, his or her employees, representatives, contractors or subcontractors

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or any other person used by the syndication promoter or recommended by him or her to the investor or prospective investor.

- (3) Promoters must make available the prescribed information to investors who invest in or intend investing in public property syndication schemes, and the prescribed information must be made available to investors or potential investors in a disclosure document, the details of which are set out in subregulation (4)(b).
- (4)(a) Statements, presentations and descriptions must not convey false or misleading information about public property syndication schemes and/or omit material information during the public offer of shares. Material information is information which an investor needs in order to make an informed decision.
- (b) Investors and potential investors must be informed in writing that -
- (i) public property syndication is a long-term investment, usually not less than five years;
  - (ii) there is a substantial risk, in that the investor may not be able to sell his or her shares should he wish to do so in the future; and
  - (iii) it is not the function of the promoter to find a buyer should the investor wish to sell his shares and that it is the investor's responsibility to find his own buyer.
- (5)(a) Investors must be informed in writing that all funds received from them prior to transfer or finalisation must be deposited into the trust account of a registered estate agent, a admitted attorneys or a certified chartered accountant, provided that such trust account is protected by legislation. Individual investors are to be given written confirmation thereof, and it must be clearly stated who controls the withdrawal of funds from that account. Such an account must be designated "XYZ Attorneys/auditors/estate agents Trust Account - the XYZ syndication". In the event of investors paying by cheque, promoters must ensure that the name of the payee is printed in bold on the application forms.
- (b) Funds must only be withdrawn from the trust account in the event of registration of transfer of the property into the syndication vehicle; or underwriting by a disclosed underwriter with details of the underwriter; or repayment to an investor in the event of the syndication not proceeding.
- (c) It must be disclosed whether the property has been bought conditionally or by option, and in either or both cases full details of any condition and or option on

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- which the property was purchased must be disclosed together with the effective date of commencement of the syndication.
- (d) Any direct or indirect interest, which a promoter and or any of his or her family member or any other person who is actively involved in the promotion of that syndication has in the property to be purchased, must be disclosed.
  - (e) It must be disclosed how any capital shortfall will be dealt with.
  - (f) The method of raising the necessary capital to fund the acquisition of the property and the syndication and how any disbursements will be dealt with prior to transfer, must be disclosed.
  - (g) Provision must be made for interest earned to be paid on investors' funds deposited as provided for in paragraph (a) prior to the effective date of the transfer of the property.
- (6)(a) Full details of the promoter of the syndication scheme, such as name, registered company or close corporation numbers, directors, addresses, telephone and fax numbers and e-mail address must be given.
- (b) Full disclosure must be made as to whether the promoter is acting as a principal in the scheme or as an agent for someone else. If the promoter is acting as an agent, he or she must provide full details of the principal.
- (c) The disclosure document, which is to be dated and signed by the promoter, must contain a statement of proper due diligence (commercially and legally) with regard to the property and its tenants prior to the unconditional purchase thereof and he or she must state that this was done and that he or she is satisfied with the results thereof.
- (7)(a) Full details of the syndication vehicle must be disclosed, including the names and addresses, telephone and fax numbers and the e-mail addresses of the property manager, the company secretary, the board of directors, the auditor, the attorney and the valuer.
- (b) In addition full disclosure must be made of the fee structure of the management company or manager(s) and any appointments or contracts relating to the syndication.
- (8)(a) Full disclosure must be made of the type of company structure to be used for the syndication scheme and reference must be made to the legislation governing the company structure chosen. Reference must be made to the company registration number, or advising that the company is still to be formed, the memorandum, the articles of association, the shareholder's agreement, and where applicable, the

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partnership agreement, a deed of trust and the founding statement. The disclosure must state whether a shareholders' agreement exists or not, and if such an agreement exists then it must be attached as an annexure to the disclosure document.

- (b) Full details must be given of the financial year end, the shares to be issued, the shares to be issued in future, control over unissued shares, shareholders' loans and debentures, a pro-forma balance sheet on acquisition (or in the case of new developments, on completion), the income distribution plan, minimum and maximum shareholders or participation quota, any special voting rights, existing and planned gearing, borrowing powers and how they are to be exercised, external borrowing facilities available to investors to finance the acquisition of shares in the investment company and the amount provided in the syndication structure for working capital and reserves.
- (9)(a) Details must be given of -
- (i) the title deed and its number;
  - (ii) material servitudes or encumbrances if further development is considered with regard to the property;
  - (iii) zoning and the relevant town planning regulations insofar as further development is intended with regard to the property;
  - (iv) additional development potential;
  - (v) the buildings erected or dates of original erection with dates of improvements (including lifts, air conditioning and roof structure) thereto, if available;
  - (vi) the physical address, locality and site area, including a map of the area; and
  - (vii) insurance cover, name of insurer, types of risks covered, amounts covered, policy due date and policy number.
- (b) In addition there must be a statement which sets out -
- (i) the cost of the property to the promoter or the syndication company including acquisition price, cost of renovations, conversion or enhancement including details of any new leases or lease renegotiations which enhance value, marketing and promotional cost fees and the promoter's entrepreneurial mark up, giving rise to the shareholding offer price in the company as at the offer date; and



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- (ii) the valuation of the property as at a date, which must be not more than three calendar months before date of the offer, undertaken by a valuer, in accordance with subregulation (13).
- (c) If the land is to be encumbered by a mortgage bond after the closing date of the offer, the promoter must disclose -
- (i) the outstanding balance owing by the mortgagor in terms of the mortgage bond including: the rate of interest, the loan repayment period and whether the bond is first ranking or otherwise;
  - (ii) the maximum amount secured by the mortgage bond;
  - (iii) the terms of the mortgage bond;
  - (iv) the identity of the mortgagee; and
  - (v) a statement to the effect that the taking up of such a loan will not be in contravention of the memorandum or articles of association of the company, close corporation, trust deed of the trust, partnership agreement of a partnership or the constitution of the public property syndication vehicle.
- (10) Full details must be given of -
- (a) any head lease agreement and subleases together with the quantum and location of any vacant space covered by such head lease and subleases, where "quantum" refers to the square meterage and the value involved;
  - (b) any gross or net rental guarantees supplied by the vendor of the property; and
  - (c) actual leases concluded with full details of space let, duration of leases, rentals, escalation rates for the leases, tenant names and security for leases, expenses recovered from tenants, lease renewal options, rental review periods and vacant space.
- (11) The income and expenditure statement must provide -
- (a) a detailed pro-forma income statement which must detail all projected expenses, contractual expenses and fees payable, gross rentals, recoveries, and projected net income for the syndicating company;
  - (b) a statement as to the long-term vacancy rate with full motivation thereof, but a nil rate is unacceptable; and
  - (c) a statement as to the extent of provision for future maintenance, with full details where applicable.
- (12)(a) Full details must be provided of -

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- (i) the basis used to calculate projections with regard to net income growth, to be based upon rental income derived from leases and or market rental growth, less specified and disclosed, as well as reasonably expected expense projections;
  - (ii) the basis used to calculate projections on capital value, to be stated in Rand currency as estimates, provided they are accompanied by stated, specific assumptions showing how those values are determined, but specific projections as to capital growth are not permissible, taking into account the many variables influencing property values; and
  - (iii) whether the validity of the assumptions used in determining projections is based on fact or opinion.
- (b) Should a specific return be projected, it should be calculated with reference to the syndication value.
- (13)(a) The name of the valuer and his or her qualifications and experience must be disclosed.
- (b) The valuer must take cognisance of the state of repair and condition of buildings and improvements.
- (c) The valuer must take cognisance of the municipal valuation of the property concerned.
- (d) For purposes of paragraph (e) -
- (i) "open market value" contemplated in paragraph (d)(ii) means the best price at which the property might reasonably be expected to have been sold unconditionally for a cash consideration on the date of valuation assuming -
    - (aa) a willing and informed seller and a willing and informed buyer who are not connected persons as defined in section 1 of the Value-Added Tax Act, 1991 ( Act No. 89 of 1991); and
    - (bb) that, prior to the date of valuation, there has been a reasonable period, having regard to the nature of the property and the state of the market, for the proper marketing of the interest, for the agreement of price and terms and for the completion of the sale; and
    - (cc) that no account is taken of any additional bid by a purchaser with a special interest.
  - (ii) "syndication value" contemplated in paragraph (d)(ii) is the aggregate sum of the shareholders' total interest in the syndication vehicle in terms of the

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disclosure document, recognising that this sum includes an appropriate premium over and above the open market value of the property asset, and the quantum of the premium must be stated.

- (e) A report from a valuer for purposes of subregulation (3) must incorporate -
- (i) an introduction, stating that the valuer has been instructed by the promoter or whoever instructed the valuer and that such valuer has a valid professional indemnity policy, as well as the amount of such cover;
  - (ii) the valuation undertaken by the valuer, which must be either an open market value or syndication value;
  - (iii) the title deed description;
  - (iv) municipal information such as town planning regulations and the municipal valuation of the land and improvements;
  - (v) the location of the property;
  - (vi) a brief description of the building, such as the method of construction, materials, type, grade and size;
  - (vii) the insurance replacement cost of the building in accordance with the following definition: The estimated cost of replacing the asset, as it exists, as if new, at prices applicable on the valuation date, inclusive of professional fees, but exclusive of any finance charges, demolition costs or emergency services costs;
  - (viii) tenancy details, including names of tenants, rentable areas occupied and or vacant, rental escalations, and lease expiry dates;
  - (ix) expenses such as the level of anticipated initial annual operating expenses and the rate of collection/commission;
  - (x) the net income, the anticipated net rental income in the first year and comments on any unusual growth or anticipated vacancies in the next three years, and what assumptions are made as to the re-letting of space over which leases are expiring or are vacant, including anticipated re-letting commission and tenant installation costs;
  - (xi) the capitalisation rate, meaning the appropriate rate at which the market net income is capitalised, and evidence to this effect;
  - (xii) valuations of the property as at a date, which must be not more than three calendar months before date of the offer, stating whether the open market

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- value or syndication value has been used, and two valuations must be submitted and must be undertaken and signed by the respective valuers;
- (xiii) full details about previous transactions regarding the property, including -
- (aa) in the case of a new development, the total cost thereof, including the market value of the land. The contractor or contractors are to confirm in an affidavit the total costs, including the costs of any improvements;
  - (bb) the sales history of the property for the past ten years, including details of -
    - (A) the various legal entities who owned the property according to the title deeds and the selling price of the property with each change of ownership and the relevant dates; and
    - (B) if one or more legal entities owned the property according to the title deeds, any changes in the ownership of the legal entities, the selling price of the property with each change of ownership and the relevant dates.
- (f) The fees for valuations must not be dependent upon the amount of the valuation.

**Claims against Guardian's Fund: Prohibition on alienation of rights**

20. No person may enter into or act upon any agreement whereby one person cedes to any other person, charges, sets off against any debt or alienates in any other manner, his or her right or title to, or any claim against the Guardian's Fund.

**419 schemes**

- 21.(1) Without derogating from and notwithstanding anything contained in any other legislation or law, no person may by any false pretence, and with the intent to defraud -
- (a) obtain, from any other person, in the Republic or in any other country, for himself or any other person; or
  - (b) induce any other person, in the Republic or in any other country, to deliver to any person,
- any property, whether or not the property is obtained or its delivery induced through the medium of a contract induced by false pretence.

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- (2) No person may by false pretence, and with the intent to defraud, induce any other person, in the Republic or in any other country, to confer a benefit on him or her or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for.
- (3) Without derogating from any other law, no person, being the occupier of or who is concerned with the management of any premises may cause or knowingly permit the premises to be used for any purpose contemplated in subregulations (1) or (2).
- (4) Without derogating from any other law, no person may by false pretence, and with the intent to defraud any other person, invite or otherwise induce that person or any other person to visit the Republic for any purpose connected with the contravention of this regulation.
- (5)(a) Without derogating from any other law, no person may conduct a financial transaction which involves the proceeds of a specified unlawful activity -
- (i) with the intent to promote the carrying on of a special unlawful activity; or
  - (ii) where the transaction is designated in whole or in part -
    - (aa) to conceal or disguise the nature, the location, the source the ownership or the control of the proceeds of a specific unlawful activity, or
    - (bb) to avoid a lawful transaction under South African law.
- (b) Without derogating from any other law, no person may transport or attempt to transport a monetary instrument or funds from a place inside the Republic or elsewhere or through a place outside the Republic or to a place in the Republic, from or through a place outside the Republic -
- (i) with the intent to promote the carrying on of a specified unlawful activity; or
  - (i) where the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and the transportation is designed in whole or in part -
    - (aa) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of a specified unlawful activity, or
    - (bb) to avoid a lawful transaction under South African law,
- if he or she knows or ought to know, having regard to the circumstances of the case, that the monetary instrument or funds involved in the transportation are the proceeds of some form of unlawful activity.

*Draft for public consultation - 28 October 2010***Prohibition on feasibility studies promising funding**

22. No person may offer, conduct, sell or otherwise provide an agreement for a feasibility study or a feasibility study itself which states, promises or otherwise intimates that the purchase or use of the feasibility study guarantees funding, financing, sponsorship or any other backing, whether from within the Republic or elsewhere.

**Calculation of interest for multiplication scheme**

23. For purposes of section 43(3) of the Act, the applicable REPO rate is the rate which applied at the date of the investment or commencement of participation. The effective annual interest rate will be:

$$r = \frac{R \times 1200}{C \times T}$$

Where:

- r = the effective interest rate,  
R = the interest in Rand, which is the difference between the amount paid out to the investor or participant and the amount invested,  
C = the amount invested by the investor or any amount paid by a person to become a member of a scheme, and  
T = the period of the investment in months.

**Definitions, interpretation and application: auctions**

- 24.(1) In regulations 25 to 40, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has the same meaning, and -

"**absolute auction**" means an auction at which -

- (a) goods are sold to the highest bidder without reserve;
- (b) the auction does not require a minimum bid;

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(c) the auction does not allow competing bids of any type by the seller or an agent of the seller; and

(d) the seller of the goods cannot withdraw the goods from auction after the auction is opened and there is public solicitation or calling for bids;

**"advertisement"** means any written, oral, or electronic communication that offers goods or any combination thereof by or at auction, or promotes, solicits, induces, or offers to conduct an auction or to provide auction services;

**"auction"** means a sale at which prospective purchasers are invited to bid and includes a sale at which bids are suggested and the suggested amounts progressively reduced until a bid is actually made, but does not include any process, project or matter related to a request for proposals issued by an organ of state;

**"auction house"** means a company or other juristic person which from time to time conducts auctions as part of its business;

**"auctioneer"** means the person conducting an auction, irrespective of whether he or she is doing so for his or her own account or as employee of or agent for an auction house or other person;

**"bidders' record"** means the document contemplated in regulation 32;

**"closed auction"** means an auction where the auctioneer or the owner, as the case may be, issues an invitation to take part in an auction only to a finite list of consumers;

**"defect"** means any quality, condition or situation, or lack thereof, relevant to the successful use or operation of goods or immovable property, but excludes any visible minor cosmetic flaw;

**"game"** means game as defined in section (1) of the Game Theft Act, 1991 (Act No. 105 of 1991);

**"goods"** includes, where appropriate, services;

**"livestock"** means cattle, sheep, goats, pigs, horses, mules and donkeys;

**"lot"** means any group of goods sold or offered for sale as a unit and identified as such;

**"vendor's roll"** means the document contemplated in regulation 34(4); and

**"URL"** means an operational uniform resource locator, providing access to information on the internet.

(2) Regulations 25 to 40 must be read together with section 45(6) of the Act.

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- (3) Subject to subregulation (4), these regulations apply to all auctions, irrespective of the nature of the goods offered on auction, the value of the property or the reason for conducting the auction.
- (4) These regulations do not apply to -
  - (a) transactions concluded under the auspices of a registered or licensed stock exchange or similar institution; or
  - (b) an auction where the goods for sale have been donated for sale at an auction and the proceeds of the auction are paid to a bona fide religious, educational, cultural, welfare, social or sports organisation or body which does not as its primary activity undertake commercial or business operations, but an auction conducted as a sale in execution or ordered by a court of law does not constitute an auction contemplated in paragraph (a).
- (5) Any provision in any agreement relating to goods sold or bought at an auction or advertised or offered for sale at an auction, or any agreement providing for conducting the auction itself, in conflict with these regulations, does not from the moment of its conception or conclusion, as the case may be, have any force or effect, but this subregulation must not be interpreted so as to prevent holding a person liable for any relevant contravention.
- (6) These regulations do not detract from any law providing for or related to the advertising, sale, purchase, delivery, rendering or financing of goods.
- (7) An auctioneer selling immovable property by way of auction must comply with any other applicable law in respect thereof, including legislation regulating the activities of estate agents.
- (8) An auctioneer must comply with all general provisions of these regulations as well as those applicable to the category of auction or auctioneer provided for in regulations 38 to 40.

**Mandatory advertising of auctions**

- 25.(1) Subject to regulations 39 and 40, no goods may under any circumstance whatsoever be sold by auction unless the inclusion of such a particular item or lot or service in that auction has been advertised in print or electronically in such a manner that the general public has had a reasonable opportunity to become aware of the auction, the goods on offer and of the rules governing the auction.



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- (2) The onus to prove that an auction was advertised as contemplated in subregulation (1) rests on the auctioneer.
- (3) An auctioneer must for purposes of subregulation (1) advertise the auction of a particular item or lot at least 24 hours prior to the commencement of the auction, but -
  - (a) any goods may be withdrawn at any time prior to the commencement of the auction;
  - (b) in the event of an auction where goods offered for sale include immovable property, this period must exceed five business days.
- (4) If an auction or part thereof relates to goods sold in execution or by order of court, the advertisement must clearly state that fact.

**General rules on advertising of auctions**

- 26.(1) Despite the rules and rulings of any advertising standards body, all advertising of auctions must -
- (a) be accurate; and
  - (b) provide sufficient information for a reasonable consumer to -
    - (i) understand that it relates to an auction; and
    - (ii) be able to find the place where the auction is to be held.
- (2) Advertising relating to an auction must subject to subregulation (3) -
- (a) be in a legible format and size;
  - (b) contain a reference to these regulations, together with the URL of an operational internet site where a copy of these regulations can be obtained;
  - (c) state the date, place and time of the auction;
  - (d) state the name of the auctioneer and the auction house, if any, and if registration or licensing of auctioneers or auction houses after the commencement of these regulations becomes mandatory, such registration or licensing number;
  - (e) state where the rules of auction can be obtained;
  - (f) state the particulars of the goods offered on auction;
  - (g) if applicable, state that the auction will be held over a number of days;
  - (h) state, if applicable as contemplated in section 45(4) of the Act, that a sale by auction is subject to -
    - (i) a reserved or upset price; or

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- (ii) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction; and
  - (iii) contain a reminder that all prospective bidders must register as such prior to making bids during the auction and that such registration requires proof of identity and of residence as contemplated in regulation 31(2).
- (3) The requirements of subregulation (2) do not apply to roadside advertising or classified advertising in printed newspapers, but such advertising must -
  - (a) at the top of the advertising prominently display the word "auction";
  - (b) indicate where a full advertisement as contemplated in subregulation (2)(b) can be obtained; and
  - (c) state the date, place and time of the auction.
- (4) A consumer may at any time during ordinary business hours request an auctioneer to provide him or her with access to an advertisement contemplated in subregulation (2), and the auctioneer must forthwith without charging any fee whatsoever comply with such a request, but -
  - (a) a consumer is entitled to only one free copy;
  - (b) the auctioneer may provide a URL of an operational website which will provide a copy of the full advertisement in a format generally used.
- (5) Any material or publication not meeting all of the requirements of this regulation does not constitute advertising for purposes of this regulation 25 and this regulation.
- (6) An auction may not be advertised as a "sale in execution" or use similar wording implying court action unless -
  - (a) at least 75% of the items or lots in the auction are being offered pursuant to a court order;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction;
  - (c) the advertising contains an explanation of the court order including identification of the court.
- (7) Unless all items or lots being offered at auction are pursuant to a court order, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.

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- (8) Subregulations (6) and (7) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and were clearly not purchased or attained for the purpose of resale at auction.
- (9) An auction may not be advertised as an "insolvency auction" or use similar wording implying insolvency unless -
- (a) at least 75% of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - (c) the advertising contains the order number of the Master of the High Court.
- (10) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.
- (11) Subregulations (9) and (10) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and was clearly not purchased or attained for the purpose of resale at auction.
- (12) An auction may not be advertised as "deceased auction" or use similar wording implying insolvency unless -
- (a) at least 75% of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - (c) the advertising contains the order number of the Master of the High Court.
- (13) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.
- (14) Subregulations (12) and (13) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and was clearly not purchased or attained for the purpose of resale at auction.

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- (15) An auction shall not be advertised as "divorce auction" or use similar wording implying court action unless -
- (a) at least 75% of the items or lots in the auction are being offered pursuant to a court order;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - (c) the advertising must contain an explanation of the court order including identification of the court.
- (16) Unless all items or lots being offered at the auction are pursuant to a court order, then the advertising shall clearly indicate that the auction is "with additions", "supplemented" or use similar wording.
- (17) Subregulations (15) and (16) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and was clearly not purchased or attained for the purpose of resale at auction.
- (18) No auction may be advertised as "absolute", no advertising may contain the words "absolute auction" or the word "absolute" or words with similar meaning and no auctioneer may offer or sell any goods at absolute auction unless -
- (a) there are no liens or encumbrances on the goods, except property tax obligations, easements, or restrictions of record, in favour of any person other than the seller, or unless each and every holder of each and every lien and encumbrance has in writing agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder, or that a financially responsible person in writing absolutely guarantees the immediate and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
  - (b) there is the bona fide intention at the time of the advertising and at the time of the auction to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the highest bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the goods will not be transferred to the highest bidder; and

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- (c) the rules of auction contain a binding requirement that the auction be conducted without reserve.
- (19) Subregulation (18) does not prohibit -
- (a) a secured party or other lien holder who is not the seller from bidding at an absolute auction, but such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer;
  - (b) any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to that dissolution;
  - (c) any individual party or heir of a deceased person's bona fide estate from bidding as an individual entity, apart from the selling entity, on goods being offered at auction pursuant to that estate being settled; or
  - (d) the inclusion of non-misleading advertising of certain goods to be sold at "absolute auction" and the non-misleading advertising of certain goods to be offered at auction with reserve, within the same advertisement, or for sale at the same date and place, but that advertisement must make clear, through appropriate emphasis, which goods are being offered by each method.

**Rules of auction****27.(1) An auctioneer must -**

- (a) in writing compile the rules of auction; and
  - (b) except in the case of a livestock or game auction or a closed auction, make the document available to the general public at least 24 hours prior to the commencement of the auction.
- (2) The rules of auction must, as a minimum -
- (a) on the first page of the document in large letters display the words "rules of auction", and immediately beneath that the date, place and time of the auction;
  - (b) contain the full names, physical address and contact details of the auctioneer, and where applicable, of the auction house;
  - (c) contain all mandatory information required by these regulations, and if applicable, the information contemplated in section 45(4) or (5) of the Act;

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- (d) contain a statement to the effect that the rules of auction comply with section 45 of the Act and with these regulations;
  - (e) contain the text of subsection (1), (2) and (3) of section 45 of the Act;
  - (f) provide that an auction will commence at the published time and that it will not be delayed to enable any specific person or more persons in general to take part in the auction;
  - (g) provide that a person who attends at the auction to bid on behalf of another person must produce a letter of authority meeting the requirements of regulation 32(3) in order to so bid on behalf of that person;
  - (h) contain a statement to the effect that the auctioneer has a trust account into which all moneys will be paid for the benefit of the seller, minus the agreed commission;
  - (i) contain a statement to the effect that the auctioneer will during the auction announce the reason for the auction unless that reason is the normal and voluntary disposal of goods by the owner;
  - (j) provide that a person who intends to bid at the auction must register prior to the commencement as contemplated in regulation 32(2) together with a description of the requirements for registration; and
  - (k) provide that the bidders' record contemplated in regulation 32 and the vendor roll contemplated in regulation 34(4) are available for inspection during normal hours without the charge of a fee.
- (3) The rules of auction may not -
- (a) exclude liability in respect of inaccurate information provided in the advertising of the auction;
  - (b) exclude liability in respect of the rules of auction not meeting the requirements of these regulations; or
  - (c) contain any qualification, reservation or diminution of the requirements of these regulations unless expressly provided for.
- (4) In the event that the rules of auction are amended after their initial publication, the auctioneer must expressly indicate that the new version is an amended version.
- (5) The rules of auction must be signed by the auctioneer who is going to conduct the auction and he or she must certify that the rules of auction to the best of his or her knowledge meets the requirements of this regulation.

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- (6) If on the day of the auction the auctioneer who signed the rules of auction as contemplated in subregulation (e) above is unavailable to conduct the auction, the auctioneer who then conducts the auction will be deemed to have so certified the rules of auction.
- (7) An auctioneer is personally accountable and liable for the contents of the rules of auction applicable to a specific auction.
- (8) The rules of auction need not be read out at an auction to be valid, but only if -
  - (a) the rules of auction were, where applicable, available to the general public at least 24 hours prior to the commencement of the auction;
  - (b) in the case of a livestock or game auction contemplated in regulation 39(1) are the same as for previous auctions and are generally available on the auction house or the auctioneer's website or at the auction house or the auctioneer's business premises during normal business hours;
  - (c) in the case of a closed auction, were made available to all persons to whom an invitation to take part in that auction was issued; or
  - (d) at an auction other than an internet auction, the auctioneer invites any person present to object to the rules of auction not being read upon, and nobody does.
- (9) The rules of auction may not exclude the right of inspection as contemplated in regulation 34(5).

**Auctioneer and auction house to hold and account for consumer's property**

- 28.(1) An auctioneer and auction house must at all times strictly comply with section 65(2) of the Act.
- (2) No auctioneer may sell goods on auction until he or she has first entered into a written agreement with the owner or rightful holder of such goods to be sold, whether for a specific auction or auctions on general, which agreement contains the terms and conditions upon which that auctioneer accepts the goods for sale.
- (3) An agreement contemplated in subregulation 2 must as a minimum contain -
  - (a) the name and physical address of owner of the goods to be sold or the owner's agent or the rightful holder thereof;

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- (b) if the goods are to be sold at a specific auction, the date of the auction or if the goods are to be sold at a number of auctions, a termination date of the agreement;
  - (c) the address of the premises where the auction is to be held;
  - (d) the rules of auction;
  - (e) a description of all of the fees to be charged by the auctioneer or the auction house, which must include commissions, storage, advertising and labour, or a method by which such fees will be determined;
  - (f) an explanation of the settlement of the auction that includes the disbursement of interest money, if applicable;
  - (g) a statement indicating whether the auction is a reserve auction or not;
  - (h) a brief description of the goods to be sold;
  - (i) if the sale is of goods at absolute auction, a statement affirming that the seller of the goods has a bona fide intention to transfer ownership of the property to the highest bidder;
  - (j) an exact copy of section 65(2) of the Act;
  - (k) an exact copy of subsections (1) to (5) of section 45 of the Act.
- (4) An auctioneer must retain a copy of every agreement contemplated in subregulation 2 signed by the owner or rightful holder of the goods to be auctioned for a period of at least three years from the date of the auction.
- (5) In performing the duties of an auctioneer, every auctioneer -
- (a) is the agent of the owner or rightful holder of the goods for all aspects of an auction;
  - (b) must follow all lawful and reasonable requests of the owner or rightful holder of the goods or immovable property sold at auction;
  - (c) must perform his or her duties so that the highest or most favourable offer made by a bidder is accepted; and
  - (d) must otherwise perform his or her duties in accordance with the highest standards applicable to auctions.
- (6) An auctioneer must keep abreast of current market conditions of goods at all times in order to be in a position to advise and perform services for his or her clients to the best of his or her ability.
- (7) An auctioneer -
- (a) owes a duty of care towards his or her client;



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- (b) must at all times preserve a professional, confidential relationship with his or her client;
  - (c) must timeously reveal estimated costs and services for conducting the auction; and
  - (d) if he or she is aware or ought reasonably to be aware of any risks associated with the auction of particular goods, he or she must forthwith disclose such risks to the client.
- (8) All unsold property must be returned to the owner or rightful holder immediately upon the completion of an auction unless otherwise agreed.
- (9) The owner or rightful holder must be provided with an itemised account of all goods sold immediately upon completion of the auction unless otherwise agreed, which as a minimum must contain -
- (a) the item or lot sold,
  - (b) amount received for the sold item or lot; and
  - (c) the name of the buyers of every item or lot.

**Disqualification to conduct auction**

- 29.** A person who -
- (a) has been found guilty by a court of law, whether in the Republic or elsewhere, of an offence of which fraud or dishonesty is an element, or of any other offence for which such person has been sentenced to imprisonment exceeding five years without the option of a fine;
  - (b) is of unsound mind; or
  - (c) is an unrehabilitated insolvent,
- may not conduct an auction or in any other way act as an auctioneer or hold him or herself out as an auctioneer.

**Prohibited behaviour**

- 30.** An auctioneer may not -
- (a) charge or receive any fee or commission in respect of the sale of goods unless the goods have been delivered to the purchaser or registered in the

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- purchaser's name, as the case may be, or the purchaser has agreed to an arrangement which will ensure the delivery of the goods in question;
- (b) accept a bid from a person unless he or she is registered in the Bidders' Record as contemplated in regulation 32;
  - (c) set a minimum or reserve price without the express written permission of the seller;
  - (d) remove an item or lot from an auction without the express written permission of the seller;
  - (e) allow bidding on an item or a lot if the auction thereof has not been advertised as contemplated in regulations 25 and 26;
  - (f) during an auction deviate from the sequence of goods as advertised;
  - (g) knowingly misrepresent, or cause or permit to be misrepresented the value, composition, structure, character or quality or manufacture of the goods put up for sale at an auction;
  - (h) hinder the access of any person to any advertisement contemplated in these regulations, rules of auction or vendor's roll; or
  - (i) pay any other person in order to be appointed as auctioneer, whether in general or for a particular auction or in respect of any specific goods.

**False entry in auction record**

- 31.(1)** Without detracting from any other applicable law, an auctioneer, including an employee of the auctioneer or the auction house, may not knowingly enter in any record kept or required to be kept by the auctioneer under or in terms of these regulations or any other applicable law, any name or other details other than the real name and details of the actual successful bidder.
- (2) If any name or details other than the real name and details of the successful bidder is entered into the record, the auctioneer will be guilty of contravening this regulation, notwithstanding that the error was made by an employee, unless the auctioneer can prove that he or she was not aware that a name or details other than the real name and details of the successful bidder was entered into the record.

*Draft for public consultation - 28 October 2010***Bidder's record**

- 32.(1) An auctioneer must for every auction have a bidders' record to record the identity of all bidders at an auction.
- (2) Subject to regulation 36(2), every prospective bidder must prior to the commencement of an auction register his or her identity in the bidder's record, and such registration must with the necessary changes meet the requirements of Chapter 1 of the regulations in terms of the Financial Intelligence Centre Act, 2001, published in Notice No. R. 1595 in Gazette No. 24176 of 20 December 2002, in respect of establishment and verification of identity, and sign that entry.
- (3) A person who intends to bid on behalf of another must produce a letter of authority expressly authorising him or her to bid on behalf of that person, and both that person and the person bidding on his or her behalf must meet the requirements of subregulation (2)
- (4) If a person will be bidding on behalf of a company, the letter of authority contemplated in subregulation (3) must appear on the letterhead of the company and must be accompanied by a certified copy of the resolution authorising him or her to do so.
- (5) The bidders' record is available for public inspection at any time, free of charge -
- (a) during an auction, at the premises where the auction is being held; and
  - (b) before or after an auction, at the auction house or auctioneer's place of business and during normal business hours.
- (6) An auctioneer must record the bidder number contemplated in regulation 34(1) in the bidders' record.

**Ownership**

33. A person who wishes to dispose of his or her property by way of an auction must sign a declaration stating that he or she is the owner or rightful holder of the goods and submit that declaration to the auctioneer.

**Bidding**

- 34.(1) An auctioneer must provide a prospective bidder whose name appears in the bidders' record with a bidder number before he or she may bid, as well as a paddle or other

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device to which that number is attached in such a way that it is clearly visible to the persons present at the auction.

- (2) A bid taken from an unregistered person is invalid.
- (3) The place where an auction is held must be open and accessible to any member of the public, subject to the auctioneer's right to refuse a person the right to remain on the auction's premises in the event that that person repeatedly behaves in such a way so as to disrupt the auction without any valid reason.
- (4) An auctioneer must have a vendor's roll in which all details of the auction are recorded, which must, as a minimum, include -
  - (a) the advertising of the auction;
  - (b) the rules of auction;
  - (c) the bidders' record;
  - (d) the ownership declarations contemplated in regulation 27(2)(h);
  - (e) a list of all goods on auction, including goods which were withdrawn from auction;
  - (f) the names of the successful bidders, the goods or lots bought and the prices paid in respect thereof;
  - (g) the details of any challenges to the validity of the auction or the conduct thereof, and the particulars of the persons making such challenges, if available;
  - (h) any items or lots not sold;
  - (i) the details of any reserved price or any matter contemplated in subsections (4) and (5) of section 45 of the Act.
- (5) The auctioneer must afford consumers a reasonable period of time and opportunity to inspect the goods on offer prior to the commencement of an auction, and no fee may be charged for such opportunity, but an auctioneer may -
  - (a) refuse or restrict access to such goods if the consumer after gaining access in any way acts unlawful or in contravention of the applicable rules of auction;
  - (b) require the consumer to adhere to or submit to any security measures reasonably applicable in the circumstances.
- (6) Subject to any reserve price, the highest bidder, when the auctioneer announces the completion of a sale by the fall of the hammer, or in any other customary manner, is the purchaser of the goods or lots on auction.

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- (7) No fee may be charged for participation in an auction, but this does not apply to refundable deposits.
- (8) The auctioneer must upon concluding the proceedings of an auction -
  - (a) announce that the auction has come to an end;
  - (b) sign the vendor's roll; and
  - (c) certify that the proceedings of the auction were to the best of his or her knowledge conducted in accordance with these regulations, any other applicable law and the rules of auction.

**Mock auction**

- 35.(1)(a) A mock auction is an auction in which -
  - (a) goods are sold for less than the highest bid, or part of the purchase price is repaid or credited to the purchaser;
  - (b) the right to bid for goods is restricted to persons who have bought or have agreed to buy other goods; or
  - (c) any goods are given away as gifts.
- (2) No person may promote, take part or conduct a mock auction.
- (3) If it can be proved that the reduction in the purchase price or the repayment credit was due to a defect which the auctioneer only became aware of after the highest bid was made, or because of damage sustained after the highest bid was made, the auction will not be considered to be a mock auction.
- (4) No person may promote, organize, participate in or benefit from any kind of conspiracy between an auctioneer, any participants in an auction or any other persons who agree not to bid against each other at an auction or who otherwise conspire to decrease or increase the number or amounts of bids offered at auction.

**Internet or electronic auctions**

- 36.(1) An auction may be conducted via the internet or other electronic medium or platform, irrespective of where the server or other electronic medium or platform is situated, only if -

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- (a) it meets all requirements in respect of an auction provided for in these regulations or other applicable law, but with the necessary changes, if any, to suit an electronic medium or platform;
  - (b) the relevant internet website or electronic medium or platform is generally available to anyone over the age of 18 years at any time of the day;
  - (c) the relevant internet website or electronic medium or platform provides high standards of security for electronic transactions;
  - (d) the relevant internet website or electronic medium or platform provides for easy access to all records prescribed in these regulations in a generally used or accepted medium or format;
  - (e) the internet auction provider keeps the information contemplated in regulation 12(4).
- (2) For purposes of regulation 32(2), a prospective bidder in an auction to be held via the internet or other electronic medium or platform must register by providing -
- (a) his or her full names, identification or passport number, age, physical address, internet protocol address, and where applicable, login code or name, and password; and
  - (b) the details of the means by which payment will be effected,
- and the registration webpage must contain a highly visible statement to the effect that any information provided by the prospective bidder which is inaccurate or incomplete will invalidate his or her registration and will render any attempted transaction null and void.
- (3) An auctioneer conducting an auction via the internet or other electronic medium or platform may not exclude liability if any goods purchased by auction are not delivered to the purchaser thereof.

**Records**

- 37.(1) All records prescribed in these regulations must be kept for a period of at least five years.
- (2)(a) Any person in possession of any record contemplated in these regulations must forthwith upon receipt of a written request at his or her own cost provide the Commission or any relevant body or forum with certified copies of the record so

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requested or which may be relevant to any record so requested, but if the original record is expressly requested, that original record must itself be made available.

- (b) The Commission may not for purposes of criminal proceedings provide copies of any documents which has come into its possession pursuant to subregulation (a) to anyone, unless by order of court.

**Motor vehicle auctions**

**38.** In addition to any other requirement in these regulations, an auctioneer may not conduct an auction unless a notice containing the particulars and statements required in this subregulation relating to the vehicle is attached to the vehicle and has been attached to the vehicle at all times when the vehicle was available for inspection by prospective bidders, which must include -

- (a) the name and business address of the auctioneer;
- (b) if the auctioneer or auction house is conducting the sale on his, her or its own behalf, whether the auctioneer or auction house is liable to discharge the duty of repair, or not;
- (c) if the auctioneer or auction house is conducting the sale on behalf of -
  - (i) a motor vehicle dealer or bank or other financing entity, the name in which that dealer, bank or entity is licensed and the business address of the dealer, bank or entity and whether the dealer, bank or entity is liable to discharge the duty of repair, or not;
  - (ii) another person, a statement that there will be no duty to repair, the name and address of the last owner of the vehicle who was not a dealer, bank or entity, alternatively a statement that the last owner's name and address are available on request from the auctioneer or auction house;
- (d) if the owner let the vehicle on hire to another person under a vehicle leasing agreement, the name and address of such other person, alternatively a statement that such person's name and address are available on request from the auctioneer;
- (e) the vehicle's year of manufacture;
- (f) the vehicle's year of first registration;
- (g) the vehicle's manufacturer and model designation;

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- (h) the vehicle's registration number;
- (i) the vehicle's engine number;
- (j) the vehicle's vehicle identification number (VIN);
- (k) a statement whether or not the reading of the odometer of that vehicle is guaranteed; and
- (l) a statement contemplated in regulation 27(2)(i).

**Livestock and game auctions**

39. If a livestock or game auction is conducted regularly on a weekly or monthly basis -
- (a) at the same time, the same place and by the same auctioneer or auction house;
  - (b) subject to the same rules of auction; and
  - (c) nothing but livestock or game is on offer,
- the provisions of regulations 25(1) and 26(4) do not apply to that auction.

**Closed auctions**

40. The provisions of regulations 25(1) and 26(4) do not apply to closed auctions.

**Maximum amount of cancellation penalty for lay-by's**

- 41(1). For purposes of section 62(6) of the Act, a cancellation penalty may not exceed the loss of value on the goods, if any, since the commencement of the lay-by agreement
- (2) Any notices exchanged in respect of the cancellation of lay-by's may be transmitted or stored electronically if the requirements of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) are met.

**Direct referral of matter to Tribunal**

- 42(1) For purposes of section 69(a) of the Act, a matter may be referred to the Tribunal by submitting the form contained in Annexure "C" to this Schedule, together with certified copies of any documents the Tribunal should consider, by mailing it to ..... (Postal Address), delivering it by hand to ..... (Physical Address), by filing



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it electronically at ..... (Website) or by e-mailing it to ..... (e-mail address).

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

**Initiating complaint to Commission**

43. For purposes of section 71(1) of the Act, a person may file a complaint with the Commission in the form contained in Annexure "D" to this Schedule, together with certified copies of any documents the Commission should consider, by mailing it to ..... (Postal Address), delivering it by hand to ..... (Physical Address), by filing it electronically at ..... (Website) or by e-mailing it to ..... (e-mail address).

**Investigation by Commission**

44. For purposes of section 72(1)(a) of the Act, the Commission may issue a notice of non-referral in the form contained in Annexure "E" to this Schedule.

**Outcome of investigation**

45. For purposes of section 73(1)(a) of the Act, the Commission may issue a notice of non-referral in the form contained in Annexure "F" to this Schedule.

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

- 46.(1) For purposes of section 73(3) of the Act, an application for an order that a matter be referred to the Tribunal must be lodged with the Tribunal within 15 business days of the matter so being referred to the consumer court by submitting the form contained in Annexure "G" to this Schedule, together with certified copies of any documents the Tribunal should consider as well as the document referring the matter to the consumer court, by mailing it to ..... (Postal Address), delivering it by hand

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

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

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

47.(1) For purposes of section 75(2) of the Act, a respondent in a matter referred to a consumer court may apply to the Tribunal for an order that the matter be referred to the Tribunal, by submitting the form contained in Annexure “H” to this Schedule, together with certified copies of any documents the Tribunal should consider as well as the document referring the matter to the consumer court, by mailing it to ..... (Postal Address), delivering it by hand to ..... (Physical Address), by filing it electronically at ..... (Website) or by e-mailing it to ..... (e-mail address).

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

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

48.(1) For purposes of section 75(3) of the Act, the Commission or a complainant may refer a matter to the Tribunal, by submitting the form contained in Annexure “I” to this Schedule, together with certified copies of any documents the Tribunal should consider as well as the document referring the matter to the consumer court, by mailing it to ..... (Postal Address), delivering it by hand to ..... (Physical Address), by filing it electronically at ..... (Website) or by e-mailing it to ..... (e-mail address).

- (2) The Commission must simultaneously lodge or serve copies of the documents contemplated in subregulation (1) in person or by registered mail to the parties to the matter.

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

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

- 49.(1) For purposes of this regulation, “applicant” means any consumer protection group that wishes to be accredited by the Commission in terms of section 78 of the Act for the purposes contemplated in that section or elsewhere in the Act, and “instrument establishing and governing the applicant” means in the case of a -
- (a) juristic person, certified copies of the memorandum and articles of association, certificate of incorporation or founding statement, as the case may be;
  - (b) partnership, the partnership agreement; or
  - (c) trust, the applicable trust deed.
- (2) For purposes of section 78(6) of the Act, the Commission must in its sole discretion consider the aspects relevant to the applicant and the application in assessing whether that applicant for accreditation meets the applicable requirements of section 78 from the following list:
- (a) the objectives or purpose of the applicant;
  - (b) whether the applicant engages in, or makes a realistic proposal to engage in, actions to promote and advance the consumer interests of persons contemplated in section 3(1)(b) of the Act;
  - (c) the applicant’s ability to sustainably provide a service to historically disadvantaged, low-income consumers in rural or peri-urban areas;
  - (d) the efficiency and effectiveness of the applicant in promoting the interests of consumers;
  - (e) whether the applicant’s infrastructure and support mechanisms are adequate and appropriate for the function it intends to fulfil;
  - (f) the procedures and processes required by the applicant to determine whether to pursue a matter on behalf of consumers;
  - (g) whether the applicant has a strict policy on conflicts of interest;

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- (h) whether the applicant has or holds any interest of whatever nature, whether directly or indirectly, in any company operating in the industry within which the applicant operates or plans to operate;
  - (i) whether the applicant charges a consumer to take up a matter on his, her or their behalf, and if so, the amounts charged;
  - (j) any other factor which may be relevant.
- (3) The Commission must on its website publish all relevant information to inform a prospective applicant of the requirements in respect of an application for accreditation in terms of section 78 of the Act, including criteria it will utilise to assess the factors contemplated in subregulation (2).
- (4) Any applicant must submit an application providing all information contemplated in subregulations (2) and (5), as well as a statement by its chairperson, chief executive or other person in charge of its operations, supported by a resolution taken at a meeting of its members or stakeholders, that the applicant is committed to achieving the purposes of the Act.
- (5) The Commission must upon receipt of an application publish a notice in the Gazette and any newspaper distributed in the geographical area in respect of which the application has been submitted, and on its own website, stating -
- (a) the name of the applicant;
  - (b) the applicant's registered address;
  - (c) the industry and the geographical area in respect of which the application has been submitted;
  - (d) the time period within which and the address where objections to the possible accreditation of the applicant may be submitted.

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- (6) The Commission may upon receipt of an application request the provision of any additional information it may deem relevant.
- (7) The Commission may in its sole discretion invite the applicant and other interested persons to make oral submissions in support of or opposition to the application.
- (8) The Commission must within a reasonable period of receipt of an application consider the application and any objection to the application submitted timeously, and must then take a decision on the accreditation of the applicant in terms of section 78(3) of the Act.
- (9) The Commission must forthwith after deciding on the application in writing inform the applicant and any person who lodged an objection of -
  - (a) the outcome of the matter; and
  - (b) their rights in terms of or under the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- (10) An accreditation is valid for a period of 5 (five) years, after which such accreditation expires, and a previously accredited consumer protection group must re-apply for accreditation.
- (11) The Commission may provisionally accredit an applicant, and the applicant must within a time period determined in writing by the Commission meet any additional requirements set by the Commission, which, if the applicant fails to timeously and fully meet such conditions, expires on the date on which such time period ends.
- (12) The Commission must in the case of a successful application -
  - (a) issue a certificate of accreditation with a unique number, signed by a Commissioner, to the applicant, who must display the certificate in a prominent place at his, her or its main office; and
  - (b) on its website add the name of the applicant in a list of all accredited consumer protection groups.
- (13) The Commission may at any time after accreditation -
  - (a) request the accredited consumer protection group to provide it with any additional information the Commission may require;
  - (b) in its sole discretion and when it deems it necessary in the interest of consumers to do so, suspend or withdraw such accreditation of the accredited consumer protection group, but the Commission must in such instances inform the applicant of and apply all his, her or its rights provided for in the Promotion

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

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

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

- 50.(1) For purposes of section 80(1) of the Act, a person may file a notice with the Registrar in the form contained in Annexure "J" to this Schedule, by mailing it to ..... (Postal Address), delivering it by hand to ..... (Physical Address), by filing it electronically at ..... (Website) or by e-mailing it to ..... (e-mail address).
- (2) A person filing a notice with the Registrar as contemplated in subregulation (1) must pay an application fee of R 50.00 (Fifty Rand).
- (3) Payment of the application fee contemplated in subregulation (2) may be effected by payment in cash at ..... (Physical Address), by electronic funds transfer or payment into the account of the Registrar at XXX Bank with branch code ..... and account number .....
- (4) The Registrar may not accept a notice contemplated in subregulation (1) unless the notice is accompanied by an original receipt for the payment of the application fee.
- (5) The Registrar may in his or her sole discretion require additional proof of payment of the application fee before accepting a notice contemplated in subregulation (1).

**Notice to cancel registration**

- 51.(1) For purposes of section 80(4)(a) of the Act, the Registrar may give notice to the person concerned in the form contained in Annexure "K" to this Schedule, together with any documents he or she wishes to attach.

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- (2) The person to whom the business name is registered must within 30 (thirty) days of receipt of the notice contemplated in subregulation (1) by registered mail or by hand submit his or her reply at the address stated in that notice.

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

52. For purposes of section 92(4) of the Act, the official languages to be used by the Commission in any documents it is required to deliver in terms of this Act are English and isiZulu.

**Compliance notice**

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

**Objection to compliance notice**

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

**Notice from the Chairperson: Civil actions**

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

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

- 56.(1) For purposes of section 120(d) of the Act, a term of a consumer agreement between a supplier acting wholly or mainly for purposes related to his or her business or profession and an individual consumer or individual consumers who entered into it

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for purposes wholly or mainly unrelated to his or her business or profession is deemed to be unfair if it —

- (a) has the purpose or effect of a term listed in subregulation (3), and
  - (b) does not fall within the ambit of subregulation (4).
- (2)(a) The list in subregulation (3) is indicative only, so that a term listed therein may be fair in view of the particular circumstances of the case.
- (b) The list in subregulation (3) is non-exhaustive, so that other terms may also be unfair for purposes of section 48 of the Act.
  - (c) A term which falls within the ambit of subregulation (4) remains subject to sections 48 to 52 of the Act.
  - (d) These regulations do not derogate from provisions in the Act or other law in terms of or in respect of which a term of an agreement is prohibited.
- (3) A term of a consumer agreement subject to the provisions of subregulation (1) is deemed to be unfair if it has the purpose and effect of —
- (a) excluding or limiting the liability of the supplier for death or personal injury caused to the consumer through an act or omission of that supplier;
  - (b) excluding or restricting the legal rights or remedies of the consumer against the supplier or another party in the event of total or partial non-performance or inadequate performance by the supplier of any of the obligations provided for in the agreement, including the right of the consumer to set off a debt owed to the supplier against any claim which the consumer may have against the supplier;
  - (c) limiting the supplier's obligation to respect commitments undertaken by his or her agents or making his or her commitments subject to compliance with a particular condition which depends exclusively on the supplier;
  - (d) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by the Act or other law;
  - (e) restricting the evidence available to the consumer or imposing on him or her a burden of proof which, according to the applicable law, should lie with the supplier;
  - (f) giving the supplier the right to determine whether the goods or services supplied are in conformity with the agreement or giving the supplier the exclusive right to interpret any term of the agreement;



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- (g) allowing the supplier to retain a payment by the consumer where the latter fails to conclude or perform the agreement, without giving the consumer the right to be compensated in the same amount if the supplier fails to conclude or perform the agreement;
- (h) requiring any consumer who fails to fulfil his or her obligation to pay damages which significantly exceed the harm suffered by the supplier;
- (i) allowing the supplier to terminate the agreement at will where the same right is not granted to the consumer;
- (j) enabling the supplier to terminate an open-ended agreement without reasonable notice except where the consumer has committed a serious breach of agreement;
- (k) allowing the supplier to increase the price agreed with the consumer when the agreement was concluded without giving the consumer the right to terminate the agreement;
- (l) obliging the consumer to fulfil all his or her obligations where the supplier has failed to fulfil all his or her obligations;
- (m) giving the supplier the possibility of transferring his or her obligations under the agreement to the detriment of the consumer, without the consumer's agreement;
- (n) restricting the consumer's right to re-sell the goods by limiting the transferability of any commercial guarantee provided by the supplier;
- (o) enabling the supplier to unilaterally alter the terms of the agreement including the characteristics of the product or service;
- (p) unilaterally amending terms of the agreement communicated to the consumer in a durable medium through on-line terms of the agreement which have not been agreed by the consumer;
- (q) permitting, or having the effect of permitting, the supplier, but not the consumer, to avoid or limit performance of the agreement;
- (r) permitting, or having the effect of permitting, the supplier, but not the consumer, to renew or not renew the agreement;
- (s) limiting, or having the effect of limiting, the supplier's vicarious liability for its agents;
- (t) permitting the supplier, upon termination of the agreement by either party, to demand unreasonably high remuneration for the use of a thing or right, or for

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- performance made, or to demand unreasonably high reimbursement of expenditure;
- (u) permitting the supplier to impose on the consumer, without good reason, immediate payment of an excessive part of the price prior to performance of the agreement;
  - (v) excluding or restricting the consumer's right to rely on the statutory defence of prescription;
  - (w) imposing a limitation period that is shorter than otherwise applicable under the common law or legislation for legal steps to be taken by the consumer (including for the making of a written demand and the institution of legal proceedings);
  - (x) modifying the normal rules regarding the distribution of risk to the detriment of the consumer;
  - (y) allowing the supplier an unreasonably long time to perform;
  - (z) forcing the consumer to indemnify the supplier against liability incurred by it to third parties;
  - (aa) providing that the consumer must be deemed to have made or not made a statement or acknowledgment to his or her detriment, unless -
    - (i) a suitable period of time is granted to him or her for the making of an express declaration in respect thereof; and
    - (ii) at the commencement of the period the supplier draws the attention of the consumer to the meaning that will be attached to his or her conduct;
  - (bb) providing that a statement made by the supplier which is of particular interest to the consumer is deemed to have reached the consumer, unless such statement has been sent by prepaid registered post to the chosen address of the consumer;
  - (cc) entitling the supplier to claim legal or other costs on a higher scale than usual, where there is not also a term entitling the consumer to claim such costs on the same scale;
  - (dd) providing that a law other than that of the Republic applies to a consumer agreement concluded and implemented in the Republic, where the consumer was residing in the Republic at the time when the agreement was concluded.

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- (4)(a) Paragraph (i) of subregulation (3) does not apply to a term in terms of which a supplier of financial services reserves the right to unilaterally terminate an open-ended agreement without notice, but the supplier is required to immediately inform the consumer thereof.
- (b) Paragraph (k) of subregulation (3) does not apply to -
- (i) a transaction in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;
  - (ii) an agreement for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;
  - (iii) a price-indexation clause, where lawful, but the method by which prices vary must be explicitly described.
- (c) Paragraph (o) of subregulation (3) does not apply to -
- (i) a term under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, but -
    - (aa) the supplier must immediately inform the consumer thereof; and
    - (bb) the consumer is free to dissolve the agreement immediately;
  - (ii) a transaction in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;
  - (iii) an agreement for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;
  - (iv) a term under which the supplier reserves the right to unilaterally alter the conditions of an open-ended agreement, but -
    - (aa) the supplier must forthwith inform the consumer thereof; and
    - (bb) the consumer is free to dissolve the agreement immediately;
- (d) Paragraphs (h) and (t) of subregulation (3) do not apply to any penalty, fee or compensation which the supplier is entitled to charge under the provisions of this Act or any other law.

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

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

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

**Annexure C - Regulation 42**

<b>National Consumer Tribunal</b>	
<b>Form - Direct Referral - section 69(a)</b>	
Application for referral of matter by:	
• an individual; or	<input type="checkbox"/>
• an authorised person acting on behalf of another person who cannot act in his or her own name; or	<input type="checkbox"/>
• a person acting as a member of, or in the interest of, a group or class of affected persons; or	<input type="checkbox"/>

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<ul style="list-style-type: none"> <li>• an association acting in the interest of its members. <input type="checkbox"/></li> </ul>	
(Tick the appropriate box)	
Full names of complainant	
ID/Registration Number of complainant	
If acting on behalf of other person, group or association, please provide details	
Postal Address	
Physical Address	
Cell phone number	
Landline number	
Fax number	
E-mail address	
When is the best time to contact you, should this be necessary?	
Has the complainant previously filed a complaint with the NCT?	
If so, please provide the reference number	
Nature of complaint	

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Provision of Consumer Protection Act or regulations promulgated under it or Code contravened (if known)	
Name of company or person against whom complaint is made	
Address of company or person against whom complaint is made	
Short description of complaint	
List of certified copies of documents relevant to complaint attached to this form	
What outcome do you propose for this complaint?	
I confirm that I want the National Consumer Tribunal to consider my referral	
<p>I understand that –</p> <ul style="list-style-type: none"> <li>• the National Consumer Tribunal will handle my complaint according to the requirements of the Consumer Protection Act, 2008;</li> <li>• Confidential information may be considered by the National Consumer Tribunal in the</li> </ul>	

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<p>process of handling my referral; and</p> <ul style="list-style-type: none"> <li>The National Consumer Tribunal may need to communicate with other organisations in respect of my referral and may need to exchange information in this regard.</li> </ul> <p>Should the National Consumer Tribunal require me to issue a statement under oath in respect of information contained in this form, I will do so.</p>	
Place	
Signature	
<b>Office use only</b>	
Reference number	

**Annexure D - Regulation 43**

<b>National Consumer Commission</b>	
<b>Form - Complaint - section 71(1)</b>	
Full names of complainant	
ID/Registration number of complainant	
Postal Address	
Physical Address	
Cell phone number	
Landline number	
Fax number	
E-mail address	
When is the best time to contact you, should this be necessary?	

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Has the complainant previously filed a complaint with the NCC?	
If so, please provide the reference number	
Nature of complaint	
Provision of Consumer Protection Act or regulations promulgated under it or Code contravened (if known)	
Name of company or person against whom complaint is made	
Address of company or person against whom complaint is made	
Short description of complaint	
Details of steps taken to resolve the complaint	



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List of certified copies of documents relevant to complaint attached to this form	
What outcome do you propose for this complaint?	
Date	
Place	
Signature	
<b>Office use only</b>	
Reference number	

**Annexure E - Regulation 44**

<b>National Consumer Commission</b>	
<b>Form - section 72(1)(a)</b>	
<b>Notice of non-referral</b>	
Reference Number	
Date	
Name of complainant	
ID/Registration Number	
Postal Address	
Fax number	
E-mail	

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address	
Dear .....	
Complaint: .....	
Date: .....	
I regret to inform you that the Commission is unable to investigate the matter referred to in your complaint, as the complaint -	
	appears to be frivolous or vexatious.
	does not allege any facts which, if true, would constitute grounds for a remedy under the Consumer Protection Act, 2008.
	is prevented, in terms of section 116 of the Consumer Protection Act, 2008, from being referred to the National Consumer Tribunal, because more than three years have passed since—
	(a) the act or omission that is the cause of the complaint; or
	(b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.
Yours faithfully	
Commissioner/Deputy Commissioner	

**Annexure F - Regulation 45**

<b>National Consumer Commission</b>	
<b>Form - section 73(1)(a)</b>	
<b>Notice of non-referral</b>	
Reference Number	
Date	

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Name of complainant	
ID/Registration Number	
Postal Address	
Fax number	
E-mail address	
<p>Dear .....</p> <p>Complaint: .....</p> <p>Date: .....</p> <p>I regret to inform you that the Commission is unable to refer the matter referred to in your complaint.</p> <p>Yours faithfully</p> <p>Commissioner/Deputy Commissioner</p>	

**Annexure G - Regulation 46**

<b>Application to the National Consumer Tribunal</b>	
<b>Form - section 73(3)</b>	
NCC Reference	



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<p>Yours faithfully</p>     <hr/>
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**Annexure H - Regulation 47**

<b>National Consumer Tribunal</b>	
<b>Form - section 75(2)</b>	
<b>Application for referral of matter to National Consumer Tribunal</b>	
NCC reference number	
Full names of respondent	
ID number of respondent	
Postal Address	
Physical Address	
Cell phone number	
Landline number	
Fax number	
E-mail address	
When is the best time to contact you, should this be necessary?	
Reasons for request to refer the matter to the Tribunal	

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<b>Date</b>	
<b>Place</b>	
<b>Signature</b>	
<b>Office use only</b>	
<b>Reference number</b>	
<b>Consumer court response</b>	
<b>Complainant response</b>	

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Decision	
Date	
Signature	
Notice to Consumer Court	
Notice to respondent	
Notice to complainant	
Notice to National Consumer Commission	
Remarks:	

**Annexure I - Regulation 48**

<b>National Consumer Tribunal</b>	
<b>Form - section 75(3)</b>	
<b>Referral of matter to National Consumer Tribunal</b>	
Full names of complainant	

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ID/Registration number of complainant	
Postal Address	
Physical Address	
Cell phone number	
Landline number	
Fax number	
E-mail address	
When is the best time to contact you, should this be necessary?	
NCC reference number	
Date of notice of non-referral	
Nature of complaint	
Provision of Consumer Protection Act or regulations promulgated under it or Code contravened (if known)	
Name of company or person against whom complaint is made	
Address of company or person against whom complaint is made	
Short description of complaint	
List of certified copies of documents	



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relevant to complaint attached to this form	
Reasons for issue of notice of non-referral by NCC	
Date	
Place	
Signature	
Office use only	
Reference number	
Leave granted from Tribunal  (Mark with an "X")	<b>Yes</b> <input type="checkbox"/>
	<b>No</b> <input type="checkbox"/>
	<b>Not Applicable</b> <input type="checkbox"/>
If "No", reason for this response	
Decision	<b>Referral to Tribunal</b> <input type="checkbox"/>
	<b>Referral to Consumer Court</b> <input type="checkbox"/>
	<b>Dismissal of Complaint</b> <input type="checkbox"/>
Date	

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Signature	
Notice to Consumer Court or Tribunal as applicable	
Notice to respondent	
Notice to complainant	
Notice to National Consumer Commission	

**Annexure J - Regulation 50**

<b>Registrar of Companies</b>	
<b>Form: section 80(1) CPA</b>	
Full names of applicant	
ID or registration number of applicant	
Postal Address	
Physical Address	
Cell phone number	
Landline number	
Fax number	
E-mail address	
When is the best time to contact you, should this be necessary?	
<b>Purpose of application (mark with X)</b>	
<input type="checkbox"/>	To register any number of business names being used, or to be used, by that person in carrying on the person's business.
<input type="checkbox"/>	To register the same business name translated into any number of official

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	languages of the Republic.
	To change a registered business name.
	To transfer a registered business name to another person.
Registration number of business	
Details of envisaged business name (if applicable)	
Details of translations of business name (if applicable)	
Details of change of business name (if applicable)	
Details of transfer of business name to another person (if applicable)	
Name of transferee	
ID or registration number of transferee	
Postal Address	
Physical Address	
Cell phone number	
Landline number	
Fax number	
E-mail address	
Type of business	
Date of transfer	
Date	
Place	

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Signature	
Signature of transferee (if applicable)	
<b>Office use only</b>	
Registration effected	
Date	

**Annexure K - Regulation 51**

<b>Registrar of Companies</b>	
<b>Form - section 80(4)(a) CPA</b>	
<b>Notice to show cause why registration of business name should not be cancelled</b>	
Reference Number	
Date	
Name of person to whom the business name is registered	
Postal Address	
Fax number	
E-mail address	

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Dear .....

**Notice to show cause why registration of business name should not be cancelled:**  
 .....

Date: .....

I believe that you have not been carrying on business under the above-mentioned name for a period of at least six months.

I therefore in terms of section 80(4)(a) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) call on you to within 30 days of receipt of this notice show cause why your registration should not be cancelled, failing which your registration will be cancelled and you will be prohibited from carrying on business under the above-mentioned name. The address where you may submit your response are in the case of submission by hand, at  
 .....  
 .....  
 or in the case of submission by registered mail, at .....  
 .....  
 .....

Yours faithfully

Registrar

**Annexure L - Regulation 53**

<b>National Consumer Commission</b>	
<b>Form - Section 100(1) of the Consumer Protection Act, 2008 (Act No. 68 of 2008)</b>	
<b>Compliance Notice</b>	
Name of person or entity to whom	

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notice applies	
Address	
Reference number	
Date	
Provision of Act not complied with	
<p>The details of the nature and extent of the non-compliance are as follows:</p>	
<p>Details of any steps that are required to be taken and the period within which those steps must be taken:</p>	
<p>Penalty that may be imposed in terms of this Act if those steps are not taken:</p>	
<p>Enquiries made be made to:</p>	
Name	
Contact details	

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Hours of business	
Address to which objections to this notice may be submitted in the prescribed form	
For office use only	
Details of response	
Recommendation	
Signed	
Date:	

**Annexure M - Regulation 54**

<b>National Consumer Tribunal</b>	
<b>Form - Section 101(1) of the Consumer Protection Act, 2008 (Act No. 68 of 2008)</b>	
<b>Application for Review of Compliance Notice</b>	
NCC Reference number	
Name of person or entity to whom notice applies	
Name of person or entity referring for review	
Address	
Date on which	

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Compliance Notice was issued	
Provision of Act allegedly not complied with	
Reasons for request to review the matter:	
Date	
Place	
Signature	
Office use only	
Reference number	
Commission response	
Decision	
Date	
Signature	
Notice to National Consumer Commission	



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Notice to applicant	
Remarks:	

**Annexure N - Regulation 55**

<b>National Consumer Tribunal</b>
<b>Form - Section 115(2)(b) of the Consumer Protection Act, 2008 (Act No. 68 of 2008)</b>
<p>The Registrar or Clerk of the Court                  .....                  .....                  .....</p> <p>Dear Sir/Madam</p> <p><b>Notice for purposes of section 115(2)(b) of the Consumer Protection Act, 2008 (Act No. 68 of 2008): Case number</b> .....</p> <p>I have been informed that .....</p> <p>.....</p> <p>.....</p> <p>has instituted civil action against .....</p> <p>.....</p> <p>.....</p> <p>with reference number .....in your court.</p> <p>I hereby certify that -</p> <ul style="list-style-type: none"> <li>• the conduct constituting the basis for the action has been found to be a prohibited or</li> </ul>

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required conduct in terms of this Act;

- the Tribunal made its finding on .....; and
- the Tribunal made its finding in terms of section .....

.....  
of the Consumer Protection Act, 2008 (Act No. 68 of 2008).

Yours faithfully

Chairperson

Date:

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