

Consumer Goods and Services Ombud: to register or not to register?



The Consumer Goods and Services Ombud (“CGSO”) is an alternative dispute resolution body. In accordance with section 82(6) of the Consumer Protection Act 68 of 2008 (“CPA”), the CGSO aims to enforce the purpose and interpretation of the CPA.

When can you refer matters to the CGSO?

In the event that a Natural Person or a juristic person with an annual turnover of less than R2 million (jointly referred to as “Consumer”) feels aggrieved due to the service they received or a product they purchased, the matter can be referred to an Ombud. Section 69(b) of the CPA provides a Consumer with the opportunity to enforce any right afforded to them by the CPA when the matter is reported to an Ombud with the necessary jurisdiction.

What is the process of alternative dispute resolution?

The process of alternative dispute resolution finds its origin in section 70 of the CPA. An aggrieved Consumer will lodge a complaint with the CGSO by following the steps on their website. This complainant must detail the time of purchase, the defect as well as the reason for the dispute. The CGSO will then forward the complaint to the supplier to provide them with an opportunity to respond. This service is delivered free of charge. Should no settlement be reached, the case will be referred to the Consumer Commission.

I know what you are thinking, “I don’t supply goods or services to natural people of small companies, so there is no need for me to register”. *All entities that are involved in the supply chain should register.* Section 1 of the CPA defines the supply chain as *“the Collective of all suppliers who directly or indirectly contribute in turn to the ultimate supply of those goods or services to a consumer, whether as a producer, importer, distributor or retailer of goods, or as a service provider”*. This means that even if you are the manufacturer that sells to a large juristic person, you are still obligated to register, because the end user of your product will be a Consumer.

What exclusions does the Consumer Goods and Services Ombud (CGSO) provide for?

The Consumer Goods and Services Industry Code of Conduct (“Code”) provides for certain exclusions. According to clause 4.4 of the Code, there are certain entities that need not register. The first exemption is if the transaction is not governed by the CPA and/or is governed by other public regulations. Transactions not covered by the CPA are stipulated in section 5(2) of the CPA as follows:

- Any transaction with the State;
- Transactions between juristic persons with an annual turnover of more than R2 million;
- The transaction falls within an exemption granted by the minister;
- The transaction is a Credit Agreement;
- Labour agreements; or
- Services to be supplied under an employment contract.

It is very important to note that if you fall within any of these exemptions but are not subject to any other public regulation, you will still have to register with the CGSO.

Furthermore, clause 4.4 of the code states that entities that fall within the automotive industry or Electronic Communication Services, as defined by the Electronic Communications Act 36 of 2005, or transact with organs of state or financial institutions, need not register.

Further to the above, if you are a manufacturer, supplier or producer who sells a product where the end user is a consumer, you will have to register with the CGSO if you are not governed by any other public regulation. This is true even if you sell to juristic persons with an annual turnover above R2 million. The end user remains a consumer and they are the ones protected by the CPA and CGSO.

How can you register with the CGSO?

You can register with the CGSO on their website. Annual fees are determined according to the annual turnover of the entity. An entity will run the risk of non-compliance should they not register with the CGSO. The CGSO may impose fines on entities for late registration. These fines can be anything up to 10% of the annual turnover.

Once an entity is registered with the CGSO, there are certain responsibilities they have to fulfil. These responsibilities are outlined in the Code.

Tips on establishing an effective and accessible Internal Complaints-Handling Process:

- Provide a prescribed notice stating that the entity is a Participant of the Industry Code;
- Provide Consumers with a copy of the Industry Code or a summary thereof;
- Provide training to relevant staff on the CPA, Regulations, Industry Code, and the entity's internal complaint-handling procedure;
- Keep a record of complaints lodged for a minimum of 3 years;
- Provide relevant information on the CGSO to assist consumers in the resolution of individual complaints;
- Comply with all reasonable requests made by the CGSO in a timely manner;
- Contribute to the funding of the operations of the CGSO by paying a joining fee, an annual levy and (if necessary) a special levy. Annual levies are based on the participant's annual turnover; and
- Appoint a designated official to manage communication between complainants and the CGSO.

The Consumer Protection Act (CPA) and Consumer Goods and Services Industry Code of Conduct aim to ensure that Consumers can exercise their rights. Therefore, it is imperative that entities register with the relevant Ombud to ensure an equal distribution of power and effective dispute resolution.

SERR Synergy has a team of qualified Information Compliance Advisors who assist businesses to comply with provisions of the Consumer Protection Act. We assist businesses with the registration at the Consumer Ombudsman and offer our clients assistance with any disputes at the Consumer Commissioner, Tribunal or Consumer Ombudsman.

About the Author: Demi-Lee Preston completed her BA Law and LLB degrees at the University of Pretoria. She joined the SERR team as an Information Compliance Advisor. She specialises in POPIA and PAIA compliance and has a special interest in Consumer Protection Law.

Sources:

Consumer Protection Act 68 of 2008

Consumer Goods and Services Industry Code of Conduct

Consumer Goods and Services Ombud Website - <http://www.cgso.org.za/cgso/>

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