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- (2) The Minister, by notice, may exempt categories of goods or services, or circumstances of trade, from the application of subsection (1).

32. Written consumer agreements

- (1) This section applies only to a continuous service agreement, or other prescribed categories of agreement.
- (2) The supplier must deliver, without charge to the consumer, a copy of a document that records an agreement, transmitted to the consumer in a paper form, or in a printable electronic medium.
- (3) The Minister may prescribe –
- (a) categories of additional agreements to which this section applies; and
 - (b) any specific wording to be included in such an agreement to give full effect to the purposes of this Act.
- (4) Regardless whether or not a particular written agreement is required in terms of this section –
- (a) any written agreement between a supplier and consumer must satisfy the requirements of sections 33 and 34;
 - (b) any change to a document recording a written agreement, or an amended agreement, after it is signed by the consumer, if applicable, or delivered to the consumer, is void unless –
 - (i) the change reduces the consumer's obligations or liabilities under the agreement; or
 - (ii) after the change is made, the consumer signs or initials in the margin opposite the change; and

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- (c) if the parties to a written agreement agree to change its terms, the supplier must deliver to the consumer a document that reflects their amended agreement within 20 business days after the date of the agreement to amend.

33. Right to information in official language

- (1) Subject to subsection (2), a consumer has a right to receive any document required in terms of this Act in an official language, as determined by the supplier or other person required to produce the document.
- (2) Despite subsection (1), if the Minister has prescribed any document in terms of subsection (3), a supplier or other person who is required to produce that document must -
 - (a) determine two official languages in which the supplier will make that document available, having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by the supplier;
 - (b) offer each consumer an opportunity to choose which of those two languages the consumer prefers; and
 - (c) provide each such document to the consumer in the official language chosen by the consumer in terms of paragraph (b).
- (3) The Minister, by regulation, may prescribe the documents or categories of documents that are subject to the requirements of subsection (2).

34. Right to information in plain and understandable language

- (1) The producer of a document that is required to be delivered to a consumer in terms of this Act, must provide that document -
 - (a) in the prescribed form, if any, for that document, or;
 - (b) in plain language, if no form has been prescribed for that document.

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- (2) For the purposes of this Act, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance, and import of the document without undue effort, having regard to –
- (a) the context, comprehensiveness and consistency of the document;
 - (b) the organization, form and style of the document;
 - (c) the vocabulary, usage and sentence structure of the text; and
 - (d) the use of any illustrations, examples, headings, or other aids to reading and understanding.
- (3) The National Consumer Commission may publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (1)(b).

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PART E – RIGHT TO FAIR AND RESPONSIBLE MARKETING AND PROMOTION**35. General standards for the promotion of goods or services**

A manufacturer, producer, importer, distributor, or supplier of any goods or services must not promote any goods or services -

- (a) in a manner that is misleading, fraudulent or deceptive in any way, including in respect of –
 - (i) the nature, properties, advantages or uses of the goods or services;
 - (ii) the manner in or conditions on which those goods or services may be purchased, leased or otherwise acquired;
 - (iii) the price at which the goods may be acquired, or the existence of, or relationship of the price to, any previous price, or competitors price for comparable or similar goods or services;
 - (iv) the sponsoring of any event; or
 - (v) any other material aspect of the goods or services.
- (b) in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services, as contemplated in section 51;
- (c) if those goods or services are unlawful, or if the supply, purchase, sale or possession of them is unlawful;
- (d) to be supplied in a manner that is inconsistent with any law; or
- (e) in a manner that -
 - (i) is degrading to the dignity of any person;

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- (ii) depicts, simulates, suggests, represents or reasonably appears to promote a use or application of those goods or services that is inconsistent with any law; or
- (iii) implies or expresses a preference for any particular group of prospective consumers distinguishable from the general population on the basis of a prohibited ground of unfair discrimination set out in section 9 (3) of the Constitution, except to the extent that particular goods or services are reasonably intended or designed to satisfy specific needs or interests that are common to or uniquely characteristic of the particular group of prospective consumers.

36. Bait marketing

- (1) Subject to subsection (2), a supplier must not advertise any goods or services as being generally available at a particular place and price for a particular period, unless the supplier reasonably anticipates having a quantity of those goods, or capacity to supply those services, sufficient to satisfy the reasonably anticipated demand on that date and at that place and price, from the market to which the advertisement is targeted.
- (2) Despite subsection (1), a supplier may advertise particular goods or services as being available -
 - (a) in a specified limited quantity at a specified price;
 - (b) on a specified date and at a specified time; and
 - (c) for a specified limited duration, or until the specified quantity is exhausted.
- (3) A supplier who has advertised goods or services as being generally available at a particular place and price for a particular period as contemplated in subsection (1) -
 - (a) must make those goods or services available for supply for that period at that place and for that price; and

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- (b) during that period and at that place, must not offer to supply any similar or comparable goods or services to any consumer at a higher price than the price at which the advertised goods were offered.
- (4) It is a defence to an alleged failure to comply with subsection (3)(a) if –
- (a) the supplier offered to
- (i) supply or procure another person to supply the consumer with goods or services of the kind advertised within a reasonable time, in a reasonable quantity, and at the advertised price; or
- (ii) immediately supply, or procure another person to supply within a reasonable time, equivalent goods or services in a reasonable quantity, and at the advertised price;
- (b) the consumer accepted such an offer; and
- (c) the supplier has supplied or procured another person to supply the goods or services so offered and accepted.

37. Negative option marketing

- (1) A supplier must not make an offer to supply, or to enter into or modify an agreement for the supply of, any goods or services, or induce a person to accept any goods or services or to enter into or modify such an agreement, on the basis that the goods or services are to be supplied, or the agreement or modification will automatically come into existence, unless the consumer declines the offer or inducement.
- (2) An agreement purportedly entered into as a result of an offer or inducement contemplated in subsection (1) is an unlawful agreement and void to the extent provided in section 56.
- (3) A modification of an agreement purportedly agreed as a result of an offer or inducement contemplated in subsection (1) is an unlawful provision and void to the extent provided in section 57.

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38. Direct marketing, installation and delivery

- (1) Whenever a person is marketing any goods or services in person at any residential premises, or performing any services for a consumer at any residential premises, or delivering any goods to, or installing any goods for, a consumer, the person must -
 - (a) visibly wear or display a badge or similar identification device that satisfies any prescribed standards; or
 - (b) provide suitable identification to the consumer.
- (2) Any prescribed standards contemplated in subsection (1) must require at least the following elements for an identification badge:
 - (a) the name and a photograph of the wearer;
 - (b) the name of any person on whose behalf the person wearing the badge is performing any service; and
 - (c) the business licence or registration number, if any, of any person contemplated in paragraph (a) or (b).
- (3) A person who is marketing any goods or services by telephone must orally provide suitable identification to the consumer, if the consumer so requests.
- (4) A person who is marketing any goods or services as contemplated in this section, and who concludes a transaction or agreement with a consumer, must inform the consumer of the right to rescind that agreement, as set out in section 24
- (5) If a person who has marketed any goods as contemplated in subsection (1) –
 - (a) left any goods with the consumer without requiring payment for them; or
 - (b) left any goods with, or delivered any goods to, the consumer in terms of a concluded transaction or agreement, which the consumer has subsequently rescinded, and the person has not recovered those goods within 5 business days after receiving the notice of rescission,

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those goods are unsolicited goods, to which section 21 applies.

39. Catalogue or electronic marketing

- (1) This section applies to an agreement for the supply of goods or services that is not entered into in person, including an agreement concluded -
- (a) telephonically, if the contact is initiated by the consumer,
 - (b) by postal order, fax, or internet transaction,
 - (c) in any other manner in which, with respect to goods, the consumer does not have the opportunity to inspect the goods that are the subject of the transaction before concluding the agreement,

but does not apply to a agreement or transaction contemplated in section 38.

- (2) A supplier must disclose the following information to a consumer, in an appropriate manner, having regard to the manner in which the supplier and consumer communicate in concluding the transaction, before concluding an agreement or transaction:
- (a) The supplier's name, and licence or registration number, if any;
 - (b) The address of the supplier's physical business premises; and related contact details;
 - (c) The supplier's electronic mail address, if applicable;
 - (d) a trade description of the goods or services to be supplied under the agreement, including the information required by section 28(2), and any relevant technical or system specifications;
 - (e) the information required by section 31;
 - (f) the currency in which amounts under the agreement are payable;

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- (g) the supplier's delivery arrangements, including the identity of the shipper, the mode of transportation and the place of delivery to the consumer;
 - (h) the supplier's cancellation, return, exchange and refund policies, if any;
 - (i) manner and form in which a complaint may be lodged; and
 - (j) any other prescribed information.
- (3) Before concluding a transaction in electronic form, a supplier must
- (a) make the information required under subsection (2), and a copy of any further agreement arising out of the transaction, available in a manner that requires the consumer to access the information and a copy of any such agreement, and
 - (b) provide a consumer with an express opportunity
 - (i) to correct errors in the information or any agreement;
 - (ii) to accept or decline any agreement;
 - (iii) to confirm the details of the transaction; and
 - (iv) to accept and print or copy, or decline the transaction and any agreement.
- (4) Within 10 business days after concluding an agreement with a consumer other than as contemplated in subsection (3), the supplier must deliver a dated copy of the agreement to the consumer, in an appropriate manner, having regard to the manner in which the supplier and consumer communicated in concluding the transaction.
- (5) A consumer may rescind, without penalty, a transaction or an agreement, if a copy of an agreement contemplated in subsection (4), has not been delivered to the consumer within a period contemplated in that subsection.

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40. Customer loyalty programs

- (1) The sponsor of a loyalty program, or a supplier who offers, or holds out a willingness, to accept any loyalty credits or awards as consideration for any goods or services -
- (a) must accept any tender of sufficient loyalty credits or awards as adequate consideration for the price of those goods or services;
 - (b) must ensure that the supply of those goods or services available at any time is sufficient to accommodate all reasonably anticipated demands for those goods or services to be paid for with loyalty credits or awards, subject to subsection (3)(b);
 - (c) must not require the consumer to accept an inferior quality of any such goods or services than those generally available to any other consumer on the same date who tenders a different form of consideration;
 - (d) must not impose any monetary charge in respect of the administration, processing or handling of such a transaction; and
 - (e) must not demand -
 - (i) that the consumer purchase any other goods or services in connection with that transaction; or
 - (ii) payment by the consumer of any monetary charge in respect of that transaction, irrespective whether such a charge is or may be -
 - (aa) imposed in terms of any public regulation; or
 - (bb) incurred by the supplier to enable the consumer to gain access to or utilize the goods or services that are the subject of the transaction.
- (2) A sponsor of a loyalty program, or a supplier of goods or services who accepts loyalty credits or awards as consideration for any goods or services, may impose -

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(a) a partial or complete restriction on the availability of any such goods or services in exchange for loyalty credits or awards; or

(b) a higher price, in terms of loyalty credits or awards, for any such goods or services

during any specific period or periods totalling no more than 30 days within a 12 month period, if the program sponsor has directly or indirectly given notice in writing to the members of that program at least 60 business days before the beginning of each such period.

(3) A sponsor of a loyalty program that maintains a register of the members of that program must give notice in writing to the members of that program at least 20 business days before any increase in the price, in terms of loyalty credits or awards, for any goods or services available under that program irrespective whether the sponsor of the program is the supplier of any such goods or services.

(4) Despite any provision in any law, agreement or notice to the contrary, for all purposes of this Act, loyalty credits or awards are a legal medium of exchange when offered or tendered as consideration for any goods or services offered, or transaction contemplated, in terms of that loyalty program.

41. Trade coupons and similar promotions

(1) A person must not offer any prize with the intention of not providing it, or providing it other than as offered.

(2) Any document setting out an offer contemplated in subsection (1) must fully and clearly state –

(a) the nature of the prize being offered;

(b) the goods or services to which the offer relates;

(c) the steps required by a prospective consumer to accept the offer or to receive the benefit of the offer; and

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- (d) any person from whom, any place where, and any date and time on or at which the prospective consumer may receive the benefit.
- (3) Section 40 (1), read with the changes required by the context, apply in respect of any offer contemplated in this section.

42. Promotional competitions

- (1) In this section –
- (a) “promoter” means a person who directly or indirectly promotes, sponsors, organizes or conducts a promotional competition, or for whose benefit such a competition is promoted, sponsored, organized or conducted;
- (b) “participant” means a person who expressly or implicitly enters into a promotional competition.
- (2) A person must not directly or indirectly inform a consumer, or prospective consumer that the consumer has -
- (a) won a competition, if -
- (i) no competition has in fact been conducted;
- (ii) the consumer has not expressly or implicitly entered into such a competition, or has not in fact won the competition;
- (iii) the prize for that competition is subject to a previously undisclosed condition; or
- (iv) the consumer is required to offer further consideration for the prize, after the results of the competition have been announced; or
- (b) has a right to a prize or benefit -
- (i) that the consumer has not solicited or to which the consumer does not in fact have a right;

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- (ii) if the prize or benefit was generally available or offered to all similar prospective consumers or class of prospective consumers; or
 - (iii) if, before becoming eligible to receive the prize or benefit, the consumer is required to offer further consideration for the prize or to purchase any particular goods or services.
- (3) The promoter of a promotional competition -
- (a) must not require any consideration to be paid by or on behalf of any participant in the promotional competition;
 - (b) must file an abstract of the competition rules in the prescribed manner and form with the Commission no later than the date on which consumers are first able to participate in the competition
 - (c) make the competition rules available on request and without cost to any participant;
 - (d) must not award a prize in a competition to -
 - (i) a winner of the competition if it is absolutely unlawful to supply those goods or services to the prize winner, but this sub-paragraph does not preclude awarding a prize to a person merely because that person's right to possess or use the prize is or may be restricted or regulated by, or otherwise subject to, any public regulation; or
 - (ii) to any person who is a director, member, partner, employee or agent of, or consultant to, -
 - (aa) the promoter or any other person who directly or indirectly controls, or is controlled by, the promoter; or
 - (bb) a supplier of goods or services in connection with that competition.

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- (4) For greater certainty in applying subsection (3)(a), a promoter must be regarded as having required or received consideration in respect of a promotional competition if –
- (a) the participant is required to pay any consideration, directly or indirectly for the opportunity to participate in the promotional competition, for access to the competition, or for any device by which a person may participate in the competition; or
 - (b) participation in the promotional competition requires the purchase of any goods or services, and the price charged for those goods or services is more than the price, excluding discounts, ordinarily charged for those or similar goods or services without the opportunity of taking part in a promotional competition.
- (5) An offer to participate in a promotional competition must be in writing, and must fully and clearly state –
- (a) the benefit or competition to which the offer relates;
 - (b) the steps required by a person to accept the offer or to participate in the competition;
 - (c) the basis on which the results of the competition will be determined;
 - (d) the maximum number of potential participants in the competition, and the odds of winning any particular prize in that competition;
 - (e) the medium through or by which the results of the competition will be made known, if any; and
 - (f) any person from whom, any place where, and any date and time on or at which the successful participant may receive any prize.
- (6) The requirements of subsection (5) may be satisfied either -

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- (a) directly on any medium through which a person participates in a promotional competition;
 - (b) on a document accompanying any medium contemplated in paragraph (a); or
 - (c) in any advertisement that –
 - (i) is published during the time and throughout the area in which the promotional competition is conducted; and
 - (ii) draws attention to and is clearly associated with the promotional competition.
- (7) The right to participate in a promotional competition is fully vested in a person immediately upon -
- (a) complying with any conditions that are required to earn that right; and
 - (b) acquiring possession or control of any medium through which a person may participate in that promotional competition.
- (8) The right to any benefit or right conferred on a person as a result of that person's participation in a promotional competition is fully vested immediately upon the determination of the results of the competition.
- (9) A right contemplated in subsection (7) or (8) must not be -
- (a) made subject to any further condition; or
 - (b) contingent upon a person -
 - (i) paying any consideration to the promoter for the prize; or
 - (ii) satisfying any further requirements than those stipulated in terms of subsection (5).
- (10) Section 40 (1), read with the changes required by the context, apply in respect of any prize or right to a prize conferred on a person as a result of that person's participation in a promotional competition.

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- (11) The Minister may prescribe –
- (a) a monetary threshold for the purpose of excluding competitions with low value prizes from the definition of “promotional competition”;
 - (b) minimum odds for prizes or categories of prizes offered in terms of any promotional competition;
 - (c) minimum standards and forms for keeping records associated with promotional competitions; and
 - (d) audit and reporting requirements in respect of promotional competitions.

43. Alternative work schemes

- (1) A person must not make a false representation with respect to the availability, or extent of availability, actual or potential profitability, risk, or other material aspect of the work, business or activity involved in any arrangement of an activity for gain in terms of which one person -
- (a) invites, solicits or requires other persons to conduct the work, business or activity from their homes, or
 - (b) represents to others as being practicable, to a considerable extent, to conduct the work, business or activity from their homes; or
 - (c) invites, solicits or requires other persons to perform any the work, business or activity, invest money, or perform any work, business or activity in association with the investment of money.
- (2) An advertisement promoting any matter contemplated in subsection (1) must:
- (a) be accompanied by a cautionary statement in the prescribed wording and form, disclosing the uncertainty of the extent of -
 - (i) work, business or activity available; and

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- (ii) income or other benefit to be derived.
- (b) disclose, at least, the following information-
 - (i) physical address;
 - (ii) contact numbers; and
 - (iii) nature of the work.
- (3) A person must not place an advertisement contemplated in subsection (2) otherwise than in accordance with the requirements of this section.
- (4) A person who does anything contemplated in subsection (1)(a) to (c) must not charge any person a fee in respect of the promotion or conduct of any such work, business, activity or investment except to the extent that the person charged has been assigned and performed the contemplated work, business, activity, or made or received the contemplated investment.

44. Referral selling

A person must not promote, offer, supply, agree to supply, or induce a consumer to accept any goods or services on the representation that the consumer will receive a rebate, commission, or other benefit if the consumer subsequently—

- (a) gives the supplier the names of prospective consumers; or
- (b) otherwise assists the supplier to supply goods or services to other consumers.

if that rebate, commission, or other benefit is contingent upon an event occurring after the consumer agrees to the transaction.

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PART F – RIGHT TO HONEST DEALING AND FAIR AGREEMENTS**45. Consumer's right to assume supplier is entitled to sell goods**

- (1) Subject only to subsection (3), every consumer has a right to assume, and it is an implied provision of every transaction or agreement, that -
 - (a) in the case of a sale or lease, the supplier or lessor has the legal right to sell or lease the goods;
 - (b) in the case of an agreement to sell or lease, the supplier or lessor will have a legal right to sell or lease the goods at the time when the title to those goods is to pass to the consumer, or the lessee is to take possession of the leased goods;
 - (c) that the goods are free from any charge or encumbrance in favour of any third party; and
 - (d) that the supplier guarantees that the consumer or lessee is to have and enjoy undisturbed possession of the goods.
- (2) Despite any other any law to the contrary, the supplier is liable, and the consumer is not liable, to any third party whose rights or claims in respect of any goods supplied or leased as contemplated in subsection (1) have been infringed or compromised by that transaction, except to the extent that the supplier and consumer have colluded to defraud the third party.
- (3) This section does not apply in respect of used goods or immovable property.

46. Future and continuous services

- (1) This section applies in respect of any agreement in terms of which a supplier agrees to provide a consumer –
 - (a) a service to be delivered at a certain future date, or at periodic intervals during a specified period; or

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- (b) a continuous service.
- (2) An agreement for a continuous service –
- (a) to be supplied by a public supplier may be for an unlimited duration; or
 - (b) to be supplied by a private supplier -
 - (i) may be rescinded by the consumer within 5 business days after concluding or renewing the agreement;
 - (ii) must not exceed the prescribed period for the category of services to be provided;
 - (iii) is renewable only if the consumer expressly accepts the renewal, in writing, within 40 business days before, or 20 business days after, the end of the expiring agreement period; and
 - (iv) may be cancelled by the consumer with 20 business days notice at any time; and
 - (v) may be subject to a cancellation penalty of no more than 5% of the amount that would have been payable by the consumer during the unexpired period of the agreement, if -
 - (aa) such a penalty is disclosed to the consumer before the agreement is entered into; and
 - (bb) is set out in the written agreement required by section 32.
- (3) If, in terms of an agreement to which this section applies, the consumer agrees to pay -
- (a) a membership fee or similar charge or amount; or
 - (b) any amount in respect of services or access to services to be provided at a date more than 25 business days after the payment is made

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the supplier must hold that payment in trust for the benefit of the consumer, in accordance with section 74, and the supplier may make a charge against that trust once each month in advance for the pro-rata portion of the amount so held, as required to pay the ensuing month's cost of the membership or service.

- (4) If a supplier intends to close a facility to which the supplier has committed to provide future access in terms of an agreement with a consumer, the supplier must -
 - (a) give written notice of that intention to each such consumer at least 40 business days before the intended date of closure; and
 - (b) no later than five business days after closing that facility, refund to each such consumer the balance of any money held in trust for that consumer in terms of this Act.
- (5) Subsection (4) (b), read with the changes required by the context, applies equally in respect of any involuntary closing of a facility contemplated in this section.
- (6) Any money that is owed to a consumer as a refund in terms of this section is trust property held by the supplier, or the supplier's estate, for the benefit of the consumers concerned, and is subject to section 74.

47. Auctions

- (1) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, deemed to be the subject of a separate transaction.
- (2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner, and until that announcement is made, a bid may be retracted;
- (3) Notice must be given in advance that a sale by auction is subject to -
 - (a) a reserved or upset price; or

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- (b) a right to bid by or on behalf of the supplier or auctioneer, in which case the supplier or auctioneer, or any one person on behalf of the supplier or auctioneer as the case may be, may bid at the auction.
- (4) Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer,—
 - (a) the owner or auctioneer must not bid or employ any person to bid at the sale;
 - (b) the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a); and
 - (c) the consumer may approach a court to declare the transaction fraudulent, if the provisions of this subsection have been violated.
- (5) The Minister may prescribe requirements to be complied with by an auctioneer, or different categories of auctioneer, in respect of the conduct of an auction and the records to be maintained with respect to property placed for auction and the sale of any such property by auction.

48. Deferrals, waivers and changes and substitution of goods

- (1) The supply of goods or services as a result of a change to an existing agreement, or a deferral or waiver of a right under an existing agreement, is not to be treated as creating a new agreement for the purposes of this Act, if the change, deferral or waiver is made in accordance with this Act or the agreement.
- (2) If, after delivery to the consumer of goods that are the subject of a transaction, the consumer and the supplier agree to substitute other goods for all or part of the goods sold -
 - (a) from the date of delivery of the substituted goods, the transaction applies to the substituted goods rather than the goods originally described; and
 - (b) if the transaction was the subject of a written agreement, or the sales record identified any specific goods, the supplier must prepare and deliver to the

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consumer an amended agreement or sales record, describing the substituted goods, but without making any other changes to the original document.

49. Over-selling and over-booking

- (1) A supplier must not accept payment or other consideration for any goods or services if the supplier –
 - (a) has no reasonable basis to assert an intention to supply those goods or provide those services; or
 - (b) intends to supply goods or services that are materially different from the goods or services in respect of which the payment or consideration was accepted.
- (2) If a supplier makes a commitment or accepts a reservation to supply goods or services on specified date or at a specified time, and on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods or services, or similar or comparable goods or services of the same or better quality, class or nature, the supplier must –
 - (a) refund to the consumer any amount paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of re-imburement; and
 - (b) must in addition compensate the consumer for -
 - (i) breach of contract in an amount equal to the full contemplated price of the goods or services that were committed or reserved; and
 - (ii) consequential damages in an amount equal to the total of any economic loss, and loss of anticipated use or enjoyment, sustained by the consumer as a consequence of the supplier's breach of the contract.

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50. Exemptions from liability

- (1) If an agreement is in writing, or is subject to a written notice, any provision in that agreement or notice that purports to limit in any way the risk or liability of the supplier or any other person, purports to constitute an assumption of risk or liability by the consumer, purports to impose an obligation on the consumer to indemnify the supplier or any other person for any cause, or purports to be an acknowledgement of any fact by the consumer, is of no force or effect unless -
 - (a) the fact, nature and effect of that provision is drawn to the attention of the consumer before the consumer enters into the agreement;
 - (b) the provision is in plain language, as described in section 34; and
 - (c) if the provision is in a written agreement, the consumer has signed or initialled that provision indicating acceptance of it.
- (2) If a transaction, written or unwritten agreement, participation in an activity, or access to any facility, is subject to any provision of a kind contemplated in subsection (1), that provision is of no force or effect unless the fact, nature and effect of that provision is drawn to the attention of the consumer -
 - (a) before the earlier of the time at which the consumer -
 - (i) enters into the transaction or agreement, begins to engage in the activity, or enters or gains access to the facility; or
 - (ii) is required or expected to offer consideration for the transaction or agreement; and
 - (b) in a conspicuous manner and form that -
 - (i) is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances; and
 - (ii) is in plain language, as described in section 34.

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(3) In addition to the consequences of subsection (1) or (2), a provision contemplated in either of those subsections in respect of any activity or facility that is subject to any –

- (a) unusual hazard;
- (b) hazard of which the consumer could not reasonably be expected to be aware, or which an ordinarily alert consumer could not reasonably be expected to contemplate in the circumstances; or
- (c) hazard that could result in serious injury or death,

is of no force or effect unless the supplier has specifically drawn the fact, nature and potential effect of that hazard to the attention of the consumer in a form and manner that meets the requirements of subsection (2), and the consumer has signed or initialled that provision indicating acceptance of it, or otherwise acted in a manner consistent with acknowledgement of the notice, awareness of the hazard and acceptance of the provision.

(4) If, in any circumstances contemplated in this section, the supplier knows, or reasonably ought to perceive, that a particular consumer is unable to read a provision or notice as a result of impaired vision, limited literacy, or inability to comprehend any language in which the notice or provision is written, the notice or provision is of no force or effect with respect to that consumer unless the supplier has taken reasonable and appropriate steps in the circumstances to –

- (a) bring the nature, content and effect of the notice or provision to the attention of that consumer in a manner that overcomes the consumer's reading impediment; and
- (b) the consumer has expressly or by necessary implication assented to the notice or provision.

(5) The Minister may make regulations prescribing the form, manner and minimum standards for bringing provisions, hazards and other matters contemplated in this section to the attention of consumers.

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Section 51

51. False, misleading or deceptive representations

- (1) With respect to any goods or services that are the subject of an agreement, proposed agreement, transaction or proposed transaction between a supplier and a consumer or prospective consumer, or in the marketing of any such goods or services, the supplier must not, by words or conduct, -
- (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer or prospective consumer;
 - (b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception;
 - (c) knowingly permit a consumer or prospective consumer to believe a false, misleading or deceptive state of facts; or
 - (d) fail to correct an apparent misapprehension on the part of a consumer or prospective consumer, amounting to a false, misleading or deceptive representation
- or permit or require any other person to do so on behalf of the supplier.
- (2) A person acting on behalf of a supplier of any goods or services must not -
- (a) falsely represent that the person has any sponsorship, approval or affiliation; or
 - (b) engage in any conduct that the supplier is prohibited from engaging in under subsection (1).
- (3) Without limiting the generality of subsection (1), it is a false, misleading or deceptive representation to falsely state or imply, or allow a consumer or prospective consumer to incorrectly believe, that -
- (a) the supplier of any goods or services has status, affiliation, connection, sponsorship or approval that they do not have;
 - (b) any goods or services -

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- (i) have ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval that they do not have;
 - (ii) are of a particular standard, quality, grade, style or model;
 - (iii) are new or unused, if they are not or if they are re-conditioned or re-claimed, subject to subsection (5);
 - (iv) have been used for a period, to an extent, or in a manner that is materially different from the facts;
 - (v) have been supplied in accordance with a previous representation;
 - (vi) are available, or can be delivered or performed within a specified time;
- (c) any land or other immovable property -
- (i) has characteristics that it does not have;
 - (ii) may lawfully be used, or is capable of being used, for a purpose that is in fact unlawful or impracticable;
 - (iii) has or is proximate to any facilities, amenities or natural features that it does not have, or that are not available to it.
- (d) necessary service, maintenance or repair facilities or parts are readily available for or within a reasonable period;
- (e) any service, part, replacement, maintenance or repair is needed or advisable;
- (f) a specific price advantage exists;
- (g) a charge or proposed charge is for a specific purpose;
- (h) an employee, salesperson, representative or agent has authority to negotiate the terms of, or conclude, an agreement;
- (i) the transaction affects, or does not affect, any rights, remedies or obligations;

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- (j) a particular solicitation of, or communication with, the consumer or prospective consumer is for a particular purpose; or
 - (k) the consumer or prospective consumer will derive a particular benefit if they assist the supplier in obtaining a new or potential customer.
- (4) A representation contemplated in subsection (4)(b)(iii) to the effect that any goods are new is not false, misleading or deceptive if those goods have been used -
- (a) only by or on behalf of the manufacturer, importer, distributor or supplier; and
 - (b) only for the purposes of reasonable testing, service, preparation or delivery.

52. Unreasonable transactions

A supplier must not supply or agree to supply any particular goods or services to a consumer if the supplier knows, or reasonably ought to have known, or recognised from the interaction between the supplier and the consumer, -

- (a) that the goods or services are materially unsuitable for the purpose to which the consumer intends to apply them, irrespective whether the goods are of good quality or reasonably fit for their customary intended purpose; and
- (b) that the consumer is unlikely to be able to make such a determination, having regard to the nature of the goods or services, and the consumer's apparent age, education, experience, familiarity with such goods or services, and general consumer sophistication.

53. Unfair or unjust transactions

- (1) A supplier must not -
- (a) offer to supply, supply, or enter into an agreement to supply, any goods or services at a price or on terms that are unfair or unjust; or

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(b) market any goods or services, or negotiate, enter into or administer an agreement for the supply of any goods or services, in a manner that is unfair or unjust,

having regard to the fair value of the goods or services, the circumstances of the agreement, the nature of the parties to that agreement, their relationship to each other and their relative capacity, education, experience, sophistication and bargaining position.

(2) Without limiting the generality of subsection (2), a transaction is unfair or unjust if –

- (a) the transaction is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied;
- (b) the terms of the transaction are so adverse to the consumer as to be inequitable; or
- (c) the consumer relied upon a false, misleading or deceptive representation, or statement of opinion, provided by or on behalf of the supplier, to the detriment of the consumer.

54. Unconscionable conduct

- (1) A person must not use physical force, coercion, undue influence, pressure or harassment, unfair tactics or any other conduct, in connection with any –
- (a) marketing of any goods or services;
 - (b) supply of goods or services to a consumer;
 - (c) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;
 - (d) demand for, or collection of, payment for goods or services by a consumer; or
 - (e) the recovery of goods from a consumer.

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- (2) In addition to any conduct contemplated in subsection (1), it is unconscionable for a supplier to take advantage of the fact that a potential consumer was substantially unable to protect the consumer's own interests because of disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.

55. Powers of a court over unreasonable, unfair, unjust or unconscionable transactions

- (1) In any circumstances contemplated in sections 53 to 55, if this Act does not otherwise provide a remedy sufficient to correct the relevant injustice or unconscionability, the Tribunal or a court may -
- (a) declare the transaction or agreement, or any aspect or provision of it, to be unreasonable, unfair, unjust or unconscionable; and
 - (b) make any further order the Tribunal or court considers just and reasonable in the circumstances, including, but not limited to, an order -
 - (i) to restore money or property to the consumer;
 - (ii) to compensate the consumer for losses or expenses relating to -
 - (aa) the agreement, or
 - (bb) the proceedings of the Tribunal or the court; and
 - (iii) requiring the supplier to alter or cease any practice, introduce a practice, or amend any form or document, as required to avoid a repetition of the supplier's conduct.
- (2) In any matter contemplated in this section, the National Consumer Tribunal or a court -
- (a) may have regard to -
 - (i) the relative strengths of the bargaining positions of the supplier and consumer, and the conduct of each of them;

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- (ii) whether there was any opportunity for negotiation between the supplier and consumer, and if so, the extent of that negotiation;
 - (iii) whether, as a result of conduct engaged in by the supplier, the consumer was required to comply with any condition that was not reasonably necessary for the legitimate interests of the supplier;
 - (iv) whether any documents relating to the transaction satisfied the requirements of sections 33 and 34; and
 - (v) the amount for which, and circumstances under which, the consumer could have acquired identical or equivalent goods or services from a different supplier; and
- (b) must consider -
- (i) only those circumstances that existed or were reasonably foreseeable at the time that the conduct or transaction occurred or agreement was made; and
 - (ii) the principles, purposes and provisions of this Act
- irrespective whether this Act was in force at that time.

56. Unlawful consumer agreements

- (1) Subject to subsection (2), an agreement for the supply of any goods or services is unlawful if -
- (a) at the time the agreement was made the consumer was an unemancipated minor, or was subject to -
 - (i) an order of a competent court holding that person to be mentally unfit;or

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- (ii) an administration order referred to in section 74(1) of the Magistrates' Court Act, 1944 (Act No. of 1944), and the administrator concerned has not consented to the agreement

and the supplier knew, or could reasonably have determined, that the consumer was the subject of such an order;
 - (b) the agreement results from an offer prohibited in terms of section 37 (1);
 - (c) a court concludes that the agreement is unreasonable, unfair, unjust or unconscionable in terms of section 52 to 55, in which case the agreement is unlawful only to the extent ordered by the court;
 - (d) the supplier was subject to a notice or an order in terms of any public regulation requiring the supplier -
 - (i) to stop offering, making available or supplying any such goods or services; or
 - (ii) to stop offering, making available or supplying any such goods or services under the particular form of agreement used by the supplier,and no further appeal or review is available in respect of that notice or order.
- (2) Subsection (1)(a) does not apply to an agreement if the consumer, or any person acting on behalf of the consumer, directly or indirectly, by act or omission -
- (a) induced the supplier to believe that the consumer had the legal capacity to contract; or
 - (b) attempted to obscure or suppress the fact that the consumer was subject to an order contemplated in that paragraph.
- (3) To the extent that an agreement is unlawful in terms of this section, that agreement is void as from the date was entered into, despite any provision of common law, any other legislation, or any provision of an agreement to the contrary.

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57. Unlawful provisions of consumer agreements

- (1) An agreement for the supply of any goods or services, whether or not it is in writing, must not contain an unlawful provision or be subject to an unlawful condition.
- (2) A provision of a agreement, or a condition to which an agreement is subject, is unlawful if -
 - (a) its general purpose or effect is to -
 - (i) defeat the purpose and policy of this Act as set out in section 3 and 4;
 - (ii) mislead or deceive the consumer; or
 - (iii) subject the consumer to fraudulent conduct;
 - (b) it directly or indirectly purports to -
 - (i) waive or deprive a consumer of a right set out in this Act;
 - (ii) avoid a supplier's obligation or duty in terms of this Act;
 - (iii) set aside or override the effect of any provision of this Act;
 - (iv) authorize the supplier to -
 - (aa) do anything that is unlawful in terms of this Act; or
 - (bb) fail to do anything that is required in terms of this Act;
 - (c) the provision results from an offer prohibited in terms of section 37 (2);
 - (d) it requires the consumer to enter into a supplementary agreement, or sign a document, prohibited by subsection (5)(a);
 - (e) it expresses an acknowledgement by the consumer that -
 - (i) before the agreement was made, no representations or warranties were made in connection with the agreement by the supplier or a person on behalf of the supplier; or

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- (ii) the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer, and that have or has not in fact been delivered or rendered to the consumer;
- (f) it expresses an agreement by the consumer to forfeit any money to the supplier if the consumer -
- (i) exercises the right of rescission in terms of section 24;
 - (ii) fails to comply with a provision of the agreement before the consumer receives any goods or services in terms of the agreement;
- (g) it expresses, on behalf of the consumer -
- (i) an authorization for any person acting on behalf of the supplier to enter any premises for the purposes of taking possession of goods to which the agreement relates; or
 - (ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective whether such documentation is complete or incomplete at the time it is signed; or
 - (iii) a consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with this Act;
- (h) it purports to cede to any person, charge, set off against a debt, or alienate in any manner, a right of the consumer to any claim against the Guardian's Fund;
- (i) it expresses an Transport Contract agreement contemplated in Notice 31 in terms of the Consumer Affairs (unfair business practices) Act; or
- (j) it expresses an agreement by the consumer to -
- (i) deposit with the supplier, or with any other person at the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device; or

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- (ii) provide a personal identification code or number to be used to access an account.
- (3) In any agreement for the supply of any goods or services, a provision that is unlawful in terms of this section is void as from the date that the agreement took effect, or in the case of a provision added or altered by an amendment to an agreement, the date that the amendment took effect.
- (4) In any matter before it respecting an agreement that contains a provision contemplated in subsection (2), a court must –
- (a) sever that unlawful provision from the agreement, or alter it to the extent required to render it lawful, if it is reasonable to do so having regard to the agreement as a whole; or
 - (b) declare the entire agreement unlawful as from the date that the agreement, or amended agreement, took effect
 - (c) and make any further order that is just and reasonable in the circumstances with respect to that unlawful provision, or entire agreement, as the case may be.
- (5) A supplier must not -
- (a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision that would be unlawful if it were included in a primary agreement;
 - (b) request or demand a consumer to –
 - (i) give the supplier temporary or permanent possession of an instrument referred to in subsection (2)(j)(i) other than for the purpose of identification, or to make a copy of the instrument;
 - (ii) reveal any personal identification code or number contemplated in subsection (2)(j)(ii); or

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- (c) direct, or knowingly permit, any other person to do anything referred to in this section on behalf or for the benefit of the supplier.

58. Unfair contract terms

- (1) In determining whether a term of a contract is unfair or unreasonable, a court must have regard to all the circumstances of the case and in particular to the following:
 - (a) the bargaining strength of the parties to the contract relative to each other, taking into account-
 - (i) the availability of equivalent goods or services; and
 - (ii) suitable alternative sources of supply;
 - (b) whether the consumer received an inducement to agree to the term, or, in agreeing to the term, had an opportunity of-
 - (i) acquiring the goods or services, or
 - (ii) equivalent goods or services,from any source of supply under a contract that did not include that term;
 - (c) whether the consumer knew or ought reasonably to have known of the existence and extent of the term, having regard to any custom of trade and any previous dealings between the parties; and
 - (d) in the case of supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.
- (2) If a court, after having considered all the circumstances contemplated in subsection (1), is of the opinion that a term of contract is unfair or unreasonable, it may:
 - (a) rescind or amend the contract or a term of contract; or

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- (b) make any other order as may be necessary to prevent the effect of the contract being unfair or unreasonable to any of the parties,

notwithstanding the principle that effect must be given to the contractual terms agreed upon by the parties.

59. Fraudulent schemes and offers

- (1) A person must not initiate, sponsor, promote or knowingly participate in the distribution of any communication that –
- (a) offers to supply, or enter into an agreement to supply, any goods or services, or offers to enter into a transaction, or invites offers to enter into a transaction; and
 - (b) falsely states, implies or represents that -
 - (i) the communication is authorised by another person; or
 - (ii) the author of the communication represents another person.
- (2) A person must not directly or indirectly promote, or knowingly join, enter or participate in –
- (a) a fraudulent currency scheme, as described in subsection (3);
 - (b) a fraudulent financial transaction, as described in subsection (4);
 - (c) a fraudulent transfer of property or legal rights, as described in subsection (5);
or
 - (d) any other scheme declared by the Minister in terms of subsection (8);
- or cause another person to do so.
- (3) An arrangement, agreement, practice or scheme is a fraudulent currency scheme if it involves a person –

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- (a) with the intent to defraud another person, representing that the first person is capable of -
- (i) producing currency by washing, dipping or otherwise treating any substance that is not currency with a chemical substance, or exposing it to an electrical charge, or to radiation of any kind; or
 - (ii) producing currency, or increasing a sum of money, through scientific means, invocation of any juju or use of other invisible medium; or
- (b) making or issuing any currency, or making representations as being capable of doing so, unless the person is an authorized producer of that currency.
- (4) An arrangement, agreement, practice or scheme is a fraudulent financial transaction if it involves -
- (a) any proceeds of a specified unlawful activity,
 - (i) with intent to promote the carrying on of a specified unlawful activity; and
 - (ii) is designed in whole or in part to -
 - (aa) conceal or disguise the nature, location, source of ownership or control of the proceeds of a specified unlawful activity; or
 - (bb) avoid a lawful transaction; or
- (5) An arrangement, agreement, practice or scheme is a fraudulent transfer of property or legal rights if it involves a person, by false pretence and with the intent to defraud another person, -
- (a) obtaining any property from that person or any third person; or
 - (b) inducing that person or any third person to -
 - (i) deliver property at the direction of the first person; or

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- (ii) confer a benefit of any kind on any person at the direction of the first person on the understanding that the benefit has or will be paid for.
- (6) A person must not directly or indirectly represent, by false pretence or with the intent to defraud another person, to the effect that the first person -
- (a) is in possession of -
- (i) any property; or
- (ii) information relating to the whereabouts of any property or relating to any legal rights or potential legal claims; or
- (iii) has the ability to effect the transfer of any property or to locate or determine the whereabouts of an individual.
- (7) A person must not -
- (a) invite another person to participate for a fee in assisting to effect a transfer of any property that the first person is not authorized to transfer; or
- (b) seek, demand or accept any consideration from another person in connection with any unlawful activity contemplated in this section.
- (8) The Minister, by regulation published in accordance with section 148, may declare any arrangement, agreement, practice or scheme to be a scheme contemplated in subsection (1)(d), if it is similar in purpose or effect to a scheme contemplated in that subsection.

60. Pyramid and related schemes

- (1) In this section -
- (a) "consideration" has the meaning set out in section 1, except that it does not include -

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- (i) the purchase of any goods at cost to be used in making sales, or not for re-sale,
 - (ii) the purchase of any goods in exchange for which the seller of those goods offers to re-purchase the participant's products under reasonable commercial terms; or
 - (iii) the participant's time and effort in pursuit of sales or recruiting activities; and
 - (b) "participant" means a person who is admitted to a scheme for consideration.
- (2) A person must not directly or indirectly promote, or knowingly join, enter or participate in –
- (a) a multiplication scheme, as described in subsection (3);
 - (b) a pyramid scheme, as described in subsection (4);
 - (c) a chain letter scheme, as described in subsection (5);
 - (d) any other scheme declared by the Minister in terms of subsection (7);
- or cause any other person to do so.
- (3) A multiplication scheme exists when a person offers, promises or guarantees to any prospective consumer, investor or participant an effective annual interest rate, as calculated in the prescribed manner, that is at least 20 per cent above the REPO rate determined by the South African Reserve Bank as at the date of investment or commencement of participation, irrespective whether the consumer, investor or participant becomes a member of the lending party.
- (4) An arrangement, agreement, practice or scheme is a pyramid scheme if:
- (a) participants in the scheme receive compensation derived primarily from their respective recruitment of other persons as participants, rather than from the sale of any goods or services; or

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- (b) the emphasis in the promotion of the scheme indicate an arrangement or practice contemplated in paragraph (a).
- (5) An arrangement, agreement, practice or scheme is a chain letter scheme if –
- (a) it has various levels;
- (b) existing participants canvass and recruit new participants;
- (c) each successive newly recruited participant –
- (i) upon joining –
- (aa) is required to pay certain consideration, which is distributed to one, some or all of the previously existing participants, irrespective whether the new participant receives any goods or services in exchange for that consideration; and
- (bb) is assigned to the lowest level of participation in the scheme; and
- (ii) upon recruiting further new participants, or upon those new participants recruiting further new participants, and so on in continual succession –
- (aa) may participate in the distribution of the consideration paid by any such new recruit; and
- (bb) moves to a higher level within the scheme, until being removed from the scheme after reaching the highest level.
- (6) The Minister, by regulation published in accordance with section 148, may declare any arrangement, agreement, practice or scheme to be a scheme contemplated in subsection (2)(e), if it is similar in purpose or effect to a scheme contemplated in that subsection.

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PART G – RIGHT TO FAIR VALUE, GOOD QUALITY AND SAFETY**61. General right to fair value, good quality and safety**

- (1) Unless the consumer has been expressly informed and expressly agreed to accept, or knowingly acted in a manner consistent with accepting particular goods in the specific condition in which they are offered, the consumer has a right to receive goods that -
 - (a) are reasonably suitable for the purposes for which they are generally intended, subject to subsection (3);
 - (b) are of good quality, in good working order and free of defects;
 - (c) will be useable and durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply or lease; and
 - (d) comply with the mandatory standard set under the Standards Act, 1993 (Act No.29 of 1993), if any.

- (2) In addition to the right set out in subsection (1)(a), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier –
 - (a) ordinarily offers to supply such goods; or
 - (b) acts in a manner consistent with being knowledgeable about the use of those goods;

the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.

- (3) The consumer of any goods has a right to receive goods that are free of any product failure, defect or hazard that would render the utility, practicability or safety of that

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good to be less than persons are generally entitled to expect, having regard to all the circumstances of its supply, including but not limited to –

- (a) the manner in which, and the purposes for which, that good has been marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of that good;
 - (b) the range of things that might reasonably be anticipated to be done with or in relation to that good;
 - (c) the time when the good was manufactured and supplied.
- (4) For greater certainty in applying subsection (3) –
- (a) it is irrelevant whether a product failure, defect or hazard was latent or patent, or whether it could have been detected by a consumer before taking delivery of the good;
 - (b) a product failure, defect or hazard may not be inferred in respect of a particular good merely from the fact alone that a safer good has subsequently become available from the same or any other producer or supplier; and
 - (c) the safety of a good includes –
 - (i) the safety of, or with respect to, the component parts or ingredients of that good, or the raw material from which the good is produced; and
 - (ii) the risk of injury, death or illness to natural persons, or damage to property.
- (5) A person must not produce or distribute an unsafe good, or knowingly supply such a good to a consumer.

62. Implied warranty of quality

- (1) In any transaction or agreement in respect of the supply of goods to a consumer there is an implied provision that the manufacturer, importer or other producer, the

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distributor and the supplier each warrant that the goods comply with the requirements and standards contemplated in section 60, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the manufacturer, importer or other producer, the distributor or the supplier, as the case may be.

- (2) The implied warranty imposed by subsection (1) is in addition to -
- (a) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and
 - (b) any express warranty or condition stipulated by the manufacturer or importer, distributor or supplier.

63. Warranty on repaired goods

- (1) A service provider warrants every new or re-conditioned part installed during any repair or maintenance work, and the labour required to install it, for a period of 6 months after the date of installation.
- (2) A warranty in terms of this section -
- (a) is in addition to any other deemed or implied warranty; and
 - (b) is void if the consumer has subjected the part, or the goods or property in which it was installed, to misuse or abuse.

64. Warning concerning the fact and nature of hazards

- (1) The supplier of any activity or facility that is subject to any -
- (a) unusual hazard,
 - (b) hazard of which a consumer could not reasonably be expected to be aware, or which an ordinarily alert consumer could not reasonably be expected to contemplate, in the circumstances; or

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- (c) hazard that could result in serious injury or death,
- must specifically draw the fact, nature and potential effect of that hazard to the attention of consumers in a form and manner that meets the standards set out in section 50 (2) to (5).
- (2) A person who packages any prescribed goods for supply to consumers –
- (a) that could reasonably present a risk of harm or injury to the consumer, user or other person present when the goods are being used, must display on or within that packaging a notice that meets the prescribed standards providing the consumer adequate instructions for the safe handling and use of those goods; or
- (b) that contain any ingredients or components that have been determined to present a chemical or biological hazard to humans or the environment, relative to their concentration in those goods, must display on or within that packaging, a notice that meets the prescribed standards informing the consumer of the appropriate steps to –
- (i) contain those ingredients or components so as to inhibit human exposure and minimize the risk of human or environmental contamination;
- (ii) remedy or mitigate the effects of those ingredients or components in the case of human or environmental exposure to them; and
- (iii) safely dispose of those goods, ingredients or components at the end of their useful life.
- (3) Subsection (2) does not apply to any goods or services to the extent that a substantially similar label or notice has been applied in terms of any other public regulation.
- (4) A person who installs any goods contemplated in subsection (2) for a consumer must give the consumer the original copy of –
- (a) any document required in terms of that subsection, or

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- (b) any similar document applied to those goods in terms of another public regulation.

65. Recovery and safe disposal of hazardous or dangerous products or components

If any public regulation 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; and
- (b) any person who, in the ordinary course of business, manufactures, imports, sells 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 the persons to whom they are ordinarily delivered as part of the supply chain.

66. Monitoring of prescribed goods for hazards

- (1) The manufacturer or importer of any prescribed goods must maintain a register identifying each original consumer of those goods, together with the consumer's contact details.
- (2) The manufacturer or importer of any prescribed goods must -
 - (a) establish a system to receive notice of -
 - (i) consumer complaints or reports of product failures, defects or hazards;
 - (ii) the return of any such goods because of a product failure, defect or hazard;

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- (iii) accidents caused wholly or partially as a result of a product failure, defect or hazard; and
 - (iv) other indicia of defects or premature failure
 - in those goods or in any component of them, or resulting from the use of those goods;
 - (b) For the period prescribed in respect of any such goods -
 - (i) continuously monitor the sources of information contemplated in paragraph (a), and
 - (ii) analyse the information receivedwith the object of detecting or identifying any previously undetected or unrecognised potential danger to the public from the use of or exposure to those goods; and
 - (c) Report to the Commission -
 - (i) The details of any accident report contemplated in paragraph (a)(iii); and
 - (ii) A periodic summary at the prescribed intervals and in the prescribed manner and form, concerning the information received in terms of this section.
 - (3) The Commission must publish an annual report in which it compiles the information reported to it in terms of this section.
 - (4) The Minister may prescribe -
 - (a) goods, or categories of goods, to which this section will apply, and
 - (b) the period of time contemplated in subsection (2)(b) with respect to any prescribed goods.

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- (5) The provisions of this section, and of section 67 – 69, are in addition to, and not in substitution for, any other legal obligation or duty on a manufacturer or importer of goods, whether at common law or in terms of any public regulation.

67. Duty to investigate apparent defects or failures

- (1) If a manufacturer or importer of any goods that have been prescribed in terms of section 65 has detected or identified any previously undetected or unrecognised potential danger to the public from the use of or exposure to those goods, the manufacturer or importer must –
- (a) conduct an investigation, sufficient to satisfy the prescribed standards, into the nature, causes and risks of that danger,
 - (b) inform the Commission in the prescribed manner and form when it commences such an investigation; and
 - (c) report to the Commission, in a manner sufficient to satisfy the prescribed standards, when it has concluded its investigation.
- (2) The Commission may publish the conclusions of a report submitted to it in terms of this section, and invite submissions from the public on those conclusions.

68. Duty to notify consumers of defects

- (1) If, after conducting an investigation in terms of section 67, a manufacturer or importer concludes that there is a potential danger to the public from the continued use of or exposure to the goods, the manufacturer or importer must –
- (a) promptly notify each registered consumer, if applicable, of the nature, extent and risks of the product failure, defect or hazard contributing to that danger; and
 - (b) submit to the Commission a plan for -
 - (i) notifying the public generally of the nature, extent and risks of that danger; and

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- (ii) remedying the product failure, defect or hazard contributing to that danger.
- (2) The National Consumer Commission must –
- (a) consider each proposal in terms of subsection (1) having regard to the nature of the product failure, defect or hazard, and the nature, extent and urgency of any resulting danger to the public; and
- (b) either –
- (i) approve the proposal; or
- (ii) require the person making the proposal to submit a fresh proposal, if the Commission concludes that the proposal does not adequately address the need to notify consumers, minimize the danger to the public, or remedy the product failure, defect or hazard in the product.
- (3) The person who made a proposal that is the subject of a decision of the National Consumer Commission in terms of subsection (2) (b) (ii) may apply to the National Consumer Tribunal to review that decision, and the Tribunal may make an order partially or completely confirming or setting aside the decision.

69. Repair or replacement of hazardous goods

- (1) A manufacturer or importer, at its own cost, must –
- (a) contact each registered consumer of a good or component of a good that –
- (i) it has concluded is a potential danger to the public; or
- (ii) the Commission has ordered to be repaired or replaced in terms of section 70; and
- offer to repair or replace each such good or component of a good; and

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- (b) repair or replace each such good or component of a good that is submitted to it by a consumer of a good in response to such an offer or a public notice contemplated in section 68.
 - (2) If after a reasonable effort to repair a good or component of a good, the defect or hazard has not been remedied, such a good or a component of a good must be replaced.
 - (3) The cost that the manufacturer or importer must absorb includes any cost of –
 - (c) shipping and handling of the hazardous goods from or to the consumer; and
 - (d) labour and parts required to effect the repair or replacement.

70. Authority of Commission to require investigation or order recall

- (1) If the National Consumer Commission has reasonable grounds to believe that any goods prescribed in terms of section 66 may be hazardous, and the producer of those goods has not taken any steps required by section 67 or 68, the Commission, by written notice, may require that producer to –
 - (a) conduct an investigation contemplated in section 67(1);
 - (b) make a proposal contemplated in section 67(2); or
 - (c) carry out a program of notice and repair and replacement as contemplated in section 68, on any terms required by the Commission.
- (2) A manufacturer or importer affected by a notice issued in terms of this section may apply to the Tribunal to set aside the notice in whole or in part.

71. Liability for products

- (1) Any producer, distributor or supplier of a good is strictly liable for any damage, as described in subsection (2), caused wholly or partly as a consequence of a product failure, defect or hazard in a good, or as a result of inadequate instructions or

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warnings provided to the consumer, and if in a particular case, more than one person is liable in terms of this subsection, their liability is joint and several.

- (2) Subject to subsection (3), damage for which a person may become liable in terms of this section includes, but is not limited to –
- (a) the death or injury of any natural person;
 - (b) loss of, or damage to, any property, irrespective whether it is movable or immovable; and
 - (c) economic loss that results from a loss contemplated in paragraph (a) or (b).
- (3) Liability of a particular person in terms of this section does not arise in any of the following circumstances:
- (a) if the product failure, defect or hazard that results in damage is wholly attributable to compliance with any public regulation;
 - (b) if the alleged product failure, defect or hazard -
 - (i) did not exist in the good at the time it was supplied to another by the person alleged to be liable;
 - (ii) was wholly attributable to compliance by that person with instructions provided by another person who supplied the good to that person; or
 - (iii) arose after that person supplied the good to another person, as a result of the second person's action, which compromised the good;
 - (c) that it is unreasonable to expect the distributor or supplier to have discovered the product failure, defect or hazard, having regard to -
 - (i) that person's role in introducing the good to the consumer market; and
 - (ii) the state of scientific and technical knowledge at the time the good was under the control of that person; or
 - (d) the claim for damages is brought more than 3 years after the -

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- (i) death or injury of a person; or
 - (ii) earliest time at which a person with an interest in any property had knowledge of the material facts about the loss or damage to that property; or
 - (iii) the latest date on which a person suffered any economic loss.
- (4) The liability of any person in terms of this section is in addition to, and not in substitution for, any other liability of that person in terms of any law.

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PART H – SUPPLIERS’ ACCOUNTABILITY TO CONSUMERS**72. Lay-bys**

- (1) If a supplier makes an agreement to sell particular goods to a consumer, to accept payment for those goods in periodic instalments, and to hold those goods until the consumer has paid the full price for the goods, -
 - (a) each amount paid by the consumer is held by the supplier in trust for the benefit of the consumer, as a deposit subject to section 74; and
 - (b) the particular goods remain at the risk of the supplier until the consumer takes possession of them.
- (2) If a supplier is unable to deliver possession of any goods contemplated in subsection (1) when the consumer has paid the full price for the goods, the supplier must either, at the option of the consumer, -
 - (a) supply the consumer with an equivalent quantity of goods that are comparable or superior in description, design and quality; or
 - (b) refund to the consumer -
 - (i) the money paid by the consumer, with interest at a legal rate, if the inability to supply the goods is due to circumstances beyond the supplier’s control; or
 - (ii) double the amount paid by the consumer, as compensation for breach of contract.
- (3) If a consumer contemplated in subsection (1) -
 - (a) terminates or rescinds the agreement before fully paying for the goods, the supplier may charge a cancellation penalty before complying with the requirements of section 74; or

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- (b) fails to complete the payment for the goods within 60 business days after the anticipated date of completion, the supplier -
 - (i) may regard the consumer as having rescinded the agreement; and
 - (ii) may charge a cancellation penalty in respect of the goods before complying with the requirements of section 74.
- (4) A cancellation penalty contemplated in subsection (3), may not be charged unless the supplier informed the consumer of the fact and extent of the penalty before the consumer entered into the lay-by agreement.
- (5) The Minister may prescribe a maximum amount for a cancellation penalty contemplated in subsection (3).

73. Prepaid certificates, credits and vouchers

- (1) This section applies to any transaction in which a supplier -
 - (a) accepts consideration from a person in exchange for a prepaid certificate, card, credit, voucher or similar device; and
 - (b) expressly or implicitly agrees to provide goods or services to any person who subsequently presents that certificate, card, credit, voucher or similar device, up to the value represented by it.
- (2) A supplier contemplated in subsection (1) –
 - (a) must hold all consideration paid in exchange for all such certificates, cards, credits, vouchers or similar devices in trust in accordance with section 74; and
 - (b) may make a charge against that trust only when, and to the extent that, a certificate, card, credit, voucher or similar device is presented as consideration for goods or services supplied or to be supplied to or on behalf of a consumer.
- (3) Any person in possession of a certificate, card, credit, voucher or similar device contemplated in this section is a beneficiary of the trust imposed by subsection (2), to

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the extent of the unused value of that certificate, card, credit, voucher or similar device.

74. Supplier to hold and account for consumer's property

- (1) When a supplier has possession of any property belonging to or ordinarily under the control of the consumer, that property is held by the supplier in trust for the benefit of the consumer and is subject to the Trust Property Act, 1988 (Act No. 57 of 1988).
- (2) Any amount paid by a consumer to a supplier to be held as a deposit against the cost of goods or services to be supplied at a later date, or owed to a consumer by a supplier in terms of any provision of this Act, or required by this Act to be held by a supplier in trust for a consumer –
 - (a) is held by the supplier in trust for the benefit of the consumer and is subject to the Trust Property Act, 1988 (Act No. 57 of 1988); and
 - (b) if held by the supplier for at least 40 business days, must be credited with interest at rates determined in accordance with the Prescribed Rates of Interest Act, 1975 (Act No. 55 of 1975).
- (3) A person who assumes control of a supplier's property, as administrator, executor or liquidator of an estate, -
 - (a) has a duty to the consumer -
 - (i) to diligently investigate the circumstances of the supplier's business to ascertain the existence of any trust contemplated in this section; and
 - (ii) to ensure that any valid and existing trust imposed by this section, and of which the trustee has knowledge, is dealt with for the consumer's benefit in accordance with this section; and
 - (b) is liable to the consumer for any loss, unless that person has acted -
 - (i) in good faith; and

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- (ii) without knowledge of the existence of the consumer's interest.

75. Deposits in respect of containers, pallets or similar objects

- (1) The Minister may make regulations establishing a minimum or maximum deposit that a supplier must or may require a consumer to pay in respect of the return of a bottle, container, pallet, reel, or similar object used in respect of the packaging or delivery of any goods.
- (2) If a person returns a bottle, container, pallet, reel, or similar object contemplated in subsection (1) to any supplier of goods ordinarily sold in that bottle or container or on that pallet or in or on that reel or similar object, the supplier must pay that person the amount of the deposit -
- (a) if any, that is required to be charged in terms of any public regulation on the date on which the object is returned to the supplier; or
- (b) that the supplier charged for that object, or ordinarily charges for such an object
- irrespective whether the person returning the container paid a deposit for that object to that supplier.
- (3) A deposit paid by a consumer to a supplier as contemplated in this section is not trust property subject to section 74, except to the extent that an agreement or any public regulation requires otherwise.

76. Return of parts and materials

- (1) When a supplier is authorized to perform any service to any goods or property belonging to or ordinarily under the control of the consumer, the supplier must -
- (a) retain any parts or components removed from any goods or property in the course of any repair or maintenance work;

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- (b) keep those parts or components separate from parts removed from other goods or property; and
 - (c) return those parts or components to the consumer in a reasonably clean container

unless the consumer declined the return of any such parts or materials.

- (2) This section does not apply to any substance, parts or components that are required –
 - (a) in terms of any warranty under which the work was carried out, to be returned to, or disposed of at the direction of, the manufacturer or distributor;
 - (b) in terms of any insurance claim under which the work was carried out, to be returned to, or disposed of at the direction of, the insurer; or
 - (c) in terms of any public regulation, to be recovered or disposed of in a safe manner in the interests of environmental safety or public health and safety.

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Protection of consumer rights and consumers' voice

PART A – CONSUMERS RIGHT TO BE HEARD AND OBTAIN REDRESS

77. Protection of consumer rights

- (1) If a consumer has exercised, asserted or sought to uphold any right set out in this Act or in an agreement with the supplier, the supplier must not, in response –
 - (a) discriminate directly or indirectly against that consumer, compared to the supplier's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right;
 - (b) penalise the consumer;
 - (c) alter, or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or
 - (d) take any action to accelerate, enforce, suspend or terminate an agreement with the consumer.
- (2) If an agreement, or any provision of such an agreement is, in terms of this Act, declared to be unlawful, or is severed from the agreement, the supplier who is a party to that agreement must not, in response to that decision -
 - (a) directly or indirectly penalise another party to that agreement when taking any action contemplated in section 7(1);
 - (b) alter the terms or conditions of any other transaction or agreement with another party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
 - (c) take any action to accelerate, enforce, suspend or terminate another agreement with another party to the impugned agreement.

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78. Enforcement of rights by consumer

A person referred to in section 4(2) may seek to enforce any right in terms of this Act or in terms of a transaction or agreement to by –

- (a) attempting to resolve any dispute with a supplier through alternative dispute resolution in accordance with section 79;
- (b) applying to the consumer court of the province with jurisdiction over the matter, if there is such a consumer court, subject to the law establishing or governing that consumer court;
- (c) filing a complaint with the Commission in accordance with section 81; or
- (d) approaching a court with jurisdiction over the matter.

79. Alternative dispute resolution

- (1) As an alternative to filing a complaint with the National Consumer Commission in terms of section 81, a person may refer a matter that could be the subject of such a complaint as follows: -
 - (a) If the supplier concerned is a participant in an authorized or recognised ombud scheme, the matter may be referred to the ombud with jurisdiction.
 - (b) If there is no ombud with jurisdiction as contemplated in paragraph (a), the matter may be referred to either -
 - (i) a consumer court, for resolution in accordance with this Act and any applicable provincial consumer legislation ; or
 - (ii) a provincial consumer protection authority or a consumer protection group, for resolution by conciliation or mediation, if those services are offered by that authority or group.

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- (2) The respondent in a matter referred to a provincial consumer protection authority or to a consumer protection group under subsection (1)(b)(ii) may object to that referral in writing within 10 business days, in which case –
- (a) the matter may not be resolved by that entity;
 - (b) the matter is deemed to have been filed as a complaint in terms of section 81.
- (3) In respect of any dispute between a supplier and a consumer that could be the subject of an application to the Tribunal in terms of this Act, the consumer or supplier, before either may apply directly to the Tribunal, -
- (a) must attempt to resolve that matter directly between themselves; and
 - (b) if unable to do so, must refer the matter to an entity as contemplated in subsection (1).
- (4) If an entity to whom a matter is referred for alternative dispute resolution concludes that either party to the conciliation or mediation in terms of this section is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the entity must issue a certificate in the prescribed form stating that the process has failed.

80. Dispute resolution may result in consent order

The ombud with jurisdiction, consumer court or other entity that has resolved, or assisted parties in resolving, a dispute in terms of this Part may -

- (a) record the resolution of that dispute in the form of an order, and
- (b) if the parties to the dispute consent to that order, submit it to a Court to be made a consent order, in terms of its Rules.

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81. Initiating a complaint to National Consumer Commission

- (1) Any person may file a complaint with the National Consumer Commission in the prescribed manner and form, alleging that any person has acted in a manner inconsistent with this Act.
- (2) A complaint may be initiated directly by the National Consumer Commission on its own motion, on the request of a provincial consumer protection authority or request of a consumer group accredited in terms of section 83.
- (3) A consumer or supplier who has unsuccessfully attempted to resolve a dispute directly with the other party and through alternative dispute resolution in terms of Section 79, may file an application contemplated in this Act at any time within –
 - (a) 20 business days after the failure of the attempted alternative dispute resolution; or
 - (b) such longer time as the Tribunal may allow on good cause shown.

82. Powers of a court to enforce consumer rights

- (1) In addition to any other order that it may make under this Act or any other law, a court considering a matter in terms of this Act may –
 - (a) order a supplier to alter or discontinue any conduct that is inconsistent with this Act;
 - (b) make any order specifically contemplated in this Act; and
 - (c) award damages against a supplier for collective injury to all or a class of consumers generally, to be paid to any person and on any terms or conditions that the court considers just and equitable and suitable to achieve the purposes of this Act.
- (2) This Act does not diminish any right of the consumer or the supplier to recover interest or special damages in any case where by law interest or special damages may

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be recoverable, or to recover money paid if the consideration for the payment of it has failed.

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Section 83-r84

PART B – ROLE OF CIVIL SOCIETY

83. Accreditation of consumer protection groups

- (1) The Commission may accredit any juristic person, or association of persons, as a consumer protection group if that person or association –
 - (a) functions predominantly to promote or represent the interests of all or a specific category of consumers generally;
 - (b) is committed to achieving the purposes of this Act;
 - (c) has sufficient human, financial and operational resources, and adequate administrative procedures and safeguards, to enable it to function efficiently and to effectively carry out its functions in terms of this Act, or presents to the Commission a credible plan to acquire or develop those resources; and
 - (d) engages in, or makes a realistic proposal to engage in, actions to promote and advance the consumer interests of persons contemplated in section 3(2)(b).
- (2) The Commission may impose reasonable conditions on the accreditation of a consumer protection group to further the purposes of this Act.
- (3) The Minister may prescribe criteria for the Commission to follow in assessing whether an applicant for accreditation meets the requirements of this section.

84. Support for consumer protection groups

The Commission may co-operate with, facilitate, or otherwise support any of the following activities carried out by a consumer protection group:

- (a) Consumer advice and education activities and publications;
- (b) Research, market monitoring, surveillance and reporting;
- (c) Promotion of consumers' rights and advocacy of consumers' interests;

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- (d) Representation of consumers, either specifically or generally, in court;
- (e) Alternative dispute resolution through mediation or conciliation;
- (f) Participation in national and international associations, conferences or forums concerned with consumer protection matters;

85. Consumer protection group may initiate consumer protection actions

- (1) A consumer protection group may -
 - (a) commence or undertake any act to protect the interests of a consumer individually, or of consumers collectively, in any matter or before any forum contemplated in this Act; and
 - (b) intervene in any matter before any forum contemplated in this Act, if the interests of consumers represented by that group are not otherwise adequately represented in that forum.
- (2) In addition to any other authority set out in this Act, a consumer protection group may direct a generally stated concern or complaint to the Commission in respect of any matter within the purpose of this Act.

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Chapter 4 : Industry Regulation

Section 86

Chapter 4**Industry Regulation****86. Registration of business names**

- (1) A person may apply to the Registrar, either directly or through a provincial consumer protection authority, in the prescribed manner and form to register a business name that is different from the name of the person.
- (2) The Registrar, or a provincial consumer protection authority, must register a business name in accordance with the application, unless that name
 - (a) is the same as, or confusingly similar to, a name -
 - (i) of a company registered in terms of the Companies Act or Close Corporations Act; or
 - (ii) registered for use by any other person in terms of this section;
 - (b) falsely implies or suggests, or could reasonably mislead the public to believe, that the business,—
 - (i) is part of, or associated with, any other business with which it is not so associated;
 - (ii) is an organ of state, or operated, sponsored, supported or endorsed by an organ of state;
 - (iii) enjoys the patronage of any foreign head of state or head of government;
 - (iv) is owned, managed or conducted by persons having any particular educational designation or professional qualifications, standards, skills or capacity; or
 - (v) is owned, operated, sponsored, supported or endorsed by -

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- (aa) any foreign country, government or administration or any department of such a government or administration; or
 - (bb) any international organization; or
 - (c) includes any words or expression that, in isolation or in context within the name, -
 - (i) fall into the category of expression contemplated in section 16(2) of the Constitution; or
 - (ii) may reasonably be considered to offend persons of a particular race, ethnicity, gender or religion.

87. Registrar's decisions with respect to business names

- (1) Subject to subsection (2), the Registrar may refuse to register a business name if the name or amended name of that company
 - (a) does not comply with the requirements of section 86; or
 - (b) is reserved in terms of the Companies Act for use by another person.
- (2) An applicant for registration of a business name may apply to the High Court to review a refusal by the Registrar to register that name.

88. Power of court on review concerning business names

- (1) For a period of two years immediately following the registration of a business name, any person may apply to the High Court to review the decision of the Registrar to register that name, solely on the grounds that the name –
 - (a) was reserved for the use of the applicant in terms of the Companies Act at the time of the Registrar's decision;
 - (b) is confusingly similar to a name under which the applicant -