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GENERAL NOTICE

NOTICE 451 OF 2013



NATIONAL CONSUMER COMMISSION

NATIONAL CONSUMER COMMISSION

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

The proposed industry code was received from the Consumer Goods Council of South Africa (CGCSA). The code and ombudsman scheme for alternative dispute resolution of complaints are attached hereto. In accordance with section 82(3)(a) and (b) of the Act, the National Consumer Commission is required to publish the proposed industry code for public comment and consider any submissions made during the public comment period.

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

The general public is accordingly invited to submit written comments, quoting the following reference number (**NCC/GN/0008**) to: The Acting National Commissioner, National Consumer Commission c/o Mr. Jeremiah Modiba,

8th Bauhinia Street, Building No. 12, Berkley Office Park, Techno Park Centurion 0157 or email: j.modiba@thencc.org.za. The comments are due on or before 31 May 2013.



Mr. E Mohamed

Acting Commissioner: National Consumer Commission

THE CONSUMER GOODS AND SERVICES INDUSTRY

The Consumer Goods and Services Ombud

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CODE OF CONDUCT

The Office of the Consumer Goods and Services Ombud ("the CGSO") is the Consumer Goods and Services Industry's voluntary Ombud Scheme set up in line with the Consumer Protection Act 68 of 2008.

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SECTION A

1. PREAMBLE

The office of the Consumer Goods and Services Ombud ("the CGSO") is the Consumer Goods and Services Industry voluntary Ombud Scheme set up in line with the Consumer Protection Act 68 of 2008 ("the Act").

The CGSO was established to guide Industry as to what is considered the **minimum** standards of conduct expected when engaging with a consumer and to assist in resolving disputes that arise between consumers and Industry in terms of the Act.

In doing so the CGSO shall:

- Act honestly, independently and objectively;
- Have regard to fairness, justice, equity and the provisions of the Act and the Code;
- Balance the rights of consumers on the one hand and the rights of the Industry on the other hand;
- Avoid discriminating against anyone on grounds contemplated in Section 9 (3) of the Constitution of the Republic of South Africa, 1996 and Section 8 of the Consumer Protection Act.

In light of the CGSO being a voluntary scheme, it shall only be enforceable against subscribers to the CGSO. Any other **member complaints** shall be referred directly to the National Consumer Commission unless the **member** agrees to the jurisdiction of the CGSO and shall be charged on an *ad hoc* basis.

Subscribers have agreed to sign this Code of Conduct, which shall be enforceable by the CGSO in line with the **Terms** of Reference herein.

SECTION B

2. PURPOSE AND OBJECTIVES

- 2.1 The Code of Conduct for the Consumer Goods and Services Industry ("the Code") is an industry code drafted by Industry in line with the draft guidelines issued by the National Consumer Commission.

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- 2.2 The Code regulates the interaction between suppliers conducting business within the industry and the consumer, and provides for an alternative dispute resolution mechanism should there be a dispute between them and the consumers.
- 2.3 The purpose of the Code is to:
- 2.3.1 Set minimum standards of conduct for Industry when dealing with consumers;
 - 2.3.2 Raise the standard of conduct in the Consumer Goods and Services Industry without endangering the vitality and growth of business;
 - 2.3.3 Generate growth in the sector by increasing the level of certainty for all participants;
 - 2.3.4 Offer guidance to suppliers in the Consumer Goods and Services Industry as to the implementation of and the compliance with the Act and what constitutes fair business practices to be followed when operating within the Industry; and
 - 2.3.5 Educate consumers as to their rights and redress available to them should a supplier breach the Code.
- 2.4 The suppliers operating within the Consumer Goods and Service Industry are required to pursue the objectives as set out in Section 3 of the Act, especially to:
- 2.4.1 Reduce and ameliorate any disadvantages experienced by consumers in accessing the supply of any goods or services;
 - 2.4.2 Promote fair business practices;
 - 2.4.3 Protect consumers from:

2.4.3.1 Unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and

2.4.3.2 Deceptive, misleading, unfair or fraudulent conduct.

2.4.4 Providing for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumers transactions.

2.5 The Code of Conduct contains references to certain principles, practices and legislation and for the purposes of application these need to be referenced as to their interpretation and application where quoted in the Code.

3. INTERPRETATION

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

3.1.1 "**Business Day**" means days from Monday to Friday excluding public holidays in the Republic of South Africa;

3.1.2 "**Board**" means the Board of the Consumer Goods Ombud established under the Constitution of the Board of the Consumer Goods and Services Ombud attached hereto and marked as Annexure "**A**";

3.1.3 "**CGSO**" means the Consumer Goods and Services Ombud, a voluntary Ombud scheme, which is only enforceable against subscribers unless any other member or party agrees to the CGSO jurisdiction;

3.1.4 "**Code**" means the industry code for the Consumer Goods and Services Industry code drafted by industry in line with the draft guidelines issued by the National Consumer Commission;

- 3.1.5 **“Complaint”** means an expression of dissatisfaction made by a consumer to/or a supplier related to its goods and/or services or the complaints-handling process pursued or alternatively embarked on thus far by the consumer;
- 3.1.6 **“Complainant”** means any consumer or the consumer’s representative (which may not be a “legal practitioner”), including an accredited recognised consumer protection group referred to in Section 78(1) of the Act, making a complaint in respect of any goods or services provided by the subscriber concerned;
- 3.1.7 **“Consumer”** has the meaning given to it in terms of Section 1 of the Act:
- 3.1.7.1 a person to whom particular goods and or services are marketed in the ordinary course of the supplier’s business;
- 3.1.7.2 a person who has entered into a transaction with a supplier in the ordinary course of the supplier’s business, unless the transaction is exempt from the application of the Act;
- 3.1.7.3 a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was party to a transaction concerning the supply of those particular goods or services;
- 3.1.7.4 a franchisee in terms of a franchise agreement; and
- 3.1.7.5 a consumer may be represented by a representative or accredited consumer group referred to in Section 78 (1) of the Act;
- 3.1.8 **“Consumer Goods and Services”** means the goods and services provided to consumers by all entities within the Consumer Goods and Services Industry, including but not limited to retailers, suppliers, wholesalers, distributors, manufactures, producers, importers and their agents;

- 3.1.9 **"Consumer Goods and Services Industry"** means all entities, including but not limited to retailers, suppliers, wholesalers, distributors, manufacturers, producers, importers and their agents, that provide, market, offer to supply goods and services to the consumer;
- 3.1.10 **"Consumer Goods and Services Ombudsman"** means the persons who meets the minimum requirements as set out in Annexure "B", appointed as Ombudsman and the head of the Office of the Consumer Goods and Services Ombud from time to time by the Board of the Consumer Goods and Services Ombud Association in terms of its Constitution (Annexure "B") to exercise the powers and duties of that office and enforce this Code;
- 3.1.11 **"Dispute"** means a disagreement, arising from a complaint submitted to a subscriber in relation to goods and services provided to a customer of that subscriber, which has not been resolved by the parties;
- 3.1.12 **"Facilitate, Facilitation and Facilitated Settlements"** means a dispute resolution method in which the dispute resolver, being the CGSO, communicates its initial position to the parties and a settlement is sought through making of one or more offers or counter offers;
- 3.1.13 **"Distributor"** has the meaning given to it in terms of Section 1 of the Act:
- 3.1.13.1 In relation to any particular goods, means a person who, in the ordinary course of business:
- 3.1.13.1.1 is supplied with those goods by a producer, importer or other distributor; and
- 3.1.13.1.2 in turn, supplies those goods to either another distributor or to a retailer.

3.1.14 **“Goods”** has the meaning given to it in terms of Section 1 of the Act:

3.1.14.1 Includes:

3.1.14.1.1 anything marketed for human consumption;

3.1.14.1.2 any tangible object not otherwise contemplated in this paragraph;

3.1.14.1.2.1 including any medium on which anything is or may be written or encoded;

3.1.14.1.3 any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a licence to use any such intangible product;

3.1.14.1.4 a legal interest in land or any other immovable property, other than an interest that falls within the definition of “service” in this section; and

3.1.14.1.5 gas, water and electricity.

3.1.15 **“Mediation”** means the active participation of a dispute resolver, being the CGCSO, intended to assist the parties to identify the issues, to generate options, to consider alternatives and to endeavour to reach an agreement;

3.1.16 **“Importer”** has the meaning given to it in terms of Section 1 of the Act:

3.1.16.1 with respect to any particular goods, means a person who brings those goods, or causes them to be brought, from outside the Republic, with the intention of making them available for supply in the ordinary course of business;

3.1.17 “**Internal Complaints-Handling Process**” means a complaints-handling process as adopted by a particular supplier;

3.1.18 “**Parties**” means the Consumer and Suppliers;

3.1.19 “**Producer**” has the meaning given to it in terms of Section 1 of the Act:

3.1.19.1 with respect to any goods, means a person who:

3.1.19.1.1 grows, nurtures, harvests, mines, generates, refines, creates, manufactures or otherwise produces the goods within the Republic, or causes those things to be done, with the intention of making them available for supply in the ordinary course of business; or

3.1.19.1.2 by applying a personal or business name, trademark, trade description or other visual representation on or in relation to the goods, has created or established a reasonable expectation that the person is a person contemplated in 3.1.20.1.1 above.

3.1.20 “**Recommendations**” means a dispute resolution method in which the parties are given written suggestions on how factual, legal and other issues should be resolved, on possible outcomes and how they can be achieved;

3.1.21 “**Reference Schedule**” means a document or any code of industry supplied by Industry for the assistance of the Ombudsman in dealing with complex and technical issues. These schedules shall be amended from time to time as needed, however, their inclusion into this code, shall be at the sole discretion of the Ombudsman. These reference schedules are for reference purposes only and where there is a conflict between its contents and the code, the code shall take precedence.

3.1.22 **“Retailer”** has the meaning given to it in terms of Section 1 of the Act:

3.1.22.1 with respect to any particular goods, means a person who in the ordinary course of business, supplies those goods to a consumer;

3.1.23 **“Service Provider”** has the meaning given to it in terms of Section 1 of the Act:

3.1.23.1 means a person who promotes, supplies or offers to supply any service;

3.1.24 **“Service”** has the meaning given to it in terms of Section 1 of the Act:

3.1.24.1 includes, but is not limited to:

3.1.24.1.1 any work or undertaking performed by one person for the direct or indirect benefit of another;

3.1.24.1.2 the provisions of any education, information, advice or consultation, except advice that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

3.1.24.1.3 any banking services, or related or similar financial services, or undertaking, underwriting or assumption of any risk by one person on behalf of another, except to the extent that any such service:

3.1.24.1.3.1 constitutes advice or intermediary services that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); or

3.1.24.1.3.2 is regulated in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

3.1.24.1.4 the transportation of an individual or any goods;

3.1.24.1.5 the provision of:

3.1.24.1.5.1 any accommodation or sustenance;

3.1.24.1.5.2 any entertainment or similar intangible product or access to any such entertainment or intangible product;

3.1.24.1.5.3 access to any electronic communication infrastructure;

3.1.24.1.5.4 access, or of a right of access, to an event or to any premises, activity or facility; or

3.1.24.1.5.5 access to or use of any premises or other property in terms of a rental;

3.1.24.1.6 a right of occupancy of, or power or privilege over in connection with, any landlord or other immovable property, other than in terms of a rental; and

3.1.24.1.7 rights of a franchisee in terms of a franchise agreement, to the extent applicable in terms of Section 5 (6)(b) to (e) of the Act, irrespective of whether the person promoting, offering or providing the services participates in, supervises or engages directly or indirectly in the service;

3.1.25 "**Subscriber/s**" means entities in the consumer goods industry, that subscribe to the CGSO, including retailers, suppliers, wholesalers, distributors, manufacturers, producers, importers, service providers and their agents;

3.1.26 “**Supplier**” has the meaning given to it in terms of Section 1 of the Act:

3.1.26.1 Means a person who markets any goods or services;

3.1.27 “**Supply Chain**” has the meaning given to it in terms of Section 1 of the Act:

3.1.27.1 with respect to any particular goods or services, means collectively of all suppliers who directly or indirectly contribute in turn to the ultimate supply of those goods or services to a consumer, whether as producer, importer, distributor or retailer of goods, or as a service provider;

3.1.28 “**Technical Schedule**” means a reference document aiding and guiding Consumers, Subscribers or any other interested persons in respect of a technical aspect identified in the Consumer Protection Act No. 68 of 2008 (the “Act”), its Schedules, Guidelines and any amendments thereto. A Technical Schedule shall not be used to interpret the provisions of the Act, and where there is a conflict between the Act and the Technical Schedule, the Act shall prevail.

3.2 Unless the context clearly indicates otherwise:

3.2.1 all words and expressions not expressly defined in the Code or as referenced in the Code will have such meanings as may be given to them in the Consumer Protection Act 68 of 2008.

3.2.2 All references to:

3.2.2.1 a singular noun will be deemed to include the plural and vice versa;

3.2.2.2 a masculine gender will be deemed to include the other genders and vice versa;

3.2.2.3 the provisions of any law will be deemed to include amendment or substitution thereof that will be effected from time to time;

3.2.3 all section headings and arrangements contained in this Code are intended for the reference purposes only and will not affect or be taken into account in the interpretation of any of the paragraphs or sections to which they relate.

4. APPLICATION, SCOPE AND TYPE OF SUPPLIER

- 4.1 The Code applies to all suppliers in the consumer goods and services industry, including but not limited to, retailers, suppliers, wholesalers, distributors, manufacturers, producers, importers, intermediaries, logistics and supply chain agents, unless they are regulated elsewhere by a Code prescribed by the Minister in terms of Section 82 of the Act and/or where a complaint falls within the jurisdiction of an ombud with jurisdiction, as defined in Section 1 of the Act, or an industry ombud accredited in terms of Section 82 (6) of the Act.
- 4.2 This Code will apply to all the suppliers/subscribers in the consumer goods and services industry who produce/supply and/or provide services relating to but not limited to the following products (including the packaging of these goods): food, tobacco and beverages, pet food and pet products, electrical appliances, electronic goods, general merchandise, which includes tools, DIY, sport goods, home-care products, furniture, textiles, building material, hardware supplies, jewellery, cosmetics, toiletries and fragrances, as well as toys and stationery. A detailed list of Sector Industry Categories is annexed hereto and marked as "Reference Schedule "1".
- 4.3 It is mandatory for all subscribers as listed in 4.2 above to comply with the provisions of this Code if they wish to operate within the Industry.
- 4.4 This Code may be supplemented from time to time as the need arises by Reference Schedules as defined in Clause 3.1.21 dealing with the specific needs and technical

issues arising out of various sectors within the industry. These Reference Schedules shall conform to the general principles laid down by this Code and the Act. All such individual Reference Schedules shall be reflected as Appendices to this Code and may themselves be updated from time to time as the need arises.

- 4.5 This Code shall not be construed as to diminish a consumer's rights under the Act or any other law but it shall enhance the consumer's rights to be equivalent to or better than what is provided for in the Act.
- 4.6 This Code excludes motor vehicles, banking and insurance, credit, travel club, education, competition issues, broadcasting, debt counselling, debt collection, LP gas, electricity, petroleum, estate agents, leasing and government office complaints.

SECTION C

5. CONSUMER AND INDUSTRY AWARENESS

- 5.1 The subscribers under this Code are required to:
- 5.1.1 Establish an effective internal complaints-handling process that is accessible and understandable to all consumers which includes but is not limited to:
- 5.1.1.1 process of internal-complaints handling;
- 5.1.1.2 design of the internal-complaints-handling procedure;
- 5.1.1.3 monitoring processes for the internal-complaints-handling procedure and effectiveness;
- 5.1.2 A guideline base is for the Standard to be adhered to is attached hereto and marked as Annexure "C";

- 5.1.3 Display prominently on all their trading premises by means of the CGSO decal and on their website, a prescribed notice that states that they have subscribed to this Code and are bound by it;
- 5.1.4 The prescribed notice must provide consumers with the contact details of the Office of CGSO;
- 5.1.5 Ensure that a copy of this Code and/or a summary of it and their internal-complaints-handling procedure is made available to any consumer upon request and/or the consumers are directed as to where to obtain a copy of the Code and/or their internal-complaints-handling procedure;
- 5.1.6 Ensure that the relevant staff and agents in their business have adequate knowledge of the Act and the regulations issued under it, including the Code and their own inter-complaints procedure;
- 5.1.7 Ensure that they keep proper records of the complaints that are received with the following details captured:
 - 5.1.7.1 details and nature of the complaint;
 - 5.1.7.2 the business unit, division and/or brand that complaint is against;
 - 5.1.7.3 the type of the complaint;
 - 5.1.7.4 the frequency of the complaint;
 - 5.1.7.5 details of how the complaint was resolved;
 - 5.1.7.6 the time taken to deal with the complaint;

-
- 5.1.7.7 the type of remedy provided;
 - 5.1.7.8 details of why the complaint was not resolved;
 - 5.1.7.9 details of potential remedies offered but not accepted by the consumer;
 - 5.1.7.10 confirmation that consumer was referred to the CGSO for assistance in resolving the dispute;
- 5.1.8 The data captured in 5.1.7 above is to be used to produce reports to highlight any recurring complaints that have arisen and this feedback is to be shared with management, staff and the Industry (where reasonably possible), in an attempt to continually uphold compliance with the Act, Code and internal-handling procedures.
- 5.1.9 Where it is evident that the CGSO needs to be alerted to a complaint due to the hazardous nature of the complaint, a subscriber needs to do so by following the recall guidelines attached hereto and marked as Annexure "D".
- 5.1.10 Provide relevant information reasonably required by CGSO or the National Consumer Commission on any aspect of their business for the purpose of assisting in the resolution of individual complaints, subject to considerations of confidentiality, as set out under Chapter 7 of this Code;
- 5.1.11 Endeavour to resolve complaints and disputes in accordance with the law, the spirit and provisions of this Code as expressed under Chapter 3 and with regard to their own internal complaints-handling procedures;
- 5.1.12 Ensure that they, their staff members and their agents refrain from influencing or attempting to influence or harassing the CGSO, staff of the CGSO or any consumer.

- 5.2 The CGSO will determine a strategy for conducting awareness and education of the Code and the contents thereof by introduction and/or facilitation and/or distribution of information brochures, guidelines and workshops as agreed to and as can be reasonably funded from time to time by the CGSO, which includes the following:
- 5.2.1 the continued expansion of the electronic communication through the CGSO website and other social networking sites on which the accredited industry Code will be displayed;
 - 5.2.2 the continued update of related matters on the accredited industry Code on the CGSO website;
 - 5.2.3 the facilitation of an induction workshop instructing new employees in the industry from time to time, on the principles and procedures of the Code;
 - 5.2.4 Partnering with the Provincial Protection Offices and other relevant bodies on awareness campaigns.
- 5.3 The CGSO will produce annual reports on the implementation and application of the Code. These reports will be available to all suppliers, subscribers and any other interested parties;
- 5.4 Performance indicators will be developed with reference to the criteria in 5.3 above and implemented as a means of measuring the Code's effectiveness;
- 5.5 The application of the Code will be reviewed annually by the Board to ensure that the Standards of the Code meet identified objectives and the current consumer expectations are effective. This review will be distributed to the National Consumer Commission.

SECTION D**6. VOLUNTARY OMBUD SCHEME****6.1 Establishment and Powers of the Consumer Goods and Services Ombud Office**

6.1.1 The Ombud office is to adhere to the Terms of Reference of the Consumer Goods and Services Ombud as provided for in Section E below.

6.2 Sustainable Funding Model

6.2.1 Subscribers in the Industry are to contribute to the funding of the running of the CGSO. All new subscribers will pay a joining fee which shall be determined from time to time;

6.2.2 It is the responsibility of Ombud Office to collect fees from subscribers in the Industry as well as to bill the non-subscribing suppliers in the industry for complaints handled;

6.2.3 An annual increase will be raised on subscriber's contribution to the Office of the Ombud at the rate of the CPI index or the number of subscribers in order to ensure the continued sustainability of the CGSO;

6.2.4 Where a Subscriber or Supplier against whom a complaint has been referred to the Ombud for resolution fails to pay their membership fee or the complaints-handling fee, as the case may be, within the prescribed period, no response will be receivable from such a defaulting Subscriber or Supplier and the Ombud will consider the merits of the complaint based solely on the Industry Code, as the facts as they appear from the Consumer's complaint;

6.3 Complaints-Handling Process

- 6.3.1 The Ombud is to ensure that the complaints-handling process is running efficiently at all times, as outlined in Section F below.

SECTION E

7. INTRODUCTION: TERMS OF REFERENCE AND OPERATING PROCEDURE FOR CGSO

- 7.1 The terms of reference seek to establish the appropriate operating procedures so as to ensure the objects of the preamble are met for the benefit of the consumer community at large.
- 7.2 In doing so, these operating procedures are aimed at:
- 7.2.1 describing the manner in which the CGSO operates;
 - 7.2.2 assisting staff members of the CGSO to carry out their duties; and
 - 7.2.3 Ensuring that complaints are timely dealt with, both consistently and effectively.
- 7.3 The CGSO may enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services in resolving a dispute or carrying out its functions.
- 7.4 The CGSO and any member of the CGSO staff may not be subpoenaed to testify in court by any of the parties to a dispute considered by the CGSO.

8. MAINTAINING THE INDEPENDENCE OF THE CGSO

- 8.1 The CGSO is a voluntary body which may engage in the resolution of disputes arising within the consumer goods and services industry;
- 8.2 The CGSO is controlled by a voluntary association, the Board of the Consumer Goods and Services Ombud Association. The Board is appointed in accordance with the provisions of the Consumer Goods and Services Ombud Association's Constitution (Annexure "A") and the composition of the Board shall be done in terms of Section 2.1 thereof;
- 8.3 The Ombud acts independently and objectively in resolving disputes and is not influenced by anybody in making his/her decisions. The Ombud enjoys security of tenure and can only be dismissed on the grounds of incompetence, gross misconduct, or inability to effectively carry out his or her duties;
- 8.4 The independence of the CGSO and the Ombud is further assured by the fact that the Ombud and employees of CGSO are:
- 8.4.1 entirely responsible for the handling and determination of complaints;
 - 8.4.2 accountable only to the Council; and
 - 8.4.3 adequately resourced to carry out their respective functions.
- 8.5 The criteria to be used in resolving disputes includes:
- 8.5.1 the law, especially the Act and the Code (in cases where there is conflict between the interpretation of the Code or the Act, the Act will always prevail);
 - 8.5.2 applicable industry codes or guidelines;

8.5.3 Fairness in all the circumstances.

9. FUNCTIONS OF THE OFFICE OF THE CONSUMER GOODS AND SERVICES OMBUD

9.1 Included in the CGSO's functions is the obligation to enforce the Code by:

- 9.1.1 upon receipt of a complaint, investigating and evaluating alleged contraventions of complaints arising from the Code;
- 9.1.2 attempting to facilitate a settlement between parties;
- 9.1.3 making a recommendation as to how the dispute should be settled by the parties;
- 9.1.4 at the request of a party to a dispute, recording the resolution of a dispute in the form of an order in terms of Section 70 (3)(a) of the Act;
- 9.1.5 with the consent of a complainant, including in the consent order an award of damages to that complainant in terms of Section 70 (4) of the Act;
- 9.1.6 at the request and at the cost of a party to a dispute, submitting the order to the Tribunal or High Court to be made a consent order, in terms of its rules and of Section 70 (3)(b);
- 9.1.7 terminating the process by notice to the parties in terms of Section 70 (2) of the Act;

- 9.1.8 educating the general public, consumers, suppliers, staff and other interested parties regarding the existence of the Ombud's office, its procedures and time periods, remedies available, where and how to lay a complaint and how to obtain feedback on the status of the complaint;
 - 9.1.9 providing access to information in accordance with the Promotion of Access to Information Act 2 of 2000; and
 - 9.1.10 striving for continual improvement of the complaints-handling process and the quality of the service, by amongst other things, regularly determining the levels of satisfaction of complaints with the complaints-handling processes.
- 9.2 In particular, the CGSO shall
- 9.2.1 receive and deal with complaints and disputes relating to the Code or the Act by a consumer against a retailer, supplier, wholesaler, distributor, manufacturer, producer, importer, service provider or their agent free of charge;
 - 9.2.2 determine whether or not a complaint falls within the CGSO's jurisdiction;
 - 9.2.3 Decline to deal with or discontinue dealing with those matters:
 - 9.2.3.1 that do not fall within the CGSO's jurisdiction; or
 - 9.2.3.2 in which the complainant has failed to respond to requests from the CGSO for information or comments within the time reasonably stipulated by the CGSO; or
 - 9.2.3.3 in which the complaint is trivial, frivolous or vexatious; or
 - 9.2.3.4 in which the complaint does not allege any facts which, if true, would constitute grounds for a remedy under the Code or the Act;

- 9.2.3.5 in which there does not appear to be a reasonable prospect of the matter settling or of the CGSO eventually making a recommendation in favour of the complainant for whatever reason; and
- 9.2.3.6 issue a letter of non-referral;
- 9.2.4 refer complaints that would more appropriately be dealt with by another body;
- 9.2.5 explore any reasonable prospect of resolving a complaint by a facilitated settlement acceptable to both parties and, where appropriate, make a suggestion or recommendation to the parties regarding how the matter should be settled, in order to resolve a complaint speedily;
- 9.2.6 request a retailer, supplier, wholesaler, distributor, manufacturer, producer, importer, service provider or their agent involved in a complaint or dispute to provide any information to the CGSO which in the view of the CGSO relates to that complaint and its necessary resolution;
- 9.2.7 set down and on good cause shown extend a time limit for any aspect of these procedures after giving due regard to any objection from the other party and the urgency of a matter and circumstances affecting Section 3 (three) vulnerable group category consumers; inform complainants of the further options available to them if their complaints are not resolved following the assistance provided by the CGSO;
- 9.2.8 report any non-compliance with the Act or the Code by a retailer, supplier, wholesaler, distributor, manufacturer, producer, importer, service provider or their agent to the industry association of which it is a member, if any, in order for that industry association to investigate the allegations;
- 9.2.9 report any influencing or attempting to influence or harassing the Ombud or staff of the office of the Ombud or any consumer by a supplier, their staff members and their agents to the Commission;

9.2.10 compile an annual report within 6 (six) months of the close of its financial year regarding the operations and effectiveness of the Ombud office and make the report available to stakeholders, including the National Consumer Commission, through the CGSO website and other suitable means. The report must include data regarding:

9.2.10.1 complaint type;

9.2.10.2 business complained about;

9.2.10.3 the type and frequency of the complaint;

9.2.10.4 how the complaint was resolved;

9.2.10.5 time taken to deal with complaints;

9.2.10.6 type of sanction(s) imposed; and

9.2.10.7 Financial statements and audit reports.

9.2.11 collect data about the origins and caused of the complaint, and identify systematic trends and recurring problems which industry members need to address, make recommendations to the industry as to how to deal with these as well as identify ways of increasing compliance;

9.2.12 Produce annual reports on the operations and effectiveness of the Code, which are to be made readily available to all stakeholders and interested parties. The reports should provide important feedback for management and staff within the industry to continually improve compliance with the Act;

- 9.2.13 address each complaint in an equitable, objective and unbiased manner through the complaints-handling process;
- 9.2.14 engage the services of an interpreter for consumers who may require such assistance as and when required;
- 9.2.15 classify and analyse all complaints in order to identify systematic, recurring and single incidents and trends;
- 9.2.16 nothing contained in this document precludes the CGSO from developing internal rules, forms and procedures that are not in conflict with the provisions of the Code or the Act

10. THE OFFICE OF THE CONSUMER GOODS AND SERVICES OMBUD'S JURISDICTION

10.1 Eligible Complainants

- 10.1.1 the term "consumer" is defined in Section 1 of the Act and in Clause 3.1.5 hereto;
- 10.1.2 as the definition in the Act of "person" includes a juristic person subject to 10.3 below, the CGSO may accordingly consider a complaint brought by or on behalf of the consumer who is:

- 10.1.2.1 a private individual; or

- 10.1.2.2 a juristic person (small business, including a sole proprietor, trust or partnership).

10.2 Eligible Complaints

10.2.1 The CGSO can deal with:

10.2.1.1 disputes arising in terms of the Code between complainants on the one hand and suppliers/subscribers on the other hand; and/or

10.2.1.2 Complaints concerning alleged contraventions of the Act or the Code.

10.3 Limits on the CGSO's Jurisdiction

10.3.1 Amount Involved

10.3.1.1 in line with the threshold (limit) determined by the Minister under Section 5(2) of the Act, the CGCSO may not consider a complaint or dispute that relates to a juristic person as a consumer whose asset value or annual turnover equals or exceeds the threshold amount determined from time to time by the Minister in terms of Section 6 (1) of the Act.

10.3.2 Time Limit

10.3.2.1 the CGSO may not consider a complaint or dispute that relates to an act or omission which occurred before the Act came into effect or in any event more than 30 (thirty) months prior to the date when the complaint was lodged with the CGSO as such claims have become prescribed by law. The period of 30 (thirty) months commences on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first. If the complaint or dispute is older than 30 (thirty) months the CGSO should advise the complainant rather to approach the National Consumer Commission directly.

10.3.3 Other Processes

10.3.3.1 after a preliminary assessment of the complaint or at any stage during the process that any of the factors referred to below become apparent, the CGSO shall not further consider a complaint or dispute that in the opinion of the Ombud:

10.3.3.1.1 falls within the jurisdiction of any other statutory Ombud as enabling legislation; or

10.3.3.1.2 is based on the same event and facts as any matter which is, was, or becomes, the subject of any proceedings in any court, tribunal or regulatory body or by a statutory Ombud of any jurisdiction, unless the CGSO has considered it appropriate to intervene and is not prohibited from doing so under any law; or

10.3.3.1.3 could more appropriately be dealt with by the police, a court of law, by any regulatory body or through any other dispute resolution process.

10.3.4 Excluded

10.3.4.1 after a preliminary assessment of the complaint or at any stage during the process that any of the factors referred to below becomes apparent, CGSO shall not further consider a complaint or dispute that in the opinion of the Ombud:

10.3.4.1.1 is being pursued in an unreasonable, frivolous, vexatious, offensive, threatening or abusive manner;

10.3.4.1.2 does not allege any facts which, if true, would constitute grounds for a remedy under the Code or Act;

10.3.4.1.3 is lacking in substantive merit;

10.3.4.1.4 has been substantially dealt with by the CGSO;

10.3.4.1.5 is based on the same event and facts as any matter which is, was, or becomes, the subject of any proceedings in any court or other independent dispute-resolving body;

10.3.4.1.6 is under consideration by a legal practitioner on behalf of a consumer, whether or not with a view to institute legal proceedings, unless the Ombud determines that the involvement of a legal practitioner is appropriate in the circumstances.

10.3.5 Termination by the Complainant

10.3.5.1 A complainant may at any time terminate the CGSO's handling of the complaint and resort to litigation or another dispute resolution process by withdrawing the complaint in writing to the CGSO. Should the complainant wish to approach the National Consumer Commission or Tribunal, CGSO shall inform the complainant of the processes for doing so.

SECTION F

11. THE COMPLAINTS PROCESS

STAGE 1: LAYING THE COMPLAINT

11.1 Referral to Subscriber

11.1.1 **Refer complaint:** A Complainant who is dissatisfied with goods, or a service that he or she received from a Subscriber, must first refer the matter in dispute to the Subscriber, in accordance with the Subscriber's internal complaints-handling process, however, should the consumer initiate his or her complaint at the

CGSO, without referring to the Subscriber first, the CGSO shall refer the consumer back to the Subscriber.

- 11.1.2 **Time limits for complaining:** The complainant must refer the complaint to the subscriber as soon as practically possible after the complainant has become aware of it.

**STAGE 2: REFERRAL TO THE OFFICE OF THE CONSUMER GOODS AND SERVICES
OMBUD**

11.2 Complaining to the Office of the Consumer Goods and Services Ombud

- 11.2.1 **Referral to CGSO:** A Complainant who referred a complaint to the Subscriber concerned, and who is dissatisfied with the manner in which the Subscriber is dealing with it, or how it has been dealt with, or the outcomes thereof, may refer the Complainant to the CGSO in the prescribed form annexed hereto and marked "E". The complaint may be submitted by hand; mail; fax or email at the following addresses:

- 11.2.1.1 Physical Address: Association House, Bond Street Business Park, cnr Bond Street and Kent Avenue, Ferndale, Randburg, or
- 11.2.1.2 PO Box 168, Randburg, 2125, or
- 11.2.1.3 Fax Number: 021 532 2095, or
- 11.2.1.4 Email Address: cgssa@121group.co.za

- 11.2.2 **Time Limits for Complaining:** The Complainant must refer the complaint to the CGSO as soon as it is reasonably possible and within the time limit specified in Clause 10.3.2.

- 11.2.3 **Acceptance of Complaint:** The complaint shall be reported with the supporting information and unique identifiable code. The record of the initial complaint should identify the remedy sought by the complainant and any other information necessary for the effective handling of the complaint. Receipt of

each complaint should be acknowledged to the complainant within 2 (two) business days either via email, fax or phone call.

11.2.4 **Initial Assessment of the Complaint:** After receipt, each complaint should be initially assessed to ascertain whether it falls within the jurisdiction of the CGSO and in terms of severity, safety implications, complexity, impact and the need and the possibility of immediate action.

11.2.5 **Time Limits of Complaint Resolution:** The CGSO shall make every effort to resolve all complaints within 60 (sixty) business days of receipt by it, failing which it will refer the complaint to the National Consumer Commission or motivate to Ombudsman for an extension of this time limit.

11.2.6 **Tracking the Complaint:** The complaint should be tracked from the initial receipt through the entire process until the Complainant is satisfied or the final decision is made. An up-to-date status should be made available to the Complainant upon request and at regular intervals, at least at the time of preset deadlines.

11.2.7 **Processing of Complaint: Referral**

11.2.7.1 when the CGSO receives a complaint that **does not fall within the CGSO's jurisdiction**, the CGSO shall decide which other body (including the National Consumer Commission), if any, would be best able to assist the complainant and shall inform the complainant either by post, fax, telephone or email;

11.2.7.2 the discretion to refer the complaints to alternative bodies, ombuds or institutions rests with CGSO. If it decides to do so, the CGSO will refer the matter to the alternative body, ombud or institution, and give the complainant a copy of the referral letter which it sends to such alternative body, ombud or institution;

11.2.7.3 if the dispute/complaint is one that appears to fall **within the CGSO's jurisdiction** and the complainant **has not taken the matter up directly with the subscriber as a first step in trying to resolve the matter**, the CGSO must advise the complainant to refer the

matter to the subscriber, to give it the opportunity to resolve the complaint. Alternatively, the CGSO may directly refer the matter to the subscriber with the permission of the complainant;

- 11.2.7.4 any complainant who is advised to refer the matter to the subscriber must be informed that he or she can again approach the CGSO if the complaint is not satisfactorily resolved;
- 11.2.7.5 if it would, in the CGSO's opinion, with particular reference to Section 3 of the Act (vulnerable consumers), cause a complainant undue hardship or inconvenience to refer to the subscriber before obtaining the CGSO's assistance, the CGSO may deal with the complaint as if the complainant had approached the subscriber;
- 11.2.7.6 if the enquiry/complaint is one that appears to fall **within the CGSO's jurisdiction** and the complainant **has already taken up the matter with the subscriber**, the CGSO shall inform the person responsible for complaint resolution within the subscriber, hereinafter referred to as the Designated Official ("DO"), in writing, that a complaint has been lodged with the CGSO and that the subscriber shall have 15 (fifteen) business days from receipt of the communication to investigate and attempt to resolve the dispute with the complainant or to provide its reasons for repudiating the complaint. If the subscriber is unable to resolve the complaint within the period for reasons such as ongoing technical testing, internal enquiries within the subscriber's organisation or reliance on information that was not initially readily available to the subscriber, the subscriber may, at the discretion of the CGSO, be permitted additional time to resolve the matter;
- 11.2.7.7 the CGSO may refer a complainant to either the retailer or the manufacturer, or both, as the CGSO considers appropriate in the circumstances;
- 11.2.7.8 once the decision has been made to refer the complaint, it must be referred to the relevant party, body or institution with 2 (two) business days of it being received by CGSO;

- 11.2.7.9 the CGSO will provide the subscriber concerned with full details of the complaint, including copies of the relevant documentation submitted to CGSO, to the extent the CGSO considers it necessary, by post, telefax or email;
- 11.2.7.10 the CGSO shall keep track of all the complaints it refers to the subscriber, so that all of the complaints are addressed;
- 11.2.7.11 the subscriber must acknowledge receipt of the notification within 2 (two) business days and may do so by letter delivered by hand or sent by post, telefax or email;
- 11.2.7.12 conflict that may arise between one or more sets of industry codes and disputes or challenges regarding competencies or jurisdictions of the ombud must be reported to the National Consumer Commission;
- 11.2.7.13 complainants should be addressed promptly in accordance with their urgency; the complainant should be treated with courtesy and be kept informed of the progress of their complaint through the complaints-handling process; and
- 11.2.7.14 The CGSO shall adopt a customer-focus approach and be open to feedback including complaints, and show commitment to resolving complaints by its actions.

STAGE 3: COMPLAINT RESOLUTION BY THE SUBSCRIBER

11.3 Intervention by the Subscriber

- 11.3.1 If a complaint is referred to a subscriber by the CGSO in terms of 11.2.7.6, the subscriber shall:

- 11.3.1.1 contact the complainant to clarify any issue, to ascertain the essence of the complaint and to attempt to settle the complaint to the reasonable satisfaction of the complainant;
- 11.3.1.2 if able to resolve the complaint, provide CGSO with reasonable proof that the complaint has been settled and that any undertaking made by the subscriber has been complied with;
- 11.3.1.3 undertake any investigation that is necessary; the level of investigation should commensurate with the seriousness, frequency of occurrence and severity of the complaint;
- 11.3.1.4 if the subscriber is unable to resolve the complaint referred to it by the CGSO in terms of 11.2.7.6, provide the CGSO with a report outlining the investigation that it undertook and the reasons that the matter was not resolved and its reasons for repudiating the complaint;
- 11.3.1.5 if the CGSO is of the view that the subscriber has provided the assistance sought by the complainant or provided an acceptable explanation for its conduct complained of, the CGSO may inform the complainant of this fact and indicate that the file will be closed unless the complainant challenges the view, or provides new information to the complaint with 10 (ten) business days;
- 11.3.1.6 During the time set in terms of 11.2.7.6, the CGSO may facilitate a settlement between the subscriber and the complainant if the CGSO considers that it would be appropriate and helpful to do so.

STAGE 4: INVESTIGATION AND COMPLAINT RESOLUTION BY CGSO

11.4 Investigation by CGSO

- 11.4.1.1 The CGSO may, if it decides that it requires these for the purpose of arriving at the resolution of a matter:
- 11.4.1.1.1 require the subscriber, through its Designated Official, to provide it with records of the transaction or process that gave rise to the dispute, including:
- sales records;
 - advertising copy;
 - Inspection or repair records.
- 11.4.1.1.2 require, through the subscriber's Designated Official, a statement from any technical, legal, sales, marketing, complaints-handling and other personnel working on behalf of the subscriber, as appropriate to the dispute;
- 11.4.1.1.3 require comment or clarification from either the complainant or the subscriber (both retailer and manufacturer if considered appropriate) on any matter, including information provided by the other party;
- 11.4.1.1.4 require the complainant or subscriber, whichever is appropriate, to provide it with the product to which the complaint or dispute relates for inspection or testing, if the product is still available;
- 11.4.1.1.5 the CGSO may consult any person it considers suitably qualified to assist it in resolving the dispute;
- 11.4.1.1.6 the complainant or the subscriber must make every effort to comply with the requests made by the Ombud within 7 (seven) business days unless other reasons such as ongoing technical testing is preventing this.

11.5 Facilitation by the CGSO

- 11.5.1 The CGSO may, in order to settle a dispute speedily, make an assessment of its merits without taking an investigation and suggest to the parties how the matter should be settled;
- 11.5.2 The CGSO may, after collecting relevant records and information, form an initial view on the matter with respect to the subscriber's potential liability and the remedies, if any; it believes the complainant is entitled to. The possible outcomes include:
- 11.5.2.1 resolving the matter as requested by the complainant;
 - 11.5.2.2 providing some but not all of the remedies requested; or
 - 11.5.2.3 providing none of the remedies requested and advising the complainant of other options available to the complainant.
- 11.5.3 The CGSO shall communicate its view to the subscriber and to the complainant as soon as the decision is taken and invite their responses;
- 11.5.4 The subscriber and the complainant must advise the CGSO in writing within 10 (ten) business days of receiving the said communication as to whether they accept the terms of the recommendation or not;
- 11.5.5 If the matter is resolved as a result of both parties to the dispute accepting the CGSO's proposed resolution or the CGSO's assistance in arriving at a mutually acceptable compromise settlement, the resolution must be recorded and carried out. The CGSO may at the request of a party to a dispute record the resolution of the dispute in the form of an order in terms of Section 70 (3)(a) of the Act;

11.5.6 If a resolution is not agreed upon at this stage, the CGSO shall inform the parties of further options available to them, including a recommendation by the Ombud.

11.6 Mediation by CGSO

11.6.1 The CGSO may, in its discretion, mediate any matter that the Ombud believes is appropriate for mediation, taking into consideration the wishes of the parties and the nature of the complaint, without undertaking an investigation. The involvement of legal representatives shall be at the discretion and/or the alternative recommendation of the Ombud.

11.6.1.1 The Ombud may, in any case where a matter has not been settled through facilitation, make a written recommendation setting out how the matter should be resolved and the reasons for the recommendation. Where the matter has been referred to both the manufacturer and retailer, the recommendation should state which of the two, if either, the Ombud considers to be liable;

11.6.1.2 prior to making a recommendation and subject to the considerations of confidentiality, the Ombud shall, to the extent considered appropriate, permit each of the parties to comment on the information provided to the CGSO by the other during the investigation or facilitation stage;

11.6.1.3 the subscriber and the complainant must advise the Ombud in writing within 10 (ten) business days from receiving the recommendation whether they accept the terms of recommendation or not;

11.6.1.4 neither a complainant nor a subscriber shall be bound to accept a recommendation made by the Ombud, but if a subscriber does not accept a recommendation that has been accepted by a complainant, the number of those cases and those details thereof that the Ombud considers appropriate shall be published in the CGSO's annual report and by other means that the Ombud considers appropriate;

- 11.6.1.5 if the complainant rejects the recommendation or fails to respond within the time limit set in 11.6.1.3, the recommendation will fall away and the file may be closed;
- 11.6.1.6 if the matter is resolved as a result of both parties to the dispute accepting the Ombud's recommendation, the CGSO may, at the request of a party to the dispute, record the resolution of the dispute in the form of an order in terms of Section 70 (3)(a) of the Act;
- 11.6.1.7 If both parties accept the terms of recommendation, they must comply with its provisions within the period of time prescribed in the recommendations. If either party fails to comply, the CGSO shall inform the parties of further options available to them, including a referral to the National Consumer Commission or Tribunal, and the recording of the resolution of the dispute in the form of an order and having made an order and having made an order of court or the institution of legal proceedings, both of the last two mentioned options are at the parties' own expense;
- 11.6.1.8 If a resolution is not agreed upon at this stage or if a party fails to comply, the CGSO shall inform the parties of the further options available to them, including a referral to the National Consumer Commission and the institution of legal proceedings at the parties' own expense, of so advised.

SECTION G

12. CONFIDENTIALITY

- 12.1 Subject to any other law, personally identifiable information should be kept confidential and protected, except to the extent that it is necessary to provide to the party for the sole purpose of resolving a dispute, unless disclosure is required by law, or consent for disclosure is obtained from the person concerned. Similarly, trade secrets, secret manufacturing or business process or security arrangement

should be kept confidential and protected, unless disclosure is required by law, or consent for disclosure is obtained from the party that has the trade secret, secret manufacturing or business process or security arrangement.

- 12.2 If any party to a complaint supplies information to the CGSO and requests, in writing that it be treated as confidential information, the CGSO shall determine whether the information should be treated as confidential information.
- 12.3 If the CGSO determines the information should be treated as confidential information as it relates to a trade secret, secret manufacturing or business process or security arrangement, the CGSO may nevertheless use the information to reach a decision adverse to the party whom the confidential information is denied.
- 12.4 If the CGSO determines the information should not be treated as confidential, the CGSO shall inform the party that requested the information be treated as confidential that the CGSO is not entitled to use the information to reach a decision adverse to the party to whom the confidential information is denied, unless the party consents to that information being provided to the other party.
- 12.5 Subject to 12.1 - 12.2, as far as it is practical and at the sole discretion of the CGSO, all documentation should be provided to both parties to a dispute. However, it is not necessary for the documents and information used by the CGSO to be provided to both parties as long as the CGSO written reasons clearly identify that the documents or information are provided on request.

CONSTITUTION OF THE BOARD OF THE CONSUMER GOODS AND SERVICES OMBUD

The Board of the Consumer Goods and Services Ombud ("the Board") is constituted as an independent organ of the office of the Consumer Goods and Services Ombud ("the Ombud"), in accordance with the following provisions:

1. MANDATE AND RESPONSIBILITIES

The purpose of the Board is to facilitate the provision of the Office of the Ombud, as well as to ensure independent, equitable, speedy, and cost-effective mediation of disputes between consumers and subscribing Members of the Consumer Goods and Services Industry. To this end, the Board:

- 1.1. Appoints or reappoints the Ombudsman and settles the terms and conditions of his/her employment;
- 1.2. Receives the Ombud's Annual Report and ongoing updates on the Ombud's activities;
- 1.3. Approves any changes to the published rules and policy guidelines governing the Ombud's powers and activities to ensure that it complies with the purpose stated above;
- 1.4. Monitors, maintains and promotes the Ombud's independence;
- 1.5. Assists in ensuring that the Consumer Goods and Services industry, consumer bodies, the media and the general public understand the role, function and activities of the Ombud;
- 1.6. Will fully cooperate with the National Consumer Commission where required; and
- 1.7. Generally takes such steps as may be necessary to facilitate the purpose stated above.

2. COMPOSITION

2.1 The Consumer Goods and Services Ombud is a Voluntary Association, with a Board comprising 4 (four) representatives from the retail sector; 4 (four) representatives from manufacturing sector and 2 (two) representatives from consumer bodies and a representative from the Consumer Goods Council of South Africa.

2.2 There shall at all times be not less than 9 (nine) or more than 12 (twelve) persons appointed as Members of the Board. If at any time, as a result of retirement, resignation, death, or for any other reason, the number of Members shall fall below such stated minimum, then the remaining Members shall cause other persons to be co-opted as additional Members. Each constituency may on its own agree to co-opt or nominate additional members.

3. PERIOD OF APPOINTMENT

Members of the Board shall be appointed for a term of Two (2) years, but shall be eligible for reappointment as the Board sees fit. Each Member of the Board shall at all times be obliged to act in the best interests of the Office of the Ombud. Members of the Board may appoint an alternate or representative to attend meetings on his/her behalf.

4. PROCEDURES AT MEETINGS

The business of the Board shall be conducted in accordance with such procedures as will be determined by the Board through its established terms of reference, on the basis that:

4.1. The Board shall elect its own Chairperson and Vice-Chairperson who shall respectively be the Chairperson and Vice-Chairperson of the Association. The Chairperson and Vice-Chairperson of the Association shall hold office for one (1) year from the date of their election, provided that the Chairperson and Vice-Chairperson could be re-elected to the respective positions.

4.2. Neither the Chairperson of the Board, nor the Vice-Chairperson, nor the Chairperson or Vice-Chairperson of any meeting of the Board shall be entitled to a second or casting vote in addition to his deliberative vote as a Board Member.

4.3. The Board shall, unless otherwise agreed by the members, meet at the Association's premises.

4.4. The Chairperson (or in his/her absence, the Vice-Chairperson) may convene meetings of the Board at any time, but shall be obliged to convene a meeting if so requisitioned at any time by at least Three (3) Members of the Board.

4.5. The quorum necessary for the transaction of the ordinary business of the Board shall be fifty (50) percent plus one of all the members of the Board, provided that at least one (1) member of every constituency is present at the meeting.

4.6. At meetings of the Board each Member shall have One (1) vote.

4.7. All questions arising shall be decided by majority of votes.

4.8. In the event of an equality of votes the matter is to be resolved through discussion and or mediation, that is, no individual shall have a casting vote.

4.9. Proper minutes shall be kept of all proceedings of the Board, including a record of the Members present at each meeting. Such Minutes shall be signed by the Chairperson, or his/her Deputy, and shall be available at all reasonable times to Members of the Board.

4.10. A "round-robin" Resolution signed by all Members of the Board shall be as valid as if passed at a duly convened meeting. Such resolution must be tabled at the following Board meeting.

4.11. The Board may delegate some of its powers and prerogatives as it may deem appropriate to one or more of its Members, or to a specially constituted sub-committee. The Member or sub-committee, to whom such delegation is made, shall conform to any stipulations or procedures that may be determined by the Board from time to time.

4.12. If any Board member is absent from four consecutive meetings of the Board he/she may be requested to vacate his/her seat. Any such vacancy shall be filled by the Board at its first meeting after the occurrence of the vacancy.

4.13. The Ombudsman may attend all meetings of the Association in his/her capacity as the executive function, but shall not be entitled to vote at such meetings. It shall be the responsibility of the Ombudsman to ensure that proper minutes in customary form are kept in respect of all Board, general meetings of the Association and any sub-committee of the Board that may from time to time be formed.

4.14. Board members are not entitled to a Board Fee nor allowed to claim any disbursement. Their appointment to the Board is purely voluntary and in the best interest of the industry.

5. NOTICES

5.1 Notices of meetings of the Board shall be sent to all its Members, either personally, or by prepaid registered post, or in such other manner (including facsimile or email) as may be deemed expedient by the Chairperson. Notices shall be sent together with the agenda and all accompanying documents, at least seven (7) days before the Board meetings, and in respect of general meetings of members, within the timeframes stipulated by the Companies Act, No. 71 of 2008.

5.2 The inadvertent omission to address notice/s to any Member shall not invalidate the proceedings of the resultant meeting.

6. INDEMNITY

Each Member of the Board shall be indemnified from liability by the Office of the Ombud through an indemnity insurance cover in respect of all decisions and acts made and undertaken in good faith on its behalf.

7. PUBLIC BENEFIT ORGANISATION

The Consumer Goods and Services Ombud Association has been approved by the Commissioner of the South African Revenue Services as a Public Benefit Organisation and as such it is stipulated that:

7.1. The Board Members accept fiduciary responsibility for the Consumer Goods and Services Ombud Association.

7.2. No Board members shall be connected persons in relation to each other.

7.3. No single person shall directly or indirectly control the decision-making power relating to the organisation.

7.4. Funds will solely be utilised for the object of which the Board and the Association have been established and no funds will be distributed directly or indirectly for any other purpose.

7.5. The Board or the Association is prohibited from accepting a revocable donation subject to the exceptions stated in Section 30(3) (b) (v) of the Income Tax Act No. 58 of 1962 ("Income Tax Act").

7.6. Any amendments to the Constitution of the Consumer Goods and Services Ombud Board or the Consumer Goods and Services Ombud Association will be submitted to the Commissioner for the South African Revenue Services.

8. AMENDMENT OR DISESTABLISHMENT

This constituting document, including the mandate of the Ombud's Board, may be amended, the name may be changed, and the Board may be disestablished at any time, by Resolution of the Board, provided that any such Resolution is supported by no less than Two-thirds of its Members at the relevant time, being not less than the minimum number stipulated above. Upon dissolution the assets of the association shall devolve on another organisation or parties listed in Section 30(3) (b) (iii) of the Income Tax Act.

ANNEXURE B

THE CONSTITUTION FOR THE CONSUMER GOODS AND SERVICES OMBUD ASSOCIATION**1. PREAMBLE:**

1.1 The Office of the Consumer Goods and Services Ombud ("CGSO" or the "Ombud") was established on (Registration Pending)

1.2 The primary objective of the Consumer Goods and Services Ombud ("The Ombud") is to effectively resolve disputes within the Consumer Goods and Services industry, especially entities who produce/supply and/or provide services relating to the following products (including the packaging of these goods): Food and Beverage, Pet Food and Products, Electrical Appliances, Electronic Goods, General Merchandise, which includes sport, tools, DIY, Sport Goods, Chemicals, Furniture, Textiles, Building Material, Hardware Supplies, Jewellery, Cosmetics Toiletries and Fragrances as well as toys and stationery. Through the exercise of discretion the Ombud will decide whether the dispute will be most effectively resolved through facilitation, mediation, conducting a fact-finding exercise and making a recommendation on the facts or by correcting a wrong perception on the part of a complainant.

1.3 In resolving disputes the Ombud will apply the operating procedures of the Ombud's Office.

1.4 The recommendations of the Ombud shall not be binding on the subscribing members unless both parties to the dispute accept the CGSO's proposed resolution. Complainants may institute legal proceedings and/or approach the National Consumer Commission.

1.5 The Ombud shall be accountable to the Consumer Goods and Services Ombud's Board ("the Board").

1.6 The Board shall endeavor to ensure that the office of the Consumer Goods and Services Ombud provides speedy, cost-effective and equitable resolution of Consumer Goods and Services and Consumer Goods and Services information disputes arising out of the Consumer Goods and Services industry. In order to fulfil its obligation in this respect the Council shall:

- Appoint or reappoint the Ombudsman and determine the terms and conditions of his/her employment.
- Receive and comment upon reports from the Ombudsman on his/her activities.
- Determine the rules governing the Ombud's procedures and approve any changes thereto
- Monitor, maintain and promote the independence of the Ombud.

- Participate in and give input on any legislative or regulatory process affecting the Ombud and the carrying out of his/her duties.
- Assist in publicising the role, functions and activities of the Ombud.
- Facilitate the efficient management of the office of the Ombud by deciding on issues such as financing and the operational costs of the office of the Ombud.

2. ESTABLISHMENT OF THE VOLUNTARY ASSOCIATION:

A voluntary association under the name of Consumer Goods and Services Ombud's Association is hereby established with effect from (Registration Pending) as a legal persona, distinct from its members functioning not for gain but for purposes set out in paragraph 1.2 above with the capacity of acquiring rights, incurring obligations, owning property, having the power to institute and defend legal proceedings in its own name and with the attribute of perpetual succession.

3. THE BOARD AS AN ORGAN OF THE ASSOCIATION:

3.1 The Board is hereby confirmed as a separate organ of the Association.

3.2 Each member of the Board, on accepting appointment as such agrees to the provisions of the Constitution.

3.3 The CGSO is controlled by a voluntary association, the Board of the Consumer Goods and Services Ombud Association. The Board is appointed in accordance with the provisions of Consumer Goods and Services Ombud Association's Constitution (Annexure "A") and any applicable legislation and governance codes, and the composition of the Board shall be as prescribed in terms of Section 2.1 thereof.

4. APPOINTMENT OF THE OMBUDSMAN:

4.1 The Board will be responsible to appoint the Ombudsman whom is expected to have the following personal qualities, qualifications, skills or experience to be eligible for appointment:

- Be a person of recognised knowledge, judgment and objectivity;
- A fit and proper person who is honest and has impeccable integrity to his or her character;
- Must demonstrate high levels of competency, capability and financial soundness;
- Sound leadership qualities;
- Able to effectively manage and lead a service-driven organisation;
- Have at least 10 years of experience in a senior executive role relating to alternative dispute or ombudsman office; and
- Be legally qualified and be admitted as an Attorney or Advocate.

To ensure the independence of the Ombudsman from the consumer's perspective, no person who has worked for a retailer or a wholly-owned subsidiary of the retailer, which is subject to the jurisdiction of the Consumer Goods and Services Ombud ("the Ombud"), within a 3 (three) year period prior to applying for the post of Ombud, may be appointed.

No person who has any direct or indirect business interests with, or who owns shares in, any retailer or wholly-owned subsidiary of a retailer, which falls under the jurisdiction of the Ombud office, may be appointed as Ombudsman.

4.2 The process for the appointment of the Ombudsman shall be conducted in an open and transparent manner.

The Board of the Consumer Goods and Services Ombud Association ("the Board") shall appoint a special sub-committee for the Ombudsman's recruitment process. This sub-committee will be called the Recruitment Committee. The recruitment committee shall be composed of the chairperson, one industry representative, one consumer body representative and one association representative.

The recruitment committee shall advertise the position of the Ombudsman in at least two National newspapers. A shortlist of the most suitable candidates will be compiled and interviewed by the sub-committee. Once the sub-committee has made a decision on the most suitable candidate it shall make a fully motivated recommendation in this regard in writing to the Council. The Council will then make the final decision on the appointment of the candidate on a majority vote.

The Ombudsman will be required to sign an employment contract stating the terms of the employment and which is subject to performance review.

4.3 The Ombudsman will be appointed for a fixed period of 3 (three) years. Once this 3 (three) year term has ended, the Ombudsman will be eligible for reappointment for a further 3 (three) years by a majority vote of the Board. Should the Board decide to extend the Ombudsman's term for a further 3 (three) years, then no formal recruitment and application process needs to be followed. This decision as to whether or not to reappoint the Ombudsman must be communicated in writing to the Ombudsman at least one year prior to the term of office ending. If the Board wishes to extend the Ombudsman's tenure beyond the periods stipulated above, the Board must first apply to the National Consumer Commission to approve such extended tenure. Notwithstanding the aforementioned, the Ombudsman may not serve a joint term longer than 6 (six) years unless approval is obtained from the National Consumer Commission.

To ensure that the Ombudsman can carry out the required powers, functions and duties of the office without fear of retribution he/she enjoys security of tenure and may not be dismissed for any reason other than for good cause including bias, neglect of duty, an

inability to perform his/her duties through incompetence or ill health or for intentional or wilful misconduct.

Any decision to dismiss the Ombudsman must be taken by majority vote of the Board and the dismissal process must comply with all the substantive and procedural processes set down by the law.

The Ombudsman will declare in writing to the Board should there be any actual or perceived conflict of interest which may exist or arise after or at the time of his/her appointment. This will include, but is not limited to, instances where an immediate family member such as parents, siblings or children of the Ombudsman are in the permanent employment of, or have business interests with, a retailer or a wholly-owned subsidiary of a retailer falling under the jurisdiction of the CGSO.

4.4 There shall at all times be 1 (one) Ombudsman. If requested by the Ombudsman, the Board shall be entitled to appoint a deputy Ombudsman. The appointment and election of the deputy Ombudsman will take place by majority vote of the Board.

4.3 The Ombudsman may resign by giving 60 (sixty) days written notice to the Board.

CONSTITUTIONAL PROVISIONS OF THE ASSOCIATION

5. MEMBERSHIP:

5.1 The members of the association shall be:

Subscribers who trade within the Consumer Goods and Services Industry, especially entities who produce/supply and/or provide services relating to the following products (including the packaging of these goods): Food and Beverage, Pet Food and Products, Electrical Appliances, Electronic Goods, General Merchandise, which includes sport, tools, DIY, Sport Goods, Chemicals, LP Gas, Furniture, Textiles, Building Material, Hardware Supplies, Jewellery, Cosmetics Toiletries and Fragrances as well as toys and stationery.

6. AUTHORITY TO ACT:

6.1 The Ombudsman is vested with the authority to enter into legal acts on behalf of the Association and only the Ombudsman is vested with the authority to make recommendations relating to complaints and/or disputes.

7. ADMINISTRATION OF THE OFFICE:

The Ombudsman shall have the overall responsibility for the conduct of the day-to-day administration and business of the office. In this regard the Ombudsman shall appoint employees and determine their terms and conditions of employment. The Ombudsman shall do anything that is necessary and expedient for the running of the office including issuing guidelines for the implementation and application of rules.

8. MEETINGS OF THE ASSOCIATION:

8.1. The Consumer Goods and Services Ombud Board shall meet at least 4 (four) times per year.

8.2. Such meetings shall be convened by the Chairperson of the Board, who shall be independent of the industry or industry associations, failing which by the Deputy Chairperson.

8.3. The Board meetings shall receive reports on resolutions adopted at meeting(s) of the Board, and matters relating to the association such as the business, functioning and operation of the office and matters to be referred to the Board.

8.4. Minutes shall be kept of all meetings, including a record of members present; such minutes shall be signed by the Chairperson and shall be available at all reasonable times. The minutes of such meeting shall be reported at the next succeeding meeting of the Board.

8.5. Voting shall take place by a show of hands. Each member of the Board present shall have one vote and decisions within the Board shall be taken by a majority vote of all members present, provided that the members present constitute a quorum.

8.6. The quorum necessary for the transaction of the ordinary business of the Council shall be fifty (50) percent plus one of all the members of the Association Board, provided that at least one (1) member of every constituency is present at the meeting. (In the event of an equality of votes the matter is to be resolved through discussion and/or mediation, therefore no individual member shall have a casting vote.)

9. POWERS OF THE OMBUDSMAN:

The Ombudsman shall be vested with the power to do what is necessary to give effect to the primary objective of the Association. This power should be exercised in accordance with the terms of reference and procedures determined by the Board. More particularly the Ombudsman shall:

9.1. Prepare and submit to the Board an annual report detailing the activities and finances of the Association for the year in under review.

- 9.2. Prepare and submit reports to the Board on current matters and activities.
- 9.3. Promote and publicise the services provided by the association through the media and consumer bodies.
- 9.4. Identify and bring to the attention of the Subscribers undesirable practices to which a Subscriber might be party, and to report such matters to the Board where the Subscriber is unable or unwilling to remedy the undesirable practices.
- 9.5. Appoint personnel to ensure the efficient management of complaints.
- 9.6. Enter into agreements of purchase and sale and letting and hiring of property reasonably required for the purposes of the functioning of the association.
- 9.7. Open bank and other accounts necessary for the association to perform its obligations.
- 9.8. Make recommendations to the Board for amendments to the rules and policy guidelines.
- 9.9. Institute and defend legal proceedings in its own name.
- 9.10. Notwithstanding anything to the contrary contained herein, to apply its funds, reserves and surpluses in promoting the primary object of the association and the functioning of the office.

10. INDEMNITY:

Each member of the association and the Board is indemnified by the association in respect of all decisions, and acts of omission and commission made and undertaken in good faith on its behalf, and it shall be the duty of the association to reimburse such members in respect of any costs or expenses incurred in the *bona fide* discharge of such member's fiduciary duty to the association or the Board.

11. AMENDMENTS:

This constitution may be amended by a resolution of the Board.

12. DISSOLUTION:

This constituting document, including the mandate of the Ombudsman's Board, may be amended, the name may be changed, and the Board may be disestablished at any time, by Resolution of the Board, provided that any such Resolution is supported by no less than Two-thirds of its Members at the relevant time, being not less than the minimum number stipulated above. Upon dissolution the assets of the Association shall devolve on another organisation or parties listed in Section 30(3) (b) (iii) of the Income Tax Act.

13. FINANCING THE ASSOCIATION:

The basis of financing the office will be determined by the Board. In making this determination, the Board shall ensure that funding by the participants in the scheme is sufficient to enable the Ombud to function efficiently and timeously.

ANNEXURE C**GUIDANCE ON THE PROCESS OF INTERNAL COMPLAINTS HANDLING****1. Provisions of Information:**

When dealing with complaints, the member should make readily available to customers, complainants and other interested parties information concerning the complaints-handling process, including the CGSO's brochures and the member's pamphlets, or electric-based information. Such information should be provided in plain language and, so far as it is reasonable, in formats accessible to all, so that no complainants are disadvantaged. The following are examples of such information:

- where complaints can be made;
- how complaints can be made; information to be provided by the complainant (see Annexure A2 for the suggested format);
- the process of handling the complaints;
- time period associated with the various stages in the process;
- the complainant's options for remedy, including the referral to the CGSO;
- How the complainant can obtain feedback on the status of the complaint.

2. Receipt of the Complaint:

Upon reporting the initial complaint, the complaint should be recorded with the supporting information and a reference number. The record of the initial complaint should identify the remedy sought by the complainant and the other information necessary for the effective handling of the complaint including the following:

- a description of the complaint and relevant supporting data (names of the consumer, supplier, products and the like);
- the requested remedy;
- the product or related organisational practices complained about;
- the due date of the response;
- immediate action taken (if any).

3. **Initial Assessment of the Complaint:**

After receipt, each complaint should be initially assessed in terms of criteria such as severity, safety implications, complexity, impact, and the need and possibility of immediate action.

4. **Acknowledgement of the Complaint:**

Receipt of each complaint should be acknowledged to the complainant immediately, or within 2 (two) business days.

5. **Attempt to Resolve the Complaint:**

The member should contact the complainant to clarify any issue, to ascertain the essence of the complaint and to attempt to settle the complaint to the reasonable satisfaction of the complainant.

6. **Time Limits for Complaint Resolution:**

The subscriber should make every effort to resolve the matter within 15 (fifteen) business days. If the subscriber is unable to resolve the complaint within that period for reasons such as ongoing technical testing, the subscriber shall inform the complainant of that fact as soon as readily possible.

7. **Complaint Resolution:**

The subscriber should make every effort to resolve the matter in good faith and in accordance with the subscriber's internal complaints-handling process. In doing so, the subscriber should deal with the complaint in a prompt, courteous, polite, efficient and confidential manner.

8. Tracking the Complaint:

The complaint should be tracked from the initial receipt through the entire process. The complainant is to be kept informed at regular intervals.

9. Investigation of the Complaint:

Every reasonable effort should be made to investigate all the relevant circumstances and information surrounding the complaint. The level of investigation should be commensurate with the seriousness, frequency of occurrence and severity of the complaint.

10. Response to Complaints:

Following an appropriate investigation, the subscriber should offer a response; for example, correct the problem and/or take preventative measures to reduce and/or prevent future occurrences.

11. Communicating the Decision:

The decision or any action taken regarding the complaint, which is relevant to the complainant or to the personnel involved, should be communicated to them as soon as the decision or action is taken.

12. Closing the Complaint:

12.1 If the complainant accepts the proposed decision or action, then the decision or action should be carried out and recorded.

12.2 If the complainant rejects the proposed decision or action, and the subscriber repudiates further measures, this is recorded and the complainant should be informed of the possibility of referring the complaint to CGSO.

ANNEXURE D**Recall Guidelines****1. Introduction**

The ability to remove products from the market rapidly and effectively is vital to every member of the Supply Chain. A recall programme is a written action plan that is carefully constructed, tested and evaluated to ensure efficiency. It is a safety net that can prevent consumers from buying or consuming potentially unsafe and hazardous products.

Whilst a number of organisations have detailed consumer recall processes, there is an inconsistent approach to consumer product recalls within the South African market. Yet all consumers need to be able to trust that our food industry will recall products with a potential or actual consumer safety risk and that recalled unsafe products will be managed appropriately.

Supply Chain organisation's internal standards, conformity assessments and regulations are designed to help ensure products are safe for the consumer to use, but from time to time defects do occur, or hazards are identified after the product has been introduced to the marketplace. In these instances, recalls need to be undertaken by the organisation to protect the safety of the consumer.

The purpose of this document is twofold; firstly, to provide guidance on the protection of the health and safety of South African consumers by building capability in terms of recall processes within the South African Consumer Goods and Services Industry. Secondly, to protect the reputation of the South African Consumer Goods and Services Industry, who must be seen to act decisively with regard to the safety of their products.

This document does not dictate how one should go about making the recall decision. That decision is based upon the assessment of the risk to the consumer, and it is critical that this risk assessment is undertaken by qualified individuals. For further guidance on this issue, consult CGSO or the National Consumer Commission.

This is not a prescriptive document, and should merely be seen as a good practice guideline about the product recall process. It carries a legal basis neither within South African legislation

applicable to Consumer Goods and Services, nor in terms of the South African National Standards Act.

This document was compiled by a team of stakeholders in the South African Consumer Goods and Services Industry, who have first-hand knowledge regarding the recall of products from the marketplace, and who have chosen to make that knowledge available to others.

2. Normative References

The following referenced documents are recommended in order to comprehend the necessity of product recalls. All normative documents are subject to revision, and any reference to a normative document is deemed to be a reference to the latest edition of that document. Regulations relevant to Acts listed were also taken into consideration.

- **Consumer Protection Act 68 of 2008**
- **Foodstuff, Cosmetics and Disinfectants Act 54 of 1972**
- **Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act No. 36 of 1947**
- **ISO 10393 Guidance standard on consumer product recall and corrective action: Code of Good Practice (draft)**
- **HACCP Europa**
- **Directive 2001/95/EC of the EU Parliament: General Product Safety**

3. Scope

This document covers a recall process for Consumer Goods and Services, which are considered a safety risk to the consumer. These include imported products that have actual or potential consumer safety risks that need to be removed from the South African marketplace.

This document does not provide guidance on products exported from South Africa. In cases of the latter, the exporting company should consult with the relevant sector regulator for guidance.

4. Assumptions

A recall guideline for suspect Consumer Goods or Services presupposes that certain factors are in place at the organisation that produced the suspect product, namely:

- The organisation has adopted the principle of commitment and accountability of the management to the health and safety of the consumers of their product.
- The organisation has adequate resources available (or will make adequate resources available) to manage the recall and associated actions.
- The organisation has adopted a principle of continuous improvement.
- The organisation complies with relevant national and local legislation and regulations.
- The organisation has a structured decision-making process for risk-assessment, recall decision, management and communication of a consumer safety recall.
- The organisation can identify the suspect product(s) (via traceability and quality system management) or, understands that all of the products which are potentially suspect must be recalled.
- The organisation understands and acts upon collateral damage where relevant, i.e. grasping the extents to which other batches or products may be potentially or actually affected via cross-contamination or association or some other reason, which could necessitate a recall procedure.

5. Definitions

5.1 Consumers and Customers

5.1.1 in the context of this document, consumers consume the products and services as supplied by the "Supply Chain";

5.1.2 in the context of this document, customers are members of the "Supply Chain".

5.2 Consumer Safe Product

A product that does not pose any risk to consumer health or safety.

A safe product is compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of consumers, taking into account the following points in particular:

- The product and process characteristics of the consumer goods or services, including its composition, packaging, instructions for use and storage. The effect on other products, where it is reasonably foreseeable that it will be used with other products.
- The presentation of the product, the labelling, date markings, any warnings and instructions for its use and disposal, and any other indication or information regarding the product.

5.3 Product Recalls: Trade in relation to the Customer or Consumer

Trade: Removal of the suspect product(s) from the marketplace (trade, customer or distribution centres) to ensure consumer health and safety, followed with appropriate corrective actions. This is also sometimes referred to as a product withdrawal.

Consumer: Recall of the suspected product(s) from the consumer, or the consumer is advised to take appropriate action, for example to return or destroy the particular goods.

Product blocked or stopped whilst still in the control of the supplier whether in their factory or in their warehouse not to be considered a recall. This is the usual "quarantine" or "QA Held" process followed by manufacturers or suppliers.

5.4 Recall Triggers

Triggers that indicate a potential or actual consumer safety risk in consumer goods and services which may or may not lead to a recall decision are numerous. Examples are:

- Foreign matter/objects
- Contamination, including chemical and microbiological and allergen
- Reports of illness, injury and adverse reactions, e.g. allergenic reactions
- Incorrect or wrong packaging or labelling
- Accidental, negligent or malicious contamination
- Mechanical default
- Sources of triggers could be, but are not limited to:
 - Notifications from warehouses, sales representatives, employees, distributors, customers or authorities that the food product poses a risk to consumer health and/or company reputation
 - Regulators notification
 - Notifications from packaging, ingredient or processing aid suppliers
 - Consumer or customer complaints
 - Media reports
 - Notification from manufacturing units
 - Internal records
 - Etc.

5.5 Corrective Action

Generally includes any type of remedial action taken by an organisation. This may include multiple measures that are necessary to protect consumers.

5.6 Consumer Safety Risk

Shall mean any risk, where, based on the information available, there are concerns about actual or suspected risks in relation to the safety of the goods or services; the result of which could affect the consumer, including those where the effects are not immediate. (Directive 2001/95/EC)

5.7 Food Safety and Harm

Means the concept that food will not cause harm to the consumer when it is prepared and/or eaten according to its intended use. Food safety is rather related to the non-occurrence of food safety hazards or risks and does not include other human health aspects related to food, for example, malnutrition. (SANS 22000)

Harm: means physical injury or damage (including illness) to the health of people.

5.8 Food Safety Hazard

Is the biological allergen, chemical or physical agent in food, or condition of food, with the potential to cause an adverse health effect. The term "hazard" is not to be confused with the term "risk" which, in the context of food safety means a function of the *probability* of an adverse health effect and the severity of that effect. (SANS 22000)

5.9 Brand Protection and Consumer Safety Protection

In the context of this document, the above refers to the product being damaged and/or contaminated in such a manner that the product itself cannot be consumed, or its packaging cannot protect the product in any manner. It is considered unfit for consumption and shall be disposed of.

5.10 Consumer Safety Risk

Means the combination of the probability of occurrence of harm and the severity of that harm.

5.11 Risk Assessment

Risk assessment, in this context, is the determination of the risk related to a concrete situation and a recognised threat/hazard. Risk assessment requires calculations of two components of risk: the *severity* of the potential threat/hazard and the *probability* that the threat/hazard will occur.

Risk assessment consists of an objective evaluation of risk in which assumptions and uncertainties are clearly considered and presented. Part of the difficulty of risk management is that measurement of both of the quantities in which risk assessment is concerned. Severity of the threat/hazard and probability of occurrence can be very difficult to measure. The chance of error in the measurement of these two concepts is large; hence experienced, qualified individuals should undertake the risk assessment.

5.12 Traceability

Traceability means the ability to trace any finished product, its raw materials, its ingredients and its packaging that will be used for consumption, through all stages of production, processing, distribution and storage.

It is vital that when an organisation identifies a risk, they can trace it back to its source in order to swiftly isolate the suspect product and prevent the suspect product from reaching consumers. In addition, traceability allows targeted withdrawals and the provision of accurate information to the public, thereby minimising disruption to the trade.

5.13 Documentation and Records Management

All documentations and recorded data related to the recall shall be maintained and managed, including: activities arising out of a recall for continuous improvement, data analysis, due diligence and to facilitate incident investigation, product and process identification and traceability.

5.14 Root Cause Analysis (RCA)

Root cause analysis (RCA) is a class of problem solving methods aimed at identifying the root causes of problems or events. The practice of RCA is predicated on the belief that problems are best solved by attempting to address, correct or eliminate root causes, as opposed to merely addressing the immediately obvious symptoms. By directing corrective measures at root causes, it is more probable that problem recurrence will be prevented. However, it is recognised that complete prevention of recurrence by one corrective action is not always possible. Conversely, there may be several effective measures (methods) that address the root cause of a problem. Thus, RCA is often considered to be an interactive process, and is frequently viewed as a tool of continuous improvement.

RCA is typically used as a reactive method of identifying event(s) causes, revealing problems and solving them. Analysis is done *after* an event has occurred. While one follows the other, RCA is a completely separate process to Incident Management, but is often included in the Incident Management procedure as a process to be conducted when investigating the cause of a suspect product and the corrective actions required eliminating a repeat occurrence.

5.15 Living Standards Method (LSM)

The South African Advertising Research Foundation (SAARF), Living Standards Measure (LSM), developed by the South African Advertising Research Foundation (SAARF) has become the most widely used market research tool in South Africa. The SAARF LSM is a unique means of placing the SA market on a continuum by cutting across race and other outmoded techniques of categorising people, and instead, groups people according to their living standards using criteria such as degree of urbanisation and ownership of cars and major home appliances.

5.16 SWOT Analysis

A SWOT analysis must first start with defining a desired end state or objective, which in this case relates to the recall of the suspect product. A SWOT analysis is best incorporated into the initial recall planning stage.

Strengths: characteristics of the business or team that gives it an advantage over others in the industry, in this particular recall situation.

Weaknesses: characteristics that place the organisation at a disadvantage relative to others.

Opportunities: *external* chances to make greater positive impact in the recall environment.

Threats: *external* elements in the recall environment that could cause distress for the organisation.

Identification of SWOTs is essential because subsequent steps in the process of planning for achievement of the selected objective (in this case the defined recall objective/end state) can be derived from the SWOTs.

5.17 Collateral Damage

The extent to which other products or batches of products may also be potentially or actually affected, via cross-contamination or association, or some other reason (e.g. suspect batch cannot be isolated from others, and require to be recalled).

5.18 Stakeholders

Include, but are not limited to:

- Customers
- Suppliers
- Manufacturers
- Regulators
- Consumers
- Insurance companies
- Competitors

6. Consumer Safety Recall Management

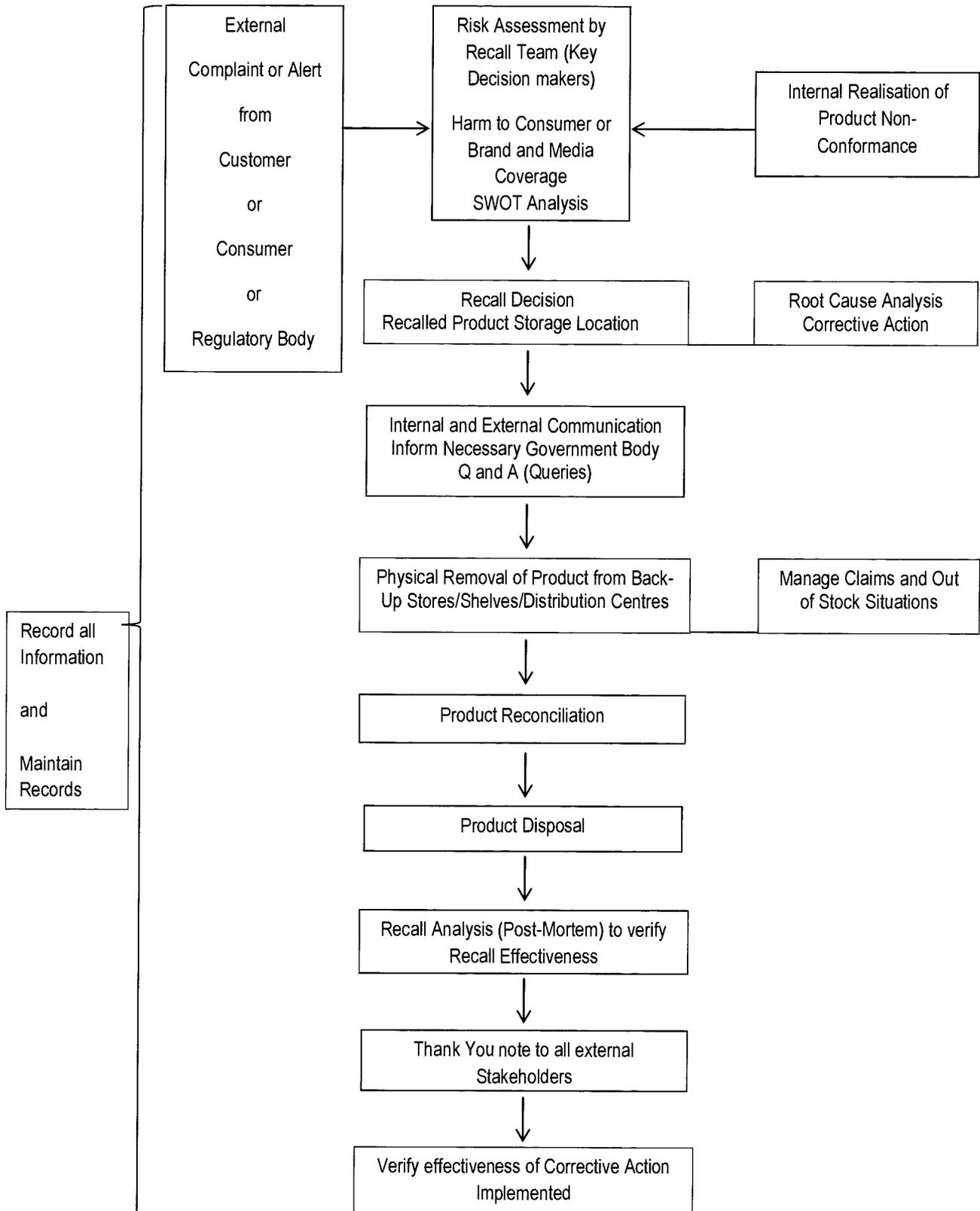
It is recommended that a team, rather than one individual, manages the consumer safety recall to ensure all aspects are appropriately addressed. Owing to the swiftness at which a consumer recall develops, it is very easy to lose control of the situation, resulting in the organisation's recall being scrutinised by the media or the authorities.

Another important factor to consider when deciding on the scope of how much, and what product will be included in the recall notice, is the fact that the market will often (grudgingly) accept one recall notice for a particular product, but is unlikely to accept a second recall notice. If the organisation is unsure of the scope (product type and quantity) in which to include a recall notice, it is preferable to recall all products of the brand or type identified. The returned products can always be sorted as to minimise losses in terms of separate affected products from non-affected products.

To widen the scope of the recall, a second recall notice could be required if all affected products were not recalled, once the first recall notice was published or communicated.

See process flow on following page:

RECALL PROCESS FLOW



6.1 Recall Team

All team members need to understand and appreciate that a consumer safety recall takes precedence over all their other activities.

The team must represent the different functions within the organisation that are impacted by the recall, for example:

- Product Recall Coordinator
- Customer/sales
- Production
- Supplier
- Retailer
- Marketing
- Quality
- Purchasing
- Consumer Services
- Outbound logistics/warehousing/transport
- Reverse logistics

Satellite expertise must also be available to the team as required, for example medical, legal, finance and public relations.

In smaller organisations one individual may be responsible for more than one of these functions, and in larger organisations these functions may be split even further.

The purpose is to have individuals present at the team meetings who can make immediate decisions as regards their responsible functions. It is also recommended that deputies are nominated to stand in for these team members where necessary; however, it is essential for deputies to have the authorisation to make key decisions.

In some circumstances, it may facilitate quicker responses if the team is split into a core team with sub-teams all reporting to the core team chair:

- **Recall core team (max 6 people) through which all information flows**
- **Recall communication team who manages communication to the consumer, customer and media**
- **Trained individuals who can manage standardised answers to queries**
- **Recall investigation team (usually manufacturing based) who commence the RCA**
- **Recall customer team who facilitate the arrangements with customers, particularly when a consumer recall is being planned**

6.2 Facilities

It is highly likely the recall team will require a room with, amongst others, the following:

- **Direct line telephone as well as one directed through the switchboard**
- **Copier/scanning equipment**
- **Computer facilities**
- **Flip charts and appropriate stationery that can be locked and left “as is” at the end of a day**
- **The individuals nominated to handle consumer, customer and media queries will require access to:**
 - **Direct line telephones and computers to receive queries and to feed the information through to the recall team on a daily basis**
 - **It is strongly recommended that these telephone and email lines are switched through to appointed individuals’ cellphones to deal with after-hours queries**

- Receptionists/Switchboard Operators/Security including those people at satellite offices need to be alerted and advised on how to deal with enquiries (document consumer details for example)

All team members must share their cellphone numbers, and cellphones should not be switched off for the duration of the recall period.

- The individuals nominated to handle consumer, customer and media queries will require access to:
 - Direct line telephones and computers to receive queries and to feed the information through to the recall team on a daily basis
 - It is strongly recommended that these telephone and email lines are switched through to individuals' cellphones to deal with after-hours queries

Emergency Telephone Contact Lists

These lists need to be maintained and kept updated in order to enable the prompt implementation of the recall plan. These lists should include the members of the various teams involved in product removal, and their functions and designations. The mentioned lists should also include contact details for both office hours and after-hours.

Emergency numbers of external partners should be well maintained (Forensic Department, Microbiologist, Courier Contacts, Mechanical Engineers etc.)

6.3 SWOT

It is recommended that the first order of business for the recall team, after a recall decision was made, is to conduct a SWOT analysis of the situation.

This can be used as the basis of any future actions or messages to stakeholders and the consumer, and also ensures that all future actions and communications project the same message.

Conflicting public messages and actions merely demonstrate that the organisation lacks (1) knowledge of the situation and (2) control of the situation.

7. Recall Decision

The decision to recall is one made by each individual company, in consultation with the relevant authorities where necessary, once a consumer safety issue has been identified.

The decision to recall must be supported by the risk assessment and clear scientific facts, if available.

It is essential for management to have established a series of steps that the recall team should consider to make sure that the organisation makes a structured decision based on available and reliable information.

Whilst this document supports a risk-based approach, it is critical that the risks in question are assessed by qualified individuals.

To clarify the recall decision-making process, refer to the example in Figure 1 below.

(This is merely an example, not a definitive process.)

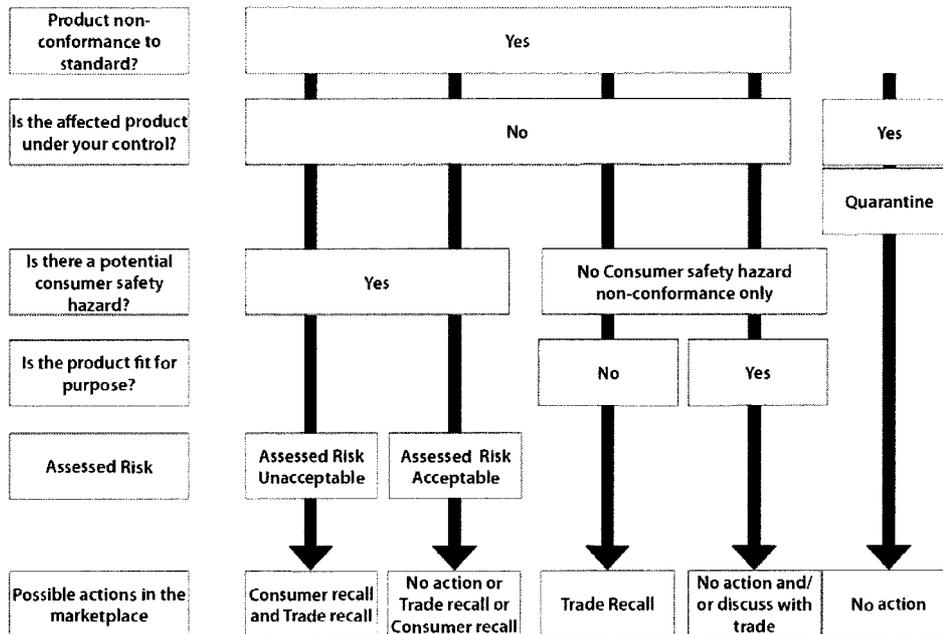
STRUCTURED RECALL DECISION-MAKING PROCESS: AN EXAMPLE

Figure 1

A consumer safety recall, while usually an individual company decision, can be dictated to the organisation, for example by:

- The National Department of Health, Directorate: Food Control, or
- The Consumer Commission who draws their authority from the Consumer Protection Act, or
- A customer of the organisation

Under these circumstances, the organisation should immediately initiate a recall of the suspect product (which may have already commenced based upon instructions issued to the marketplace by these authorities).

8. Physical Retrieval of Product

Issues to be considered includes, but are not limited to:

- Does the organisation want the consumer and customers to dispose of the suspect product and merely retain some proof that it was purchased, e.g. a barcode from the packaging, the date marking of the packaging, the empty packaging etc.?
- Does the organisation wish to collect all of the suspect products to ensure it is fully removed from the marketplace and thereby not at risk to cause any harm?
- Has the organisation considered how they will collect suspect products from all customers, including spaza stores and pavement traders? Will the organisation do the collecting themselves, or will they request the customers to return the products/proof of products to their sourcing customer?
- Re consumers: Does the organisation wish the product, or proof of product to be returned to where it was purchased, or do they wish the suspect products be returned to the organisation via post?
- In certain circumstances, the organisation may choose to retrieve product from consumers' homes. In such cases, the necessary arrangements and logistics (including resources) will have to be made (this is a common practice in USA and Europe).

8.1 Product Returned to Customer

Issues to be considered, but are not limited to:

CONSIDER

- Has agreement been obtained from customers that they are willing to receive the returned products/proof thereof?
- Does the customer require additional resources to handle returns or will they use their own resources?
- What does the customer do with the returned product/proof of product?
- Retain the products for collection: conditions of storage, where and for how long?
- Dispose of it: where and how?

- Will the organisation separately collect the returned products/proof of products from the customer, or does the organisation wish the customer to return the products in question?
- If collecting, how frequently will the organisation have to collect the said products/proof thereof from the customer?

8.2 Product Returned to the Organisation by the Consumer

Issues to be considered, but are not limited to:

- Does the organisation want the product itself or mere proof of the product's existence?
- What method of returning proof of product/suspect product will be required?
- If posted, will registered insured post be required? What happens if the product/or proof thereof goes missing?
- If collected, which method will the organisation use to obtain the information as to where to collect? For example, email or manned telephone lines. Does the organisation wish to collect from out-of-town addresses, or will they ask that consumers dispose of the suspect product in a particular manner?

9. Communication

In order to have an effective recall programme, communication should be clear, timely, transparent and accurate.

The team managing the recall must appreciate that the South African consumer is neither practised nor used to consumer goods recalls. Whilst some SA consumers might have been exposed to the odd recall, there have not been that many consumer goods recalls to the consumer level in South Africa.

Owing to this, the organisation must be well prepared for consumer queries or complaints, as well as some anticipated level of confusion as to which actual product is involved in the recall. It is essential that all communiqués carry a photograph of the suspect product, together with an indication of products that are not affected by the recall.

It is recommended the recall team adopts the approach that *all* communications, whether internal or public, be made public at some point in time.

It is critical that the organisation does not attempt to conceal any information. A consumer product recall tends to invoke considerable interest in a market unused to them. Any concealed information will invariably become public at one stage or another, and it is preferable for the organisation to control the release of information, rather than be reacting to it.

It is also critical that all press releases and written communications are vetted by legal and communications experts before they are released. This will assist in protecting the organisation from various potential legal comebacks.

Note: It is advised not to (hastily) communicate scientific facts if such facts are not clear and verified. Rather state that the facts will be made public once all scientific data is verified.

10. Queries

It is recommended that the organisation appoints at least one person to respond to queries from the media and others to assist with queries from consumers. It is important to clearly instruct employees to direct respective queries to these appointed individuals.

It is also important that these individuals reserve an opinion on the matter until further notice, rather than making arbitrary statements. (If the facts are not yet clear, it is advisable to say that the facts will be made public, once confirmed.) It is equally important that such persons obtain the answer to the query, and respond to the enquirer as soon as possible.

It is recommended that queries from the media are requested via fax or email, and responded to in writing, so as to avoid any misunderstandings.

10.1 Public Media

When issuing a recall notice to consumers via the media, do ensure that sufficient, relevant information is included in the notice (see Figure 2 below). It is recommended that a photograph of the suspect product, as purchased by the consumer, is included in the recall notice.

These could also be issued to the organisation's customers, requesting them to display it at the appropriate spot in-store.

It is recommended, that in order to be effective in terms of prominence, that the advert (communication) should be placed as an A5 minimum size in publications.

Figure 1

PRODUCT RECALL	...what is the action?
<p>ABC Hot and Steamy Microwaveable Pizza</p> <p>Quality Assurance checks revealed that a number of the foil trays in ABC Hot and Steamy Microwaveable Pizzas are defective. They risk overheating, which in certain cases causes the tray to burn.</p> <p>As a precautionary measure, ABC is advising all consumers to check if they have purchased any of the mentioned products with the Best Before Dates of ddmmyy and/or batch number xxxxxxxx.</p> <p>The Best Before Dates can be found in the coloured panel on the side of the pack.</p>	<p>...what is the product?</p> <p>...what is the problem?</p> <p>...what should the consumer do?</p> <p>...where consumer finds the identifying info</p>
NO OTHER ABC PRODUCTS ARE AFFECTED	...KEY MESSAGE!
<p>WHAT YOU, THE CONSUMER, SHOULD DO IF YOU HAVE PURCHASED OR RECEIVED THIS PRODUCT</p> <p>Discard the contents of the packaging in such a way that neither animals nor people would be able to get into contact with the affected product.</p> <p>Please send the packaging together with your contact details to: ABC, Whitehall Road, Rathfarnham, Durban 6230.</p> <p>We will contact you as soon as possible to replace the product.</p> <p>We apologise for any inconvenience caused by this incident and would like to thank all consumers in advance for their understanding and cooperation.</p>	<p>...eye-catching instruction</p> <p>...consumer's action</p> <p>...apology</p>
ABC CARELINE 1850 6273 08976	...further information

The Afrikaans media, e.g. the Rapport newspaper, will not publish an English advert (communication); thus the recall notice needs to be translated into Afrikaans.

Figure 2

PRODUKHERROEPING	...wat is die aksie?
<p>ABC Hot and Steamy Microwaveable Pizza</p> <p>Gehalte-versekeringstoetse het getoon dat 'n aantal foelieverpakkings van bogenoemde produk foutiewelik funksioneer tydens verhitting. Onder sekere omstandighede, is daar die potensiële risiko dat die produk kan oorverhit en dus brand.</p> <p>As voorsorgmaatreël, versoek maatskappy ABC dat alle verbruikers wat bogenoemde produk gekoop het, sal sekermaak of die gekoopte produk(te) die volgende "Best Before" datum bevat: ddmjjj en/of vervaldatum xxxxxxxx.</p> <p>In geval van bogenoemde produk word die datum aangedui in die gekleurde panel aan die een sykant van die verpakking.</p>	<p>...wat is die produk?</p> <p>...wat is die probleem?</p> <p>...wat moet die verbruiker doen?</p> <p>...waar kan die verbruiker die inligting vind?</p>
GEEN ANDER ABC PRODUKTE IS GEAFFEKTEER NIE	...KERNBOODSKAP!
<p>WAT U, DIE VERBRUIKER, MOET DOEN INDIEN U HIERDIE PRODUK GEKOOP OF ONTVANG HET</p> <p>Gooi die inhoud weg; liefs op 'n wyse en plek waar geen dier of mens daarmee in kontak kan kom nie.</p> <p>Stuur asseblief die verpakking, tesame met u naam en volledige kontak besonderhede aan die volgende adres: ABC, Whitehall Road, Rathfarnham, Durban 6230.</p> <p>Ons sal spoedig met u in kontak tree en poog om die produk so gou moontlik vir u te vervang.</p> <p>Ons vra om verskoning vir enige ongerief wat u mag ervaar weens hierdie insident en wil graag al ons verbruikers by voorbaat bedank vir hul samewerking in hierdie verband.</p>	<p>...prominente instruksie</p> <p>...verbruiker se aksie</p> <p>...verskoning</p>
ABC KLIËNTE DIENSNOMMER 1850 6273 08976	...verdere inligting

The team must also consider the most appropriate medium to spread the recall message, depending on the target market of the suspect product. For example, consumer recall notices could also be issued via electronic media:

- Twitter
- Facebook
- Company website
- FSI website
- Radio
- SMS
- TV

Bear in mind that in the current South African context, Radio and SMS could possibly reach a greater spread in the LSM 1 - 3 consumer base.

In addition, the organisation should decide what they wish the consumer should do with the suspect product. Ideally, the organisation should also have obtained relevant agreements if customers or third parties are involved.

10.2 Trade/Customer

The organisation's customers need to know how to identify the suspect product so they can remove it from their shelves, back of stores and/or their Distribution Centres (DCs).

In addition, being the organisation's stakeholders and partners in selling the product, they need to know precisely what is wrong with the product. They also need assurances that no other product made by the organisation will be affected by a similar cause.

If the team is conducting a Consumer Recall in addition to a Trade Recall or Product Withdrawal, it is recommended that they advise their customer's buyers as soon as they know when the public advertisements will be displayed. No customer wishes to find a product they have on their shelf as

being recalled, without their having had an opportunity to investigate and act on the matter themselves.

To ensure the correct Customer Head Office individuals are notified in the event of a recall, they must be telephoned and the said conversation should be confirmed in writing as well.

An updated recall contact list for customers must be available during office hours, and after-hours contact numbers should also be available and be kept updated.

Note: notification directly to Customers Distribution Centre is not an ideal route to follow, as it is the customer's duty to communicate with their respective DCs.

10.3 Stakeholder Communications

Local, National and Provincial Authorities: The Authorities which require notification of the product removal activity should be identified as well as further information requested by these authorities.

The Recall Team shall make the determination on which additional authorities should be contacted.

10.4 Employees

When a consumer recall is taking place, it is recommended that the organisation notifies their employees as soon as possible to prevent misunderstandings and to emphasise the communications policy. (Only authorised staff can communicate with customers, consumers and media.)

In addition, employees need to be advised that all queries related to the recall must be directed to the nominated individuals. This process will assist that all recall communications carry the same message.

10.5 Reintroduction of the Product

In the event of a consumer recall, a consumer notice is issued after the recall has been conducted and investigated. Such a notice attempts to give reassurance that the suspect product is no longer in circulation; it thanks the consumers for their cooperation; and it advises the consumers that a good product is available for them to enjoy.

Where relevant, the supplier should notify the customer that they are ready to reintroduce the product and obtain agreement from the customer as the customer may require the supplier to be re-audited/complete questionnaires/give further assurances/re-testing before reintroduction takes place.

11. Reimbursement of Customer and/or Consumer

11.1 Customer

This is usually an accounting transaction for those customers who have purchased goods on credit.

For cash and smaller stores, however, which might be a table on the pavement or a spaza store, the organisation has to make arrangements with such stores' sourcing retailers or wholesalers in order to accept the returned products, and either offer replacement products or a credit.

Decisions that need to be taken with regards to reimbursement include, but are not limited to:

- What proof of the suspect stock in hand is required before a reimbursement is given?
- Did the spaza store owner and the organisation agree upon the method of credit, if a spaza store owner returns a consumer unit to a wholesaler, who only sells the product in shrinks?
- Can the organisation arrange for transportation to the spaza or pavement stores, to replace their goods?
- Will the sourcing retailer require resources to handle and manage the returned suspect stock?
- Will the organisation offer cash, vouchers or products as a refund?

- What does the receiving store do with the returned suspect products? How do they keep it separated from non-affected stock?
- Are there particular conditions under which it must be stored?

11.2 Consumer

This is usually a refund or replacement transaction, via product, voucher or cash. However, an alternative compensation method needs to be established for those consumers who refuse replacement.

The organisation needs to arrange for returns and same-time reimbursement of the consumer-held product, either via their customers, themselves, or a third party (see customer above).

If retrieving the product from the consumer, it is appropriate for the retriever to reimburse the consumer at the same time.

Decisions that need to be taken in terms of consumer reimbursement include, but are not limited to:

CONSIDER

- What proof of suspect stock is required before a reimbursement is given to the consumer?
- Is it the piece of packaging with the date marking, the entire product, or simply the barcode?
- Will the organisation offer cash, vouchers or product as a refund?
- If requiring the product to be returned, what does the receiving store do with the returned suspect product?
- How do they keep it separated from non-affected product? Are there particular conditions under which it must be stored?
- Is the organisation going to collect the product in question?
- If requiring the product, or an identifying piece of packaging to be returned to the organisation via post, will the consumer be reimbursed for any expenses made?

Define how this aspect will be managed, plus how you will communicate it.

12. Investigation and Continuous Improvement

A structured investigation must be undertaken, followed by corrective actions, to ensure a recurrence of the situation does not arise. This will reassure customers and/or consumers that the organisation will prevent a consumer safety risk in future.

One of the structured investigation tools available is a formalised root cause analysis which, if conducted properly, ensures the cause, and not the symptom is clearly identified with associated corrective actions to eliminate or control the said cause.

Continuous improvement occurs when the organisation ensures a robust, sustained implementation of the identified corrective actions. Without this, the chances of the consumer safety situation recurring is high.

13. Ongoing Production and Delivery to Customers

The decision to stop or continue production when a consumer safety risk is identified must be made by the Recall Management Team, based on the issue at hand and the related risk assessment.

Whatever the decision, the organisation needs to instil confidence in their customers and consumers that it has robust practices in place to ensure that the suspect product has been removed and disposed of, and that no other product deliveries are affected.

It is critical that the suspect product being withdrawn is not confused with other/similar non-affected products awaiting despatch. It is recommended that a separate secure warehouse is used for storage of the returned suspect product.

14. Other

14.1 Insurance

Whilst insurance cover cannot cover all costs associated with a recall, it will assist in ensuring the business has some protection from financial ruin. Businesses should discuss Product Recall and Contamination Cover, including salvage of goods, incidental risks such as brand protection, business interruption, and other associated and expenses with their broker, insurer and finance division.

14.1.1 It is important that businesses understand and outline all the risks it faces as a result of a recall, determine the impact of these and discuss with their broker or insurer.

14.1.2 Items to consider in the discussion as to what the insurance policy should cover with regards to recall are listed, but not limited to the ones, below.

14.1.3 **Potential Harm:** The product, or batch of product, has been identified as one that could likely/*potentially* cause injury or damage. The product does not necessarily have to cause injury or damage but must have the potential to cause injury/damage.

14.1.4 **Actual Harm:** The product or batch of product has already caused harm to a consumer. In this case, the Department of Health may also intervene and direct that a recall is conducted by the government or public authority.

14.1.5 The business must understand to what extent the insurer will offer cover if the recall is initiated by the government/public authority, the business, your customer, your principal or the brand owner.

14.1.6 **Associated Risks of a Recall (not covered by a Products Recall policy):**

- **Delayed harm:** The product or batch of product may not cause harm at the time it was consumed, but result in later harm to the consumer e.g. toxin damage, a bacterium with a long incubation period etc. Whilst this is not covered by the recall policy itself, it is a risk associated with a recall.

- **Psychological harm:** The consumer claims damages owing to being psychologically affected by consumption of the product being recalled. Again, a scenario which is not covered by a recall policy, but an indication of risks associated with a recall.
- **Brand Damage:** This is probably one of the greatest threats to a business. Whilst brand protection cover is not easily available, some special markets can provide limited cover with regards to brand protection.

14.1.7 Collateral Damage: The extent to which, other products, or batches of product, may also be potentially or actually affected via cross-contamination or association or some other reason (e.g. suspect batch cannot be isolated from others) and also require to be recalled.

14.1.8 Disposal of Salvage: To protect their brand, many companies refuse to allow an insurer or third party to salvage their products, preferring to pay for environmentally sound destruction of the product. In the event of insurers insisting on retaining salvage, business should agree a value on the salvage (and reduce a claim by the salvage amount).

However, usually products are recalled due to their potential to cause injury/damage. These are destroyed and not sold as salvage.

14.1.9 Destruction: Depending on the circumstances, the product may require specialised destruction due to the nature of the product or to protect the brand or the population that may retrieve goods from dumpsites. This specialised destruction is usually expensive.

14.1.10 Business Interruption: A recall may cause the business to lose revenue.

14.1.11 Third Party Recall: The business may supply a product which is an ingredient to another (company's) product. The ingredient may be the cause of the recall (due to its potential to cause injury or damage) and the company may recall its product and recover its recall costs from the business. This must be discussed with your broker so that the extent of risk and coverage is clearly understood.

14.1.12 Advertising, Media and other costs: Usually business will incur costs for a recall so that public is made aware of the potential dangers (if any) associated with the products and can assist with returning the products.

14.1.13 Transportation costs associated with return of products.

14.2 Disposal of Suspect Product

There are a number of options for disposal, for example (provided it is safe to do so) via:

- **Rework:** if reworked in different packaging there should be no food safety risk during the process, and the appropriate date marking, must be the same date as the original date marking. Traceability on the reworked batch must be verified
- **Donation to welfare**
- **Destruction by consumer, customer or distributor**

In all cases other than rework, one of the primary risks is that the suspect product is not disposed of via the nominated route, but reintroduced into the supply chain.

It is therefore critical that whatever disposal route is chosen, it is overseen by a responsible organisation employee, photographs are taken, and the method of disposal ensures consumer and brand protection.

Given the South African situation of dump pickers at municipal waste sites and in the streets going through consumer's waste, disposal of suspect product via these municipal routes is strongly discouraged.

If choosing to use the warehouse, customer or organisation waste route, the said disposal must be in line with the relevant local or national regulations. In particular for customer or organisation waste disposal, it must be determined whether the suspect product is hazardous or non-hazardous waste and disposed of correctly.

Depending on the nature of the recall, National and Provincial Authorities may need to be consulted on the safe disposal of the recall product.

14.2.1 Destruction (Uplift and Safe Disposal) Certificate

A Destruction Certificate (uplift and safe disposal) must be issued by the local authority or waste management company, and should indicate:

The name of the product being destroyed (frequently a collated list is referred to, and the waste site merely weighs the product rather than counting it).

- The quantity of products that have been destroyed
- The method of destruction
- Where the destruction took place
- The date the destruction took place
- And preferably co-signed by the company's witness present at the destruction
- And preferably accompanied by photographs of the destruction

The Destruction Certificate is the assurance to the owner of the goods that the product has actually been destroyed appropriately. Without it, there is no proof whatsoever that the product has been destroyed in an appropriate manner and place rather than being disposed of in an unknown manner elsewhere.

14.2.1 Hazardous and Non-Hazardous Waste

According to the National Waste Management Act 59 of 2008, the following is defined:

"General waste" means waste that does not pose an immediate hazard or threat to health or to the environment, and includes:

- (a) Domestic waste;*
- (b) Building and demolition waste;*
- (c) Business waste; and*
- (d) Inert waste*

"Hazardous waste" means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment.

"Inert waste" means waste that:

(a) Does not undergo any significant physical, chemical or biological transformation after disposal;

(b) Does not burn, react physically or chemically biodegrade or otherwise adversely affect any other matter or environment with which it may come into contact; and

(c) Does not impact negatively on the environment, because of its pollutant content and because the toxicity of its leachate is insignificant

14.3 Documentation

It is essential that one team member is appointed as the Recall Administrator.

Their role is to:

- Maintain a daily diary of all activities (meetings, telephone calls etc.)
- Maintain all records referenced during the investigation
- Maintain a record of all communication approvals
- Maintain a record of all media questions and replies given, and comments in the public arena including those radio and TV clips, Twitter, Facebook etc.
- Ensure responses to media and authorities are timeous with the correct information
- Compile a lessons-learnt document and corrective actions re the recall process itself
- Identify any corrective actions for other products arising from the recall investigation e.g. manufacturing, warehousing

All documentation should be kept for a period of 5 years.

14.4 Closing the Recall Incident

A recall is closed with a final report which is used for:

- Insurance claims
- Lessons learnt
- Continuous improvement

All relevant parties involved in the process of retrieving product must be notified that the recall is now closed.

The following data should be prepared for inclusion in the final incident report and reintroduction of the product into the market (if relevant):

- Final figures (%) of recovered product to determine the financial loss and recall effectiveness when consolidating with original product volumes
- Write-off data prepared for accounts
- The instruction to destroy the product is issued and certificates of such obtained
- A meeting with the relevant insurers
- The relevant Purchasing Manager is briefed to lodge claims with suppliers if necessary
- An agreement is obtained from Marketing within 2 weeks of recall commencing as to whether product can be reintroduced into the market or whether restrictions are required owing to the brand damage sustained by the recall event
- Formally agree with customers what measures are necessary to reintroduce the product into the market and ensure these are met on time in full. Evidence of same to be included in the final incident report
- Agree the communication plan to reintroduce the product to the market
- Review the incident and complete the Incident Review Document

A Recall Incident Review Document is required, covering:

- **An approximation of damage to consumers (cases of illness/injury) Refer to Risk Analysis**
 - **The management of publicity regarding the recall**
 - **The affect the recall has had on brand and corporate image**
 - **The effectiveness of the early-warning system to the company**
 - **The time necessary to get the incident committee together**
 - **The speed and accuracy of the product and raw material traceability system**
 - **The speed and effectiveness of the advice and support from within and outside of the organisation**
 - **The effectiveness of the SWOT analysis and risk assessment of the product**
 - **The effectiveness of any public warning issued**
 - **The time taken to retrieve product from the trade and consumer**
 - **The amount of product retrieved**
 - **The costs involved, including destruction costs**
- **Members of the Recall Management Team to identify root causes, and what measures are required to prevent it happening again. Some of these answers may already be available from the initial investigations and an audit of procedures to identify whether man, machine, and material or method failure. These measures must be included in the above Incident Review Document**
 - **Complete a summary, including liability and insurance aspects**
 - **Issue learnings document for both the product itself and the recall process, including who is responsible for implementing corrective action**

14.4.1 Further complaints

There is always the possibility that not *all* affected products will be retrieved.

In the event a recall product complaint is received post the recall incident being closed, an immediate visit to the complainant must be made to retrieve the product.

Every effort must be made to discover where and when the product was obtained in order to communicate with and remove product from that source and any other customers they may have sold the product to.

14.4.2 Continuous improvement

The Organisation should apply continuous improvement principles to safety in design, production and the marketplace for such processes as:

- Hazard identification
- Product incidents investigation
- Risk assessments
- Product recall implementation, and
- Ongoing monitoring

Fundamental to effective and efficient improvement, is making informed decisions on the basis of data analyses and the incorporation of lessons learned. The organisation should define objectives for the improvement of its products and processes through the analysis of data.

The improvement processes should follow a structured approach, such as the “Plan-Do-Check-Act” (PDCA) methodology. Improvement activities can range from small-step continuous improvements at a workplace to significant improvements of the entire organisation or its supply chain.

The organisation should ensure that continuous improvement becomes established as a part of the organisational culture by:

- Providing the opportunities for people in the organisation to participate in improvement activities
- Providing the necessary resources
- Establishing recognition and reward systems for improvement, and
- Continuous improvement of the effectiveness and efficiency of the improvement process itself

- **Providing a closed loop system to ensure ongoing monitoring of the changes and their effectiveness**
- **Incorporating best practices through training and information exchange with experts**
- **Whether they be internal or external ideas and recommendations for continuous improvement may be obtained from a variety of sources such as (but not limited to) the following:**
 - **Analysis of incident and complaint data**
 - **Analysis of injury data**
 - **Employees**
 - **Suppliers and contractors**
 - **Evaluation of recalls and corrective actions**
 - **All applicable legislation, regulations, legal guidelines and standards**
 - **Technology advancements**
 - **Supply chain partners such as original design, manufacturers (ODM) and contract manufacturers**

14.4.2.1 Cost Summary

Costs associated with recalls include, but are not limited to:

- **Advertising and communications**
- **Retrieval, testing, rework (if relevant) and disposal of affected product**
- **Reimbursing consumers, including any collateral consumer costs**
- **Any charges paid by customer outlets returning suspect product to their DCs**
- **Any additional resource charges related to customers reimbursing consumers**
- **Reimbursing customers with replacement product**
- **Recall management team costs (travel, loss re day-to-day business, Consultants, etc.)**
- **Overtime for call centres and associated resources required**
- **Loss of sales**
- **Brand damage and associated costs of these actions where applicable**

- Regulatory fines
- Cost of disposal

14.4.2.2 Product Quantities Produced, Retrieved and Destroyed

It is critical for the Recall Team to appreciate how much of the suspect product was not retrieved, and if there will be any short-term and/or long-term risk associated with the recall.

A full reconciliation needs to be completed:

Product reconciliation refers to the extent to which affected product and potentially affected product can be identified and accounted for throughout the value chain.

Reconciliation of affected product is a key prerequisite for an effective recall. Product reconciliation should be considered effective when 100% of product has been accounted for. Reconciliation should include:

14.4.2.2.1 The amount of affected product still under the direct control of the organisation i.e. in production, warehouses, etc.

14.4.2.2.2 The amount of affected product under the control of the organisations, distributors

14.4.2.2.3 The amount of affected product under the control of the organisation's customers that may be used in subsequent manufacturing

a) The amount of affected product under the control of retailers, but not yet sold

b) The amount of affected product that is in market or in the hands of consumers

c) The amount of affected product likely to have been consumed or used

d) The amount of affected product remaining in the market

Note that in the event of affected product that has been sent to a customer for subsequent manufacturing (14.4.2.2.3) and that product has actually been used in subsequent manufacturing, this product needs to be obtained from the customer(s). In the event that customers have supplied finished product to the market, the customer is responsible for the recall, however, the customer must appraise their supplier of the situation if that supplier's product is implicated in the recall.

14.4.3 Mock/Dummy Recall Testing

14.4.3.1 Product Recall procedures must be verified by conducting annual testing or more frequently, if relevant. This is referred to as a 'mock' or 'dummy' recall, and is conducted in exactly the same manner as a genuine recall. To avoid questions in the marketplace, however, it is recommended that the business and customers are advised that this is a mock/dummy recall to test the preparedness and recall procedures.

As most actual recalls happen after hours/public holidays, it is recommended that a mock recall should also be performed after hours.

14.4.3.2 The output of the verification exercise must be a formal identification of any improvements, gaps or anomalies that exist, and must include allied information, for example contact lists up to date, changes in consumer safety policies, new routes to market, etc. together with the plan to close out these identified items.

14.4.3.3 A second verification exercise is recommended shortly after to ensure the gaps identified are corrected.

14.4.3.4 The mock recall should be conducted in the same manner as a proper recall. The same communication routes should be followed.

14.4.3.5 Should an actual recall have taken place that year, and there are identified improvements, it is not necessary to repeat the exercise other than to verify the close-outs have occurred.

ANNEXURE E**CGSO COMPLAINTS FORM****Record Information****Contact Method**

Reference:

Status:

Agent:

Date:

Time:

VOICED:

Category:

Other:

Sub-Category:

Consumer Information

Title:

First Names:

Surname:

ID Number:

PO Box Address:

Physical Address:

Cellphone:

Landline:

Fax:

Email:

Previous Complaint:

Previous Reference:

Company Details

Supplier Company:

Company Not Listed:

Company Address:

Company Note

Landline:

Fax:

Email:

Details of Complaint

Nature of Complaint:

Products Available for Inspection/Collection:

Detail of steps to be taken to resolve complaint:

List of Documents relevant to complaint:

What outcome proposed for this complaint?

Record History

REFERENCE SCHEDULE 1

Sector Industry Categories

- Wholesale and commission trade, except for motor vehicles and motorcycles
- Wholesale trade in food, beverages and tobacco
- Wholesale trade in textiles, clothing and footwear
- Wholesale trade in household and furniture requisites and appliances
- Wholesale trade in books and stationery
- Wholesale trade in precious stones, jewellery and silverware
- Wholesale trade in pharmaceutical, toiletries, cosmetics
- Wholesale trade in construction material, hardware, plumbing and heating equipment
- Wholesale trade in solid, liquid and gaseous fuels and related products
- Office machinery and equipment including computers
- General wholesale trade

- All Retail trade, except for motor vehicles and motorcycles
- Retail in non-specified stores with food, beverage and tobacco dominating
- Retail trade in fresh fruit and vegetables
- Retail trade in meat and meat products
- Retail trade in bakery products
- Retail trade in beverages (bottle stores)
- Other Retail trade in food, beverages and tobacco not elsewhere classified
- Retail trade of non-prescribed medicine and pharmaceutical products other than by pharmacists
- Retail trade in men's and boy's clothing
- Retail trade in ladies and girls clothing
- Retail trade in general outfitters and by dealers in piece goods, textile, leather and travel accessories
- Retail trade in shoes
- Retail trade in household furniture appliances, articles and equipment
- Retail trade in cosmetics, toiletries and fragrances
- Retail trade in hardware, paints and glass
- Retail trade in reading matter and stationery
- Retail trade in jewellery, watches and clocks
- Retail trade in sport goods and entertainment requisites
- Retail trade by other specified stores
- Retail trade in second-hand goods in store
- Specified retail trade in prescribed pharmaceutical, medical and orthopaedic goods
- Retail trade via mail order, online shopping and internet
- Retail trade via stalls and markets
- Other retail trade not in stores
- Repair of personal and household goods
- Restaurant, bars and canteens

- Manufacturing trade, except for motor vehicles and motorcycles
- Manufacturing trade in non-specified stores with food, beverage and tobacco dominating

- Manufacturing trade in fresh fruit and vegetables
- Manufacturing trade in frozen fruits and vegetables
- Manufacturing trade in bakery products
- Manufacturing trade in beverages (bottle stores)
- Manufacturing trade in food, beverages and tobacco not elsewhere classified
- Manufacturing trade of non-prescribed medicine and pharmaceutical products other than pharmacists
- Manufacturing trade in men's and boy's clothing
- Manufacturing trade in ladies and girls clothing
- Manufacturing trade in general outfitters and by dealers in piece goods, textile, leather and travel accessories
- Manufacturing trade in shoes
- Manufacturing trade in pesticides
- Manufacturing trade in car care
- Manufacturing trade in household furniture appliances, articles and equipment
- Manufacturing trade in hardware, paints and glass
- Manufacturing trade in reading matter and stationery
- Manufacturing trade in jewellery, watches and clocks
- Manufacturing trade in sport goods and entertainment requisites
- Manufacturing trade by other specified stores

- Distribution trade, except for motor vehicles and motorcycles
- Distributing trade in non-specified stores with food, beverage and tobacco dominating
- Distributing trade in fresh fruit and vegetables
- Distributing trade in frozen fruits and vegetables
- Distributing trade in bakery products
- Distributing trade in beverages (bottle stores)
- Distributing trade in food, beverages and tobacco not elsewhere classified
- Distributing trade of non-prescribed medicine and pharmaceutical products other than pharmacists
- Distributing trade in men's and boy's clothing
- Distributing trade in ladies and girls clothing
- Distributing trade in general outfitters and by dealers in piece goods, textile, leather and travel accessories
- Distributing trade in shoes
- Distributing trade in pesticides
- Distributing trade in car care
- Distributing trade in household furniture appliances, articles and equipment
- Distributing trade in hardware, paints and glass
- Distributing trade in reading matter and stationery
- Distributing trade in jewellery, watches and clocks
- Distributing trade in sport goods and entertainment requisites
- Distributing trade by other specified stores

REFERENCE SCHEDULE 2**Aerosol Sector Code****Aerosol Sector Code****Background**

The Consumer Protection Act (Act No. 68 of 2008) prescribes the manner in which suppliers of goods or services should interact with consumers. This is done by direct provisions in the Act itself and specific regulations covering specific areas, which are allowed in terms of the Act.

The Consumer Protection Act also allows for the acceptance by the dti of Industry Codes which regulate the behaviour of a specific industry regarding the provisions of the Act. Such a Code effectively seeks to give clear industry relevant definitions to the prescriptions of the Act and provide clear instructions for the behaviour of members of the industry.

Impact of Consumer Protection Act

The primary areas of impact of Consumer Protection Act on the Aerosol Industry are:

1. The safety and quality of aerosol products in the consumer's hands must be assured, which has the following implications:
 - a. Any and all claims for the product must be fully "substantiated" and justified;
 - b. The quality (every unit of the product sold should produce the same level of performance relative to claims) of the product must be assured;
 - c. The safety of the product must be assured subject to reasonable, understandable warnings identifying the fact and nature of any applicable risks.

2. Product may need to be recovered before entering the waste stream. Specifically, unlike many other consumer goods, aerosols are classified as dangerous goods in terms of SANS 10228 and thus, at some point, may be prohibited from entering into the common waste collection system, possibly in terms of the National Environmental Management Act. If so, their recovery will be mandated.

3. Safety of all aerosol products will require to be monitored and potentially defective products may need to be recalled.

This will require total traceability of all aerosol products manufactured.

4. The liability for any loss or injury arising from the use of a product will be assumed to belong to the manufacturer/distributors (in the event that it can be shown to arise from the manner in which the product has been stored/handled by the distribution chain). The standard of proof is determined on the balance of probabilities.

Manufacturers will need to be able to demonstrate that the product has been developed and manufactured with due care to ensure that the product is safe in the hands of the consumer provided that the consumer follows reasonable prescribed handling and storage instructions.

5. The implementation of deposits on prescribed packaging items is provided for.

Cross-sectoral Nature of Aerosols

It is recognised that, in essence, the AMA represents members across a number of different types of products, each of which may have an Industry Association, which promotes the interests of that particular Industry. Accordingly the function of the AMA Aerosol Sectoral Code is viewed in terms of a two-dimensional matrix of responsibility as shown in the table below.

Array of Aerosol Products

Toiletries, Pharmaceuticals, Food, Pesticides, Home Care, Paints, Car Care, Deodorants, Antiperspirants, Depilatories, Shaving Cream, etc.

Any products requiring registration by the MCC

Whipped Cream, Cooking Aids, etc.

Any products requiring registration by DAFF

Furniture Polishes, Disinfectants, Laundry Aids, Surface Cleaners, Carpet Cleaners, etc.

Various

Responsibility for Content Standards	CTFA
	SAPM
Responsibility for Packaging Format	AMA Aerosol Sectoral Code
Alternative Distribution Channels	DMA
Claim Substantiation	ASA, BCCSA

The aerosol packaging format of all these products is common and all these products are subject to unique potential quality and safety issues, which arise specifically from this packaging format. However, the quality and safety issues related to the content of each of these types of product could vary widely and would be subject to the requirements of the applicable Industry Association that represents the specific interests of that particular product. It is therefore proposed that the AMA Aerosol Sectoral Code is defined specifically with the intention of addressing the packaging issues of aerosol products and not the formulation issues. The AMA Aerosol Sectoral Code would thus be applicable to all these products.

The Code

The "Aerosol Sectoral Code" defines the minimum performance criteria relating to the packaging format aspects for all manufacturers of aerosol products. This sets certain minimum standards to address the issues identified as far as they apply to the performance of an aerosol can (but not the actual product) and defines the manner in which adherence to these standards are to be maintained.

The requirements of this Aerosol Sectoral Code are obligatory on any aerosol product (including imported products), whether or not the supplier is a member of the AMA. It is

envisaged that this Code will operate within the umbrella of the Consumer Goods and Services Ombud (CGSO).

The safety and quality of aerosol products in the consumer's hands will be assured by:

1. making the setting up of a quality management system within any company developing, marketing or filling aerosol products or manufacturing aerosol components following the principles of the AMA Quality Management System obligatory. This quality management system includes provision for a Consumer Complaints Handling Procedure for handling any complaints which may be received from Consumers. This will make provision for:

(a) the submission of any claim-related complaint to the Advertising Standards Authority for adjudication on the validity of the claim.

(b) the submission of any quality-related complaint to a third party for an audit of the supplier's adherence to the QMS. This will include assessing whether the fault arose as a result of incorrect handling/storage in the supply chain. Any such audit will be by an appropriate third party auditor.

(c) the establishment of a Sanction Regime whereby the use of the "AMA Approved" logo may be denied to any supplier does not adhere to this Aerosol Sectoral Code.

This must, most importantly, include the requirement for a fully traceable batch system for any aerosol product placed on the market. Also there should be specific defined quality parameters for an aerosol, e.g. internal pressure at 25°C and 55°C, discharge rate at 25°C, spray and cone patterns (applicable to pesticides, paints and air fresheners), crimp diameter, crimp depth.

2. accepting the jurisdiction of the Advertising Standards Authority (ASA) in assessing whether the claims made for any product has been adequately substantiated.

The ASA effectively claims this right in any case and their rulings would override a decision on the same matter by any other body. This will require the establishment of a Memorandum of Understanding between the AMA and the ASA to this effect. In terms of the ASA code, it will definitely require that any aerosol marketer will be in possession of appropriate substantiation reports acceptable to the ASA for any claims made for their products before placing such product on the market.

3. proposing the adoption of the GHS system of hazard labelling for aerosol products as the *de facto* labelling standard for such products.

This will be in advance of the mandatory compliance that will in due course be required in terms of appropriate regulations from the Department of Labour. Although compliance with GHS of raw materials in South Africa would not be mandatory until these regulations are promulgated, as it is in Europe, Japan and Australia, so any raw material supplier that is supplying their products into these markets will be able to provide GHS-compliant safety data sheets for their products.

4. the prescribing of appropriate stability test protocols in order to determine the lifetime of the aerosol product. The inclusion of the expiry date of the aerosol product on the aerosol can together with the batch identification information will be recommended.

This will ensure that the supplier has acceptable proof of the stability of the product under his prescribed storage conditions (as on the label and the SDS) in order to determine whether any product failure arises from incorrect storage/handling by either the retailer/wholesaler or the consumer.

5. the establishment of a product recall procedure to ensure that a minimum level of product recall is consistently achieved.

It is proposed that the recall procedure proposed by the National Consumer Commission (now in draft form) will be adopted in the Sectoral Code.

Quality Management System

The AMA has developed a basic quality management system based on ISO 9001, which members of the Aerosol Industry are recommended to adapt and adopt in their own businesses. This Aerosol Industry system defines the necessary areas of concern which must be addressed by member companies. It also recommends a number of other important procedures, specifically a consumer complaints-handling procedure, which should be adopted by these companies.

A key component of this Quality Management System is the identification of potential packaging format failures which must be addressed in the quality management system in order to protect the consumer from defective products.

Product Safety

As the provider of a hazardous product, the manufacturer/importer of aerosol products has a responsibility to provide understandable, adequate, instructions for the safe handling and use of their product.

This section deals with the specific measures which should be taken to ensure that the physical risks of the packaging format are minimised. These measures cover actions to be taken in the following areas:

1. **Product Development**
2. **In-Factory**
3. **In-Store/Warehouse**
4. **In Transit**
5. **In the Home**

1. Product Development

As a result of the Consumer Protection Act, Act No. 68 of 2008, a new and explicit obligation is placed on the person responsible for marketing the aerosol dispenser to analyse and identify the hazards which could arise from the use of the aerosol dispenser in order to ensure the safety of the consumer. This analysis must include the risks from inhalation of the spray under normal and reasonably foreseeable conditions of use. The marketer must then design, construct and test the product and, if applicable, draft special statements concerning its safe use if necessary.

It is important to note that it is the person responsible for marketing the aerosol dispenser, which may not be the filler, who bears the legal responsibility for ensuring that all the necessary testing has been carried out and product labelling is correct. In many

cases it may be more convenient for a supplier to conduct the analysis, tests, and design any necessary special warnings on the marketer's behalf, but this should be made explicit in any supply contract.

2. In-Factory

The primary hazards pertaining to aerosol filling are related to the flammability of gases and vapours and the pressure of some of these products, e.g. the propellant. The design of the production facility must provide for a sufficient level of safety even in the event of operating malfunctions or dangerous operating conditions.

3. In-Store/Warehouse

This section deals with the requirements for the safe warehousing of aerosol products in order to prevent damage to aerosols which may result in the product being more dangerous in the hands of the consumer.

Aerosols must be separated from other products in compliance with the separation/segregation requirements of SANS 10263. Aerosols should ideally be packed in racks in the warehouse in order to avoid possible damage to the aerosol valve and the slow release of product and propellant from the aerosols. If racking is not available, the cases of aerosols shall not be stacked higher than the level recommended by the manufacturer/importer.

4. In Transit

Any aerosol product is pressurised and classed as a 'Dangerous Goods' in terms of SANS 10228. The transport of dangerous goods in South Africa is subject to the Road Traffic Act, which regulates the transport of dangerous goods via SANS 10228 and SANS 10229-1 and 10229-2.

Aerosols can only be moved under carefully controlled and properly and fully documented conditions by a trained and licensed dangerous goods haulier. The Road Traffic Act Regulations require that all shipments of aerosols (dangerous goods) are accompanied by a Dangerous Goods Declaration, as defined in SANS 10231, issued by the consignor when it is moved between any premises.

Aerosols transported as 'dangerous goods in limited quantities' shall comply with the requirements of the appropriate section of the Code of Practice.

The Road Traffic Act Regulations require that a Dangerous Goods Declaration be completed and accompany all shipments of Dangerous Goods moved from any premises. It is now the responsibility of the consignor to compile three copies of the Note, one to be retained for records, one for the carrier and one for the consignee.

5. In the Home

Information on how the aerosol product will be used in normal and reasonably foreseeable use is needed as part of any safety assessment. For example, how and where it will be used, how frequently, how long will it be sprayed and at what spray rate. Certain products present special risks by virtue of their formulations, e.g. oven cleaners and waterproofing sprays. For these Special Products awareness of labelling requirements is necessary (see Labelling).

The aerosol product shall be formulated and designed to reduce the potential for cold burns to the user during application. If, during use, liquid propellant is allowed to come into contact with the skin (or eyes) then a cold burn could occur. This is due to the rapid cooling as the liquefied propellant evaporates. This effect should be considered when choosing a propellant and hardware.

An assessment of safety under conditions of accidental misuse shall be made. An assessment of safety when products are accidentally sprayed into eyes by adults and/or children should also be carried out where relevant. Misuse, resulting in liquid propellant coming in contact with the skin (or eyes), could cause a cold burn to occur. For aerosol oven cleaners containing alkalis or solvents additional precautions should be taken to minimise the possibility of accidental misuse. Specifically, actuators should clearly indicate the direction of discharge and aerosols should carry adequate warnings. For these products awareness of special labelling requirements is necessary (see Labelling).

Advertising

Claims relating to the function of the aerosol dispenser must comply with the requirements of the Advertising Standards Authority of South Africa. Test methods of the European Aerosol Federation, FEA (Fédération Européenne des Aérosols) are acceptable for defining the physical properties of an aerosol dispenser.

Claims relating to the performance of the contents of an aerosol dispenser are not subject to this Code.

Complaints against advertising may be lodged with either the Broadcasting Complaints Commission of South Africa in the case of questions relating to the appropriateness of the advertisement.

a) Broadcasting Complaints Commission of South Africa

Broadcasting service licensees must ensure that all broadcasts comply with the Code of Conduct of the Broadcasting Complaints Commission.

Broadcasting service licensees must not broadcast material which, judged within context, sanctions, promotes or glamorises violence or unlawful conduct based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

Broadcasting service licensees must not broadcast material which, judged within context, amounts to

- (a) propaganda for war;
- (b) incitement of imminent violence; or
- (c) the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.

Broadcasting service licensees must not broadcast material which is harmful or disturbing to children at times when a large number of children are likely to be part of the audience. Any advertisement that is intended to be shown outside of the "watershed period", which means the period between 21h00 and 05h00 for free-to-air Television Broadcasting Service licensees and 20h00 and 05h00 for subscription Television Broadcasting Service licensees, must be suitable for viewing by children.

The full details of the Code of Conduct of the Broadcasting Complaints Commission can be found on their website (www.bccsa.org.za).

b) Advertising Standards Authority of South Africa

The Advertising Standards Authority of South Africa (ASA) is an independent body set up and paid for by the marketing communications industry to regulate advertising in the public interest through a system of self-regulation. The ASA works closely with government, statutory bodies, consumer organisations and the industry to ensure that the content of advertising meets the requirements of the Code of Advertising Practice. The full details of the Code of Advertising Practice (ASA Code) can be found on their website (www.asasa.org.za).

The primary object of this Code is the regulation of commercial advertising, it applies therefore (except as expressly provided otherwise) to all advertisements for the supply of goods or services or the provision of facilities by way of trade, and also to advertisements other than those for specific products which are placed in the course of trade by or on behalf of any trader. Its rules form the basis for arbitration where there is a conflict of interest within the business, or between advertisers and the general public.

For the purpose of this Code, "advertisement" means any visual or aural communication, representation, reference or notification of any kind, which is intended to promote the sale, leasing or use of any goods or services or which appeals for or promotes the support of any cause. Promotional content of display material, menus, labels, and packaging also fall within the definition. Editorial material is not an advertisement, unless it is editorial for which consideration has been given or received. The word "advertisement" applies to published advertising wherever it may appear, be it in television or print advertising of package labelling. It does not apply to editorial or programming publicity. It should be informative, factual, honest, decent, and legal and its content should not violate any of the laws of the country. All members who subscribe to the Code shall neither prepare nor accept any advertising which conflicts with the Code and shall withdraw any advertising which has subsequently been deemed to be unacceptable by the ASA Copy, Advertising Properties or Appeal Committees.

The Code is to be applied in the spirit as well as in the letter.

In assessing an advertisement's conformity to the terms of this Code, the primary test applied will be that of the probable impact of the advertisement as a whole upon those who are likely to see or hear it. Due regard will be paid to each part of its contents, visual and oral, and to the nature of the medium through which it is conveyed.

Where the overall impression of the advertisement as a whole is in doubt, the ASA may, with the concurrence and at the cost of the party or parties concerned, call for a consumer reaction test by independent research.

Responsibility for observing the Code rests primarily with the advertiser, but it also applies to any practitioner or medium involved in publication of the advertiser's message to the public.

In the event that any marketer of an aerosol product has concerns that any television advertisement may potentially contravene the provisions of the Code, the Association for Communication and Advertising (ACA) established a voluntary advisory service on the ASA Code. The ACA Advisory Service provides valuable and affordable independent advice to any ACA member (most advertising agencies are members) who needs to ensure that its television advertising conforms to the Code. Possible legal issues are highlighted for further action. More information can be found on their website (www.acasa.co.za).

In addition to the decision by the Advertising Standards Authority and Broadcasting Complaints Commission of South Africa regarding the acceptability of advertising and labelling, there are regulations in terms of various Acts which regulate the advertising of specific products.

The advertising of food products is governed in terms of the Foodstuffs, Cosmetics and Disinfectants Act (Act No. 54 of 1972) by regulation R.146 of 1st March 2010 which prescribes the claims advertising practices which are permissible for such products.

The advertising of pesticides (called agricultural remedies) is governed in terms of the Fertilizers Farm Feeds, Agricultural Remedies and Stock Remedies Act (Act No. 36 of 1947) by regulations R.1449 of 1st July 1983 and R.935 of 22nd September 2006 which requires that no claim, which is not on the label approved by the Registrar of Act No. 36 of 1947, may be advertised and that any such advertisement must be approved by the Registrar.

The advertising of medicinal products is prescribed by the SA Code of Practice for the Marketing of Medicines approved on the 5th February 2010 by all parties to the Code. This Code is provided for in terms of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965).

The advertising of cosmetic products is defined in the Cosmetic Compendium published by the Cosmetics, Toiletries and Fragrances Association of South Africa which manages the self-regulation system of the cosmetic industry.

Labelling

Trade Metrology Labelling Requirements

Further to those labelling requirements prescribed in terms of the different Acts under which specific products are administered, the labelling of aerosol products is also prescribed in terms of the Trade Metrology Act, Act No. 77 of 1973.

Hazard Labelling Requirements

Aerosols are clearly defined as dangerous goods for purposes of transportation and are also clearly dangerous goods from a perspective of handling and storage. At present there is no prescribed system according to which the handling and storage danger of aerosol products must be presented on the label.

There are two SANS standards for the labelling of such products:

- a) a) SANS 10265 - The Classification and Labelling of Dangerous Substances and Preparations for Sale and Handling(a derivation of the EU Dangerous Preparations Directive); and
- b) b) SANS 10234 - Globally Harmonized System of Classification and Labelling of Chemicals (GHS), (a new internationally developed labelling standard).

SANS 10234

It is the intention of Government that the dangerous goods labelling will be in terms of SANS 10234:2008 – Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as required by new regulations to be promulgated under the Occupational Health and Safety Act, Act No. 85 of 1993. In addition, various other draft regulations, e.g. waste and environmental health, refer to SANS 10234 for deciding

whether a product is hazardous for purposes of disposal or safe use. SANS 10234 is therefore recommended as the basis for product labelling wherever possible, i.e. the appropriate information is available for classifying the product.

The prescriptions of SANS 10234 are not applicable to medicines, food additives, cosmetics, and pesticide residues.

As SANS 10234 is not applicable to these types of products, the Aerosol Manufacturers' Association recommends minimum label requirements for these products.

In terms of SANS 10234, an aerosol product must be classified as one of Extremely Flammable, Flammable or Non-flammable, as well as being classified as a gas under pressure.

The minimum labelling for each class of aerosol is given below.

Extremely Flammable Aerosol

Danger

Extremely flammable aerosol

Keep away from heat/sparks/open flames/hot surfaces* – No smoking

***(manufacturer to specify applicable ignition sources)**

Do not spray on an open flame or other ignition source

Pressurized container: Do not pierce or burn, even after use

Protect from sunlight and do not expose to temperatures exceeding 50°C

Flammable Aerosol**Warning****Flammable aerosol**

Keep away from heat/sparks/open flames/hot surfaces* – No smoking

***(manufacturer to specify applicable ignition sources)**

Do not spray on an open flame or other ignition source

Pressurized container: Do not pierce or burn, even after use

Protect from sunlight and do not expose to temperatures exceeding 50°C

Non-flammable Aerosol

Non-flammable aerosols would not have to carry a symbol, signal word or hazard statement. However, it is recommended that the following precautionary statements must be used:

Warning

Contains gas under pressure; may explode if heated

Protect from sunlight and store in a well-ventilated place

The wording above may not be altered in any way (even if the meaning is retained)!

In addition, the aerosol product must also be assessed for classification for any other physical, health or environmental hazard. If the aerosol is classified for any additional hazard, it will need to carry the symbols(s), signal word(s), hazard statements and precautionary statements appropriate for the additional hazard classifications.

SANS 10265

The label of an aerosol dispenser shall contain the following information in indelible, easily legible lettering:

- a) the name and address or trademark of the company responsible for marketing the product;
- b) the net contents
- c) directions for use;
- d) the danger symbol(s); and
- e) the declaration "CFC FREE" plus logo, if applicable.

In addition these requirements, the label of an aerosol dispenser shall bear the following warnings given in 8.4.3.2.1 to 8.4.3.2.3, regardless of the contents.

General warnings:

NOTE: Expressions in parenthesis are optional

- a) Flammable (if applicable);
- b) Pressurized container – (protect from sunlight and) do not expose to temperatures exceeding 50 °C;
- c) Do not pierce (puncture) or burn (incinerate), even when empty;
- d) Keep out of reach of children (even when empty);
- e) Do not spray near naked flame (or incandescent material);
- f) Keep away from source of ignition – no smoking. Use in a well-ventilated environment; and
- g) Use only as directed.

In the case of hairsprays:

Do not spray near, or place can on, polished (painted or plastics) surfaces.

In the case of oven cleaners and other corrosive products:

- a) **TOXIC – contains caustic soda;**

NOTE: If the caustic soda content is equal to or exceeds 5 % (by mass)

- b) **Avoid (prolonged) contact with skin;**
- c) **In the event of contact with eyes or skin, immediately wash out with water and seek medical advice; and**
- d) **Avoid inhalation of caustic vapours.**

NOTE: If this is not declared elsewhere

AMA Recommendations

In addition to any mandatory labelling requirements as identified above, all aerosols must carry clear identification, instructions and recommendations regarding the safe and efficient use of the product.

The label should be in at least one official language (except where specific regulations require otherwise). The use of English is most common as the language of choice for product labelling.

The can must also contain the following details that should be in indelible, easily legible lettering:

- a) **the name and address or trademark of the company responsible for marketing the product;**
- b) **each aerosol can should be batch marked (compulsory for medicinal and pesticide products) in order to facilitate a product recall should this become necessary;**
- c) **“AMA Approved” logo in accordance with the conditions placed on its use by the AMA;**
- d) **where applicable, the declaration “CFC Free” (or equivalent), plus logo if so desired; and**
- e) **the appropriate recycling logo according to the material from which the aerosol can is manufactured;**
- f) **the appropriate hazard logos and warning statements according to either SANS 10265 or SANS 10234.**

In addition, for those aerosol products which do not fall under the scope of SANS 10234, the AMA would recommend that the same labelling with regard to flammability as required by SANS 10234 should be used in order that a consistent message can be conveyed to consumers for all aerosols.

Note: International standards do change from time to time, so it is therefore likely that changes to the AMA recommendations may occur from time to time.

Barcoding

All the distribution channels manage their stocks by means of barcodes on each individual product as well as each shrink-wrap unit and case. All locally produced aerosols should have a GS1 System barcode that meets the requirements of the GS1 General Specifications.

GS1 South Africa can be contacted at:

Tel: (011) 789 5777
Fax: (011) 919 0064
Email: info@cgcsa.co.za
Website: www.cgso.org.za

Postal:

GS1 South Africa
PO Box 41417
Craighall
2024

Imported aerosols should have either a GS1 System barcode from the country of origin or an UPC number that can be scanned by the point-of-sale scanners.

Aerosols that are locally manufactured for export to Canada or the USA must have a UPC number that can be obtained via GS1 South Africa.

Shrink-wrap codes must comply with GS1 South Africa recommendations. Outer-case coding (IT symbology) is also regulated by GS1 South Africa.

Packaging Compatibility

The compatibility of the aerosol can and valve system with the product to be filled into the aerosol dispenser is critical in order to avoid the failure of the aerosol dispenser. Such a failure may result in the unintended discharge of the product or the complete failure of the aerosol dispenser resulting in instantaneous rupture of the aerosol dispenser.

In order to ensure that such failures of the aerosol dispenser should not occur, the product should be subjected to a stability test which checks the weight loss by the aerosol dispenser over an extended period at an elevated temperature as well as the corrosion or detinning of the aerosol material itself. The parameters which should be monitored during the performance of the stability test, in addition to the adherence to the product specification, are the weight loss of the aerosol dispenser, the spray characteristics of the aerosol dispenser, the complete discharge of the contents of the aerosol dispenser and the structural integrity of the construction of the aerosol dispenser. While the properties of the contents of the aerosol dispenser should be monitored during the performance of stability test, they are not covered by the requirements of this Code.

Product Recalls

A Product Recall is defined as the organised recall of any product which may constitute a danger to consumer safety for whatever reason. The reason for such a recall may be related to the contents of a product or, in the case of an aerosol product, to a fault in the package which may cause potential damage to property or injury to the user. Such a recall may be initiated by the manufacturer/distributor/importer of the product or by the National Consumer Council, if it deems there to be significant risk of harm being caused by that product.

The Industry Recall Guidelines, have been gazetted by the National Consumer Commission, and form part of the Code of Conduct for the Consumer Goods and Services

Ombudsman drawn up by the Consumer Goods Council of South Africa, which defines the manner in which products can be recalled.

Aerosol Recalls must comply with current Regulations regarding warehousing, transport and subsequent destruction (where required).

Product Returns

There are two sections of the Consumer Protection Act which make provision for the consumer to return goods which they have purchased to the supplier. These are Section 20 which allows for the return of incorrectly sold/misrepresented goods which are not fit for purpose and the return of defective goods within 6 months of the date of purchase and Section 59 which allows for consumers to return used goods for recycling if this is required by law.

Section 20 – Consumer’s right to return goods

- (1) This section is in addition to and not in substitution for:
- a) the right to return unsafe or defective goods, contemplated in Section 56; or
 - b) any other right in law between a supplier and consumer to return goods and receive a refund.
- (2) Subject to Sub-sections (3) to (6), the consumer may return goods to the supplier, and receive a full refund of any consideration paid for those goods, if the supplier has delivered:
- a) goods to the consumer in terms of an agreement arising out of direct marketing, and the consumer has rescinded that agreement during the cooling off period, in accordance with Section 16;
 - b) goods that the consumer did not have an opportunity to examine before delivery, and the consumer has rejected delivery of those goods for any of the reasons contemplated in Section 19(5);
 - c) a mixture of goods, and the consumer has refused delivery of any of those goods as contemplated in Section 19(8); or

- d) goods intended to satisfy a particular purpose communicated to the supplier as contemplated in Section 55(3), and within 10 business days after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose.
- (3) Sub-section (2) does not apply with respect to any goods if:
- a) for reasons of public health or otherwise, a public regulation prohibits the return of those goods to a supplier once they have been supplied to, or at the direction of, a consumer; or
 - b) after having been supplied to, or at the direction of, the consumer, the goods have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.
- (4) Goods returnable in terms of:
- a) Sub-section (2)(a) must be returned to the supplier at the consumer's risk and expense; or
 - b) Sub-section (2)(b) to (d) must be returned to the supplier at the supplier's risk and expense, within 10 business days after delivery to the consumer.
- (5) Upon return of any goods in terms of this Section, the supplier must refund to the consumer the price paid for the goods, less any amount that may be charged in terms of Sub-section (6).
- (6) In determining the right of a supplier to impose a charge contemplated in Sub-section (5), if any goods returned to the supplier in terms of this section are:
- a) in the original unopened packaging, the supplier may not charge the consumer any amount in respect of the goods;
 - b) in their original condition and repackaged in their original packaging, the supplier may charge the consumer a reasonable amount for:
 - I. use of the goods during the time they were in the consumer's possession, unless they are goods that are ordinarily consumed or depleted by use, and no such consumption or depletion has occurred; or
 - II. any consumption or depletion of the goods, unless that consumption or depletion is limited to a reasonable amount necessary to determine whether the goods were acceptable to the consumer; or
 - (c) in any other case, the supplier may charge the consumer a reasonable amount:
 - i. as contemplated in paragraph (b); and
 - ii. for necessary restoration costs to render the goods fit for restocking unless, having regard to the nature of the goods, and

the manner in which they were packaged, it was necessary for the consumer to destroy the packaging in order to determine whether the goods:

(aa) conformed to the description or sample provided, in the case of goods that had not been examined by the consumer before delivery as contemplated in Sub-section (2)(b); or

(bb) were fit for the intended purpose, in a case contemplated in Sub-section (2)(d).

Section 59 – Recovery and safe disposal of designated products or components

(1) If any national legislation prohibits the disposal or deposit of any particular goods, or any components, remnants, containers or packaging of any goods, into a common waste collection system:

(a) any person who in the ordinary course of business supplies goods of that kind to consumers, must accept the return of any such goods, components, remnants, containers or packaging from any consumer, without charge to the consumer, irrespective of whether that person supplied the particular object to that particular consumer; and

(b) any person who in the ordinary course of business produces, imports or distributes any such goods as part of the supply chain by which those goods reach the consumer, must in turn accept the return of any such goods, components, remnants, containers or packaging from any supplier contemplated in paragraph (a).

(2) If any regulation or industry waste management plan approved by any other legislation for the management of a specific waste type applies, the consumer may dispose or deposit the goods to a collection facility provided for in the regulation or industry waste management plan.

This section, therefore, deals with aerosols which have been returned to retailers by consumers. These aerosols may be defective or simply not fit for the purpose which the consumer had in mind or may require being recycled in terms of the National Environment Act: Waste Act.

It should be noted that the transportation of an aerosol from the retailer to the manufacturer, distributor or recycler must always comply with the requirements of the Road Traffic Act.

Aerosol Recycling

Aerosols are very suitable for recycling. Once the remaining contents have been removed, metal of the aerosol can and valve and the plastic components of the valve and the dust cap can easily be recycled.

Aerosols can be sorted from post-consumer waste collected by municipal refuse removal services. Empty aerosols should be disposed of through the municipal waste system.

It should be noted that aerosols always remains dangerous goods for road transportation. The transport of quantities of partially filled and empty aerosols must always comply with the requirements of the Road Traffic Act ([Links to relevant parts of AMA Code of Practice](#)).

Technical Schedule 1

Labelling of Products

1. A Product is deemed to have a label or a trade description if:
 - 1.1. a description of any nature is applied to the product;
 - 1.2. a description of any nature is applied to the products covering packaging;
 - 1.3. a label or reel is applied in or on the product's packaging;
 - 1.4. any one of the above is attached to the product;
 - 1.5. a description is displayed together or within close proximity to that product in manner that will likely lead to the belief that the product is designated or described by that description; or
 - 1.6. is represented or displayed in any sign, advertisement, catalogue, brochure, circular, wine list, invoice, business letter, business paper or any other commercial communication on the basis of which a consumer may request or order goods.
2. A member of the Supply Chain must not knowingly apply or represent any trade description or label as defined in point 1 hereto in a manner that is likely to mislead the consumer to any matter or information contained on or represented by the trade description or label. This includes instances of altering, defacing, removing or obscuring a trade description, label or trademark in order to mislead the consumer.
3. A retailer should immediately inform any other member of the Supply Chain and refuse to display or supply any product where the retailer should reasonably believe the label, or trade description:
 - 3.1. will likely mislead the consumer; or
 - 3.2. has been altered or defaced.
4. Unless specifically stated by the Minister in terms of Section 24(4) of the Act, where possible the retailer should apply a trade description informing the consumer of the country of origin, allergist, safety issues or any other important information in respect of the product or its usage.
5. Where possible and unless already prescribed by the Minister or law, members of the Supply Chain should inform consumers of any and all products that are genetically modified.

Technical Schedule 2

Display of Price

1. Retailers should take care in the manner in which they price their products, whether it be the initial or subsequent labelling.
2. Retailers should also educate consumers on how to read their stores' pricing mechanism in relation to the products purchased and the retailer's policy in respect of a mismatch between the displayed price and the scanned price.

Technical Schedule 3

Liability of Damages Caused by Goods

1. Any member of the Supply Chain may be liable or jointly and severally liable for any harm including:
 - The death of, injury to, any natural person;
 - an illness of a natural person;
 - any loss of, or physical damage to, any property, irrespective of whether it is movable or immovable; and
 - any economic loss that results from harm contemplated in the aforementioned as a result of supplying:
 - any unsafe goods;
 - a product failure, defect or hazard in any goods supplied; or
 - inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with use of any goods, irrespective of whether the harm resulted from any negligence on the part of any member of the Supply Chain.
2. Liability will not arise in the event that:
 - the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributed to compliance with any public regulation;
 - it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect, or hazard, having regard to that person's role in marketing the goods to the consumer; or
 - the claim has prescribed.
3. In the event that an unsafe product characteristic, failure, defect, or hazard is determined it is urged that the person responsible for determining the unsafe product characteristic, failure, defect, or hazard follow the recall guidelines as set out in Annexure "D" to the Code.
4. Determination of quantum in terms of Clause 1 of Technical Schedule 3 shall rest with the Courts.

Technical Schedule 4

Sales Records

1. A Supplier of goods and services must provide a written record of each transaction to the consumer to whom any goods and services are supplied.

2. This record must include at least the following information:
 - 2.1. the supplier's full name, or registered business name, VAT registration number, if any;
 - 2.2. the address of the premises at which, or from which, the goods and services were supplied;
 - 2.3. the date on which the transaction occurred;
 - 2.4. the name or description of any goods or services supplied or to be supplied;
 - 2.5. the unit price of any particular goods or services supplied or to be supplied;
 - 2.6. the quantity of any particular goods or services supplied or to be supplied;
 - 2.7. the total price of the transaction, before any applicable taxes;
 - 2.8. the amount of any applicable taxes; and
 - 2.9. the total price of the transaction, including any applicable taxes.

Requirements on a tax invoice

- a) Supplier's Name VAT Registration Number
- b) Address of Business
- c) Date of Transaction
- d) Description of Goods Supplied
- e) Unit Price of Goods
- f) Quantity of Goods
- g) Total Price excluding VAT
- h) Total Price including VAT

Technical Schedule 5

Grey Market Goods

Any member of the supply chain who markets any goods that bear a trademark, but have been imported without the approval or licence of the registered owner of that trademark, must apply a conspicuous notice to those goods, which warrants to the consumers the authenticity of those goods and that the goods in question have been directly imported or sourced by the member of the supply chain without the appropriate approval or licence.

The member of the supply chain should also verbally communicate the above to the consumer.

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