

The Consumer Protection Act No. 68 of 2008: cracking codes

By Neil Kirby, Director

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Don't be left in the dark when the new Consumer Protection Act comes into full effect.

The advent of the Consumer Protection Act No. 68 of 2008 ("the CPA") has introduced and caused a paradigm shift in so far as an understanding of consumer rights and how they operate are concerned. There is much chatter and agitation about the introduction into South African law formally of a range of consumer rights. The introduction of these rights has an impact on suppliers as for every right there is a corresponding obligation and, more often than not, the obligation is imposed upon a supplier. However, how far reaching are these obligations and what are suppliers to do about dealing with these obligations in a predictable, certain and consistent manner?

The CPA is an exceptionally long piece of legislation and, at times, a complicated piece of legislation. The CPA endeavours to introduce an entire system of protection for consumers. Certain of the processes that the CPA contemplates and creates are importantly processes for the realisation of consumer rights in the resolution of consumer complaints. Bearing in mind that consumers, as do suppliers, function in various sectors and parts of our economy.

Therefore, the question that arises is how does the CPA endeavour to deal with such different

sectors of the economy for the purposes of enforcing dispute resolution mechanisms with reference to a relatively uniform set of consumer rights and supplier obligations?

The answer is one found in the dispute resolution mechanisms contained in the CPA. The dispute resolution mechanisms are an important aspect of the CPA. An understanding of these mechanisms by suppliers is vital to their understanding of their rights in terms of the CPA and attenuating the risks imposed by the CPA in respect of consumer complaints against them.

The starting point for any supplier in relation to the application of dispute resolution mechanisms is the role of industry codes of practice in the resolution of disputes. In a number of sectors of the economy, industry codes form an important source of informing the supplier's obligations to consumers. These codes are thus respected by suppliers as forming an integral part of the way in which they do business and may even be reflected in a supplier's terms and conditions.

These codes range from codes of practice in relation to advertising or marketing, manufacturing standards or quality control

provisions. Accordingly, these codes are a good starting point, from the point of view of the CPA, to impose obligations on certain sectors or groups of suppliers to resolve disputes between a supplier in that sector and a disgruntled consumer. Certainly, the potential of such dispute resolution mechanism emerges from Section 82 of the CPA.

Section 82 of the CPA recognises the role of industry codes of conduct within the economy of the Republic. In this section, an industry code is defined as a code:

- “(i) regulating the interaction between or among persons conducting business within an industry; or
- (ii) regulating the interaction, or providing for alternative dispute resolution, between a person contemplated in subparagraph (i) of consumers”.

A code therefore is a good place to start from a supplier’s point of view, to understand how that supplier will resolve disputes in terms of the CPA where consumers are asserting their rights in terms of the CPA against a supplier. Suppliers are, in fact, encouraged to ascertain and understand whether or not the industry in which they function is subject to a code and what the provisions of that code are in relation to, amongst other matters, dispute resolution mechanisms.

Existing industry codes may very well be integrated successfully into the CPA in accordance with the procedures that are contemplated in Section 82. These procedures turn on the discretion of the Minister of Trade and Industry in conjunction with the

National Consumer Commission to publish a code of conduct in the *Government Gazette*. Once such a code is published, it is integrated into the formal dispute resolution mechanisms of the CPA. To this end, if the code proposes a dispute resolution, in so a scheme of alternative dispute resolution, such a scheme may be recognised as an accredited industry ombud. In terms of the provisions of Section 70 of the CPA, accredited industry ombud, such a person, for the purposes of the CPA, may competently resolve consumer complaints without the need for such a complaint to be dealt with by a court of the National Consumer Commission. In accordance with the dispute resolution mechanisms in the CPA, an accredited industry ombud may constitute the first port of call for an aggrieved consumer who is endeavouring to assert his or her rights, in terms of the CPA, against a supplier.

Section 82 of the CPA does, however, require that before a code is approved for the purposes of the CPA, its terms must be consistent with the provisions of the CPA and that such a code may be reviewed periodically by the National Consumer Commission, in accordance with powers set out in Section 82, to ensure that the code, as approved, is effective for the purposes of realising the purposes and policies of the CPA.

Time to get organised! The existence of terms and conditions in industry codes of conduct, obviously subject to the provisions of the Competition Act No. 89 of 1998, is an important starting point for suppliers to understand the ultimate impact of the

CPA on their businesses especially in so far as the manner in which consumers will be enforcing their rights against suppliers, in particular sectors, in terms of the CPA. In so far as suppliers do have access to an industry code that contains an alternative dispute resolution scheme that may be relied upon by consumers, this may be an ideal forum within which to manage consumer complaints - bearing in mind that a consumer has a range of avenues available to him or her to enforce his or her rights including referring a matter directly to the National Consumer Tribunal (Section 69 (a)), the applicable ombud with jurisdiction (Section 69(b)), an accredited industry ombud (Section 69(c)(i)), a consumer court (Section 69(c)(ii)), an alternative dispute resolution agent (Section 69(c)(iii)) or a court with jurisdiction over the matter (Section 69(d)). Therefore in so far as suppliers are able to gain any advantage by ensuring that an applicable industry ombud is available to deal with consumer complaints, such an avenue and forum would be an advantage worthy of explanation by any industry or sector of the economy.

Whilst the CPA does present a paradigm shift in the manner in which consumers’ rights and suppliers’ obligations are to be dealt with and defined in South African law, the CPA does not leave suppliers without remedies or the ability to ensure that their rights and obligations are respected: provided they implement the applicable infrastructure in order to ensure that they are able to deal effectively and efficiently with the provisions of the CPA into the future.

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