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# GOVERNMENT NOTICE

## DEPARTMENT OF TRADE AND INDUSTRY

**No. 817** **17 October 2014**

### CONSUMER PROTECTION ACT, 2008

### PRESCRIPTION OF THE SOUTH AFRICAN AUTOMOTIVE INDUSTRY CODE AND ACCREDITATION OF THE ALTERNATIVE DISPUTE RESOLUTION SCHEME ADMINISTERED BY THE MOTOR INDUSTRY OMBUD OF SOUTH AFRICA AS AN ACCREDITED INDUSTRY OMBUD IN TERMS OF SECTION 82 OF THE CONSUMER PROTECTION ACT, 2008 (ACT NO. 68 OF 2008)

I, Dr Rob Davies, Minister of Trade and Industry, after having considered comments made in relation to Notice 69 of 2014, published in Government Gazette No.37301 on 7 February 2014 on the application for accreditation of the South African Automotive Industry Code of Conduct made in terms of Section 82 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) (the Act) and acting on the recommendations thereto made by the National Consumer Commission in terms of Section 82(3) of the Act, do hereby prescribe the code in the attached schedule as the industry code for the automotive industry and accredit as an accredited industry ombud the alternative dispute resolution scheme administered by the Motor Industry Ombud of South African in terms of Section 82(6)(b) of the Act.

This notice will come into effect three (3) months after publication in the Government Gazette.

**Dr Rob Davies (MP)**
**Minister of Trade and Industry**
**Date: 2 / 10 /2014**

# SOUTH AFRICAN
# AUTOMOTIVE INDUSTRY CODE OF CONDUCT

**Vision:**

**The Automotive Industry of South Africa will at all times endeavour to comply with the contents and spirit of the Consumer Protection Act 68 of 2008 when supplying goods and services to consumers.**

**Mission:**

**The Automotive Industry of South Africa will achieve its vision in three ways, by:**

1. **Subscribing to this Code of Conduct;**
2. **Providing goods and services that are safe and at prices that are fair and reasonable;**
3. **Publicly acknowledging the consumer's rights to be heard, to be informed, to have the right to safety, the right to choose, and the right to redress with regard to the South African Automotive Industry.**

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## PART A

### 1. INTRODUCTION:

The South African Automotive Industry Code (the Code)was proposed by the automotive industry and recommended to the Minister of Trade and Industry by the National Consumer Commission in accordance with the provisions of Section 82(3) of the Consumer Protection Act 68 of 2008 (the Act). The Code will regulate the interactions between persons conducting business in the automotive industry and their interactions with consumers.

Purpose of the Code is to regulate relations between persons conducting business within the automotive industry and to provide for a scheme of alternative dispute resolution between consumers and all participants in the industry and to create an industry ombud to provide alternative dispute resolution services. Any provision in the Code that is inconsistent with the Act will be invalid.

The Code is an industry code and it applies to the entire Automotive Industry as defined in this code of conduct irrespective of whether such persons are members of any automotive industry association. The Code relates to the conduct for the supply of goods and services by the Automotive Industry and consumers within the Republic of South Africa and focuses on consumer protection, supplier guidance and fair business practices.

The Automotive Industry for the purposes of this Code means: importers, distributors, manufacturers, retailers, franchisors, franchisees; suppliers ,and intermediaries who import, distribute, produce, retail or supply passenger, recreational, agricultural, industrial, or commercial vehicles, including but not limited to passenger vehicles, trucks, motor cycles, quad cycles , whether self -propelled or not or an internal combustion propelled engine for a boat, or import, distribute, manufacture, retail or supply any completed components and/or accessories to such vehicles, and/or renders a related repair or replacement service to consumers in respect of such vehicles; and trailers, and "anyone who modifies , converts or adapts vehicles .

This Code will be implemented by the Motor Industry Ombudsman of South Africa (MIOSA) and its interpretation is vested in the MIOSA.

The Code provides for an Alternative Dispute Resolution process, within the Automotive Industry, and between:

- consumers and suppliers; and
- suppliers themselves, which will, amongst other things, include instances in which:
  - a supplier falls within the definition of consumer as envisaged in the Act; and
  - a supplier falls under the threshold as determined by the Regulations to the Act; and
  - supplier and manufacturer;
  - consumer and manufacturer.



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## 2. DEFINITIONS

**The definitions in the Act will apply to the Code.**

**In this Code:**

2.1. **"ADR"** means Alternative Dispute Resolution;

2.2. **"the Act"** means The Consumer Protection Act 68 of 2008 and the Regulations thereto, as amended from time to time;

2.3. **"Automotive Industry"** means importers, distributors, manufacturers, retailers, franchisors, franchisees; suppliers ,and intermediaries who import, distribute, produce, retail or supply passenger, recreational, agricultural, industrial, or commercial vehicles, including but not limited to passenger vehicles, trucks, motor cycles, quad cycles or, whether self -propelled or not an internal combustion propelled engine for a boat, or import, distribute, manufacture, retail or supply any completed components and/or accessories to such vehicles, and/or renders a related repair or replacement service to consumers in respect of such vehicles; and trailers, and "anyone who modifies , converts or adapts vehicles.

2.4. **"the Code"** means this Code of Conduct as amended from time to time;

2.5. **"days"** means business days whichis any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;

2.6. **"dealer"** means a retailer who supplies goods or services to the end-consumer;

2.7. **"distributer"** in relation to any particular goods, means a person who, in the ordinary course of business—

2.7.1. is supplied with those goods by a manufacturer; and

2.7.2. in turn, supplies those goods to either another distributor or to a retailer;

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

2.9. **"manufacturer"** includes a producer or importer and it means a person who: –

2.9.1. manufactures or produces goods, or causes any goods to be manufactured or produced, with the intention of making them available for supply in the ordinary course of business; or

2.9.2. by applying a personal or business name, trademark, trade description or other visual representation on or in relation to the goods, has created or established a reasonable expectation that the person is a person contemplated in clause 2.9.1;

2.10. "**MIOSA**" means Motor Industry Ombudsman of South Africa, established to assist in resolving disputes that arise in terms of the Act regarding any goods or services provided by the Automotive Industry to such consumers, including suppliers who are in turn also consumers within the industry supply chain;

2.11. **"motor vehicle"** means any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity or any other means, including a motorcycle, trailer, caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle;



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2.12. **"NCC"** means the National Consumer Commission;

2.13. **"NCT"** means National Consumer Tribunal;

2.14. **"normal office hours"** means from 08H30 to 16H30 Monday to Thursday and 08H30 to 16H00 on Fridays;

2.15. **"OEM"** means the original equipment manufacturer, and for the purposes of this code includesthe distributor, importer or manufacturer as the case may be;

2.16. **"trade associations"** means associations that act as a collective to represent, assist, educate and advise their members in matters of common interest;

2.17. **"used vehicle"** means a motor vehicle that has been previously licensed or registered and includes demonstration (demo) vehicles but excludes a vehicle or the components thereof disposed of as scrap or utilised for parts and not saleable as an operating vehicle.

## 3. REQUIRED PERFORMANCE STANDARDS

3.1.1 Individuals and businesses operating within the Automotive Industry are required to follow the purpose and policy of the Act, to refrain from prohibited conduct and particularly to, in their dealings with consumers, protect consumers from:-

3.1.1.1 unconscionable conduct;

3.1.1.2 unfair, unreasonable, unjust contracts and contractual terms;

3.1.1.3 unfair, unreasonable, unjust or otherwise improper trade practices; and

3.1.1.4 deceptive, misleading, unfair or fraudulent conduct.

## 4. OBLIGATIONS BY SUPPLIERS REGARDING COMPLAINTS

4.1 Suppliers shall:

4.1.1 Establish internal complaints handling processes, including the following:

4.1.1.1 an internal complaints handling department, if any, of the supplier; and/or

4.1.1.2 a suitable complaints resolution procedure,; and

4.1.1.3 the process to be followed by the consumer in order for such complaint to be lodged with the MIOSA.

4.1.2 display in or at all trading premises a notice that:

4.1.2.1 reflects that there is a Code which binds suppliers; and

4.1.2.2 when requested by consumers, and at no cost, provide the consumers with the contact details of:

4.1.2.2.1 the particular internal complaints handling department, if any, of the supplier, and

4.1.2.2.2 the MIOSA, including details relating to the process to be followed by the consumer in order for such complaint to be lodged;



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4.1.3 train, or if not possible inform all relevant staff members in respect of:

4.1.3.1 the Act and Regulations, as issued and / or amended from time to time; and

4.1.3.2 the Code, as amended from time to time; and

4.1.3.3 general principles and procedures on effective handling of complaints

4.1.4 attempt to resolve complaints and disputes in accordance with:

4.1.4.1 the spirit and provisions of this Code, the Act and Regulations; and

4.1.4.2 the spirit and provisions of dispute procedures;

4.1.5 make every reasonable effort to resolve complaints within 30(thirty) days and if unable to do so, for reasons such as on-going technical testing or the like, then to inform the consumer thereof before the expiry of 30 (thirty) days.

## 5. NON-COMPLIANCE WITH THE CODE

5.1 Non-compliance with the Code is prohibited by Section 82(8) of the Act.

5.2 Where there is any non-compliance with the Code by suppliers within the Automotive Industry and such non-compliance is brought to the attention of the MIOSA, the matter will be investigated and dealt with in accordance with the MIOSA procedures.

5.3 The MIOSA may, in addition to any step taken in terms of its procedures, refer such non-compliance to the NCC.

## PART B: ALTERNATIVE DISPUTE RESOLUTION

This part of the Code deals with specific sections of the Act that cater for the resolution of disputes through an ADR function such as the MIOSA.

## 6. DISPUTE RESOLUTION MECHANISMS

6.1. If a matter is not resolved within 30 days of a dispute between a consumer and a supplier, the consumer may approach MIOSA.

## 7. MAINTAINING THE INDEPENDENCE OF THE MOTOR INDUSTRY OMBUD

7.1. The MIOSA is a voluntary, non-statutory body that has been afforded recognition under section 82(6) of the Act.

7.2. The MIOSA may engage in the resolution of disputes arising within the Automotive Industry.



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## 8. OBJECTIVES OF MIOSA

8.1. The objective of the MIOSA, in terms of clause 12.1below, is to consider and dispose of complaints in a procedurally fair, informal, economical and expeditious manner in accordance with the principles of natural justice and by reference to what is equitable in all the circumstances in accordance with the Act and its Regulations.

## 9. MIOSA SELECTION CRITERIA

9.1. The Ombud and all persons conducting alternative dispute resolution must ideally have:

9.1.1. Suitable qualifications and experience in economics, law, commerce, industry or public affairs and dispute resolution;

9.1.2. sufficient knowledge of the technical aspects of the goods and services provided in the Automotive Industry;

9.1.3. sufficient knowledge and skill to comprehend the Act to ensure that the staff component of the MIOSA will diligently and honestly conduct their day-to-day tasks.

9.2. An Ombud may not:

9.2.1. have any previous criminal conviction or conviction during her/his tenure of which dishonesty is an element;

9.2.2. be an un-rehabilitated insolvent or commit an act of insolvency during her/his tenure;

9.2.3. have a current interest (manufacturing, importing, distribution or retail) directly or indirectly in the Automotive Industry or serve in any capacity with regard to policy-making bodies or industry associations within the Automotive Industry whatsoever.

9.3. Selection criteria and qualifications of the Board of Directors:

9.3.1. All Board members will be selected in terms of the Memorandum of Incorporation of the MIOSA.

## 10. OMBUD APPOINTMENT PROCEDURES

10.1. An Ombud will be appointed as follows:

10.1.1. Subject to clause 10.4, each board member as well as the incumbent Ombud will have one vote;

10.1.2. A new Ombud will be elected by way of simple majority of votes of the Board of Directors following the completion of a diligent recruitment process;

10.1.3. The Ombud will be appointed for fixed periods of 5 (five) years at a time with the option of a single further 5 (five) year appointment.

10.2. Whenever a new Ombud is to be appointed, the new Ombud will be appointed one year prior to his/her commencement of the period of service and will be remunerated according to the remuneration criteria as set by the MIOSA board for this period.

10.3. The Board of the MIOSA will be required to invite applications from the general public who meet the selection criteria as set out in clause 9.3 above.



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## 11. REMOVAL OF THE OMBUD

11.1. During the period envisaged in clause 10.1.3above, the Ombud enjoys security of tenure and can only be dismissed on the grounds of gross misconduct, incompetence, or its inability to effectively carry out duties.

## 12. MINIMUM STANDARDS AND POWERS OF THE MIOSA

12.1. The MIOSA will:

12.1.1. be registered with the Companies and Intellectual Property Commission as a NOT FOR PROFIT company in terms of the Companies Act, 71 of 2008;

12.1.2. comply with the requirements of the King Code of Governance Principles as amended from time to time.

12.1.3. at all times comply with the provisions of the Companies Act, 71 of 2008 and its regulations as amended from time to time relating to NOT FOR PROFIT Companies;

12.1.4. comply with all government regulation and legislation concerning Broad-Based Black Economic Empowerment including the Preferential Procurement Framework requirements;

12.1.5. be sufficiently resourced to perform and carry out its functions;

12.1.6. not be influenced when making its decisions;

12.1.7. be entirely responsible for the management and determination of complaints;

12.1.8. be accountable to the Minister, the Commissioner of the NCC and the Board;

12.1.9. act independently, objectively, openly and honestly;

12.1.10. have regard to the provisions of the Act as well as principles of the rule of law, of equality, fairness, justice and equity;

12.1.11. equally and impartially balance the rights of consumers (also called "complainants") and the rights of suppliers;

12.1.12. exercise its functions and duties in terms of these operating procedures;

12.1.13. resolve complaints as efficiently and as speedily as is possible; and

12.1.14. ensure that its staff perform their functions in terms of and according to these operating procedures;

12.1.15. be guided by the following considerations:

12.1.15.1. the Act;

12.1.15.2. the need to resolve disputes expeditiously.



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## 13. FUNDING THE MIOSA

The MIOSA:

13.1. financial year will be from 1 March to 28 February.

13.2. is funded by the Automotive Industry in the manner as set out in Schedule 5.

13.3. will provide the Commissioner of the NCC with a written report on the progress made with the compilation of the database every 6 (six) months, the first report to be submitted within 6 (six) months of accreditation and every six months thereafter.

13.4. will be responsible to collect all contributions due and owing by the members of the Automotive Industry.

13.5. may put out to tender the compilation of the database of all members of the Automotive industry and the collection of funding contributions from those members, provided that it will only be entitled to do so if the related expenditure has been approved as part of the annual budget.

13.6. will invoice the members of the Automotive Industry monthly on or before the 7th(seventh) day of each month and the invoices are payable monthly in arrears on or before the 20th(twentieth) day of each month.

13.7. must deposit all funds in an account opened with a bank registered under the Banks Act, 1990 (Act No. 94 of 1990).

13.8. must utilise all funds received for the defrayal of expenses incurred in the performance of its duties and may invest funds which are not required for immediate use.

13.9. payments, excluding petty cash, must be made by way of cheques or Electronic Funds Transactions and/or debit orders drawn against the bank account of the MIOSA and must be signed in a manner decided on by the Board after consultation with the Ombud; provided that all cheques, bills and other negotiable instruments to be drawn on the MIOSA's bank accounts will at all times require the approval of 2 (two) of the directors of the MIOSA.

13.10. Funds standing to its credit at the end of the financial year, as well as funds invested, must be carried forward to the next financial year.

13.11. Will, through the Ombud, submit an annual budget to the Board on 1 November of each year which budget will include, without limitation, the budget for:

13.11.1. Awareness and as per clause 16.3;

13.11.2. remuneration of the staff, including directors;

13.11.3. operating capital in respect of normal business activities;

13.11.4. capital in respect of training for staff;

13.11.5. unforeseen contingencies;

13.11.6. marketing in order to promote the MIOSA.

13.12. Board must consider the proposed budget and furnish the MIOSA with an approved budget by 31 January of each year.



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## 14. CONFLICT OF INTEREST

14.1. The MIOSA must adopt a conflict of interest policy which includes at least the:

14.1.1. identification of conflicts of interest in which the Ombud and/or any Director and/or employee of the MIOSA have an actual or potential interest that may influence the objectivity of the Ombud and/or Director and/or employee may be in question;

14.1.2. provisions for avoiding any conflicts of interest, and where not possible, reasons therefore and procedures to mitigate such conflicts and internal controls to adhere to the policy;

14.1.3. processes to disclose any conflicts of interest;

14.1.4. rules relating to the giving and receipt of gifts, vouchers, incentives, hospitality or other benefits; and

14.1.5. creation and maintenance of a gift register.

## 15. ACCOUNTABILITY

15.1. The Ombud is the accounting officer in respect of all funds received and all payments made in respect of expenses incurred by the MIOSA.

15.2. The Ombud, as accounting officer, must ensure that proper accounting records for the recording of all the MIOSA's transactions are kept, which records will:

15.2.1. be kept at the main offices of the MIOSA regarded as such from time to time by the Board;

15.2.2. at all times during normal working hours, be available for inspection by the Minister, the NCC and the Board or their duly appointed and authorised representatives.

15.3. The MIOSA will ensure that financial statements consisting of:

15.3.1. an income and expenditure account for the financial year under observation; and

15.3.2. a balance sheet reflecting the financial position of the MIOSA at the end of the financial year,

are prepared by a firm of auditors appointed by the board of the MIOSA as soon as possible after the financial year end, but not later than 90 (ninety) days after the financial year end.

15.4. A copy of the financial statements must as soon as possible, but not more than 7 (seven) days after those statements have been prepared, be made available to each member of the Board.

15.5. The Board will, within one month of the finalization of the financial statements, meet to consider, provide comment and / or approve such financial statements.

15.6. A copy of the approved financial statements will be made available to the Minister, the Commissioner of the NCC and each member of the Board.



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## 16. REPORTS, STATISTICS AND AWARENESS

16.1. The MIOSA will, in terms of Section 82(5) and (7) of the Act, provide monthly reports on:

16.1.1. management accounts;

16.1.2. trends,

16.1.3. statistics,

16.1.4. systemic issues;

16.1.5. general case information on

16.1.5.1. Number cases referred to MIOSA for each supplier (OEM, dealer or repair workshop)

16.1.5.2. Number of cases considered and closed

16.1.5.3. Number of cases resolved; and

16.1.5.4. Turn-around times for case closure;

16.1.5.5. consumer details;

16.1.5.6. origin of complaint

16.2. The MIOSA will annually provide the NCC with:

16.2.1. An annual Report on the general functionality of the Code, its successes and operation as well as the methods used by the MIOSA to monitor the effectiveness of the Code.

16.2.2. Annual Financial Statement, approved by the auditors of the MIOSA;

16.3. The MIOSA shall conduct ongoing awareness in order to educate and create awareness for consumers, suppliers and all other participants within the Automotive Industry on vehicle-related matters within the Act and the role of the MIOSA.

## 17 JURISDICTION OF THE MIOSA

17.1 The authority of the MIOSA to resolve disputes is acquired from this Code and the Act.

17.2 It should be noted that the MIOSA does not have jurisdiction in respect of any dispute:

17.2.1 which falls within the exclusive mandate of any other Ombudsman;

17.2.2 which has prescribed in terms of the Prescription Act

17.2.2.1 the period of 3 (three) years commences on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first;

17.2.3 which requires the determination of merits and the quantum of damages;

17.2.4 which requires the Ombud to act as arbitrator in the above mentioned circumstances;

17.2.5 where a class action must be determined;

17.2.6 where legal action has been instituted by either party unless such complaint was received by the MIOSA before such legal action was instituted;

17.2.7 where it appears that a criminal offence has been committed by either party, in which event the MIOSA will only deal with the facts outside the ambit of the suspected criminal offence;



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17.3 Limits on the MIOSA's jurisdiction:

17.3.1 The MIOSA may not consider a complaint or dispute that relates to a juristic person as a consumer whose asset value or annual turnover equals or exceeds the threshold (limit) being the amount as determined by the Minister by regulation issued in terms of section 5(2) of the Act, from time to time;

17.3.2 The MIOSA may not make a finding on product liability.

## 18 GENERAL ADMINISTRATIVE POWERS OF OMBUD

18.1 The Ombud may for the performance of functions in the MIOSA and as a charge against or for the benefit of the funds of the MIOSA, as the case may be-

18.1.1 hire, purchase or otherwise acquire property, and let, sell or otherwise dispose of property so purchased or acquired;

18.1.2 enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services;

18.1.3 insure the office against any loss, damage, risk or liability;

18.1.4 employ sufficiently trained persons to assist the Ombud, determine their terms of appointment and, subject to such conditions as may be determined by the Ombud, delegate or assign to any such employee, including a Deputy Ombud, any administrative function vesting in the Ombud in terms of this part;

18.1.5 obtain such professional advice as may reasonably be required; and

18.1.6 in general, do anything which is necessary or expedient for the achievement of the objectives of the Ombud.

## 19 DEREGISTRATION AND LIQUIDATION OF MIOSA

19.1 The MIOSA may not be deregistered, dissolved or liquidated except in terms of the Companies Act or other relevant prevailing legislation.

## 20 CONSIDERING A COMPLAINT

20.1 The MIOSA may consider a complaint brought by or on behalf of a consumer as defined in the Act.



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## 21 PROCEDURE FOR DETERMINATION OF A DISPUTE

21.1 Any party will be required to respond to a request by the MIOSA within 10 (ten) days of receiving notification from MIOSA, failing which the party will be barred from providing information, unless the MIOSA in its discretion and considering the reasons for the delay determines otherwise.

21.2 After complaints are lodged with the MIOSA for investigation regarding alleged contraventions of the Code or the Act, the MIOSA must:

21.2.1 investigate and evaluate alleged complaints arising from the alleged contraventions of the Code or the Act;

21.2.2 attempt to facilitate a settlement between the parties and where possible, provide a recommendation with regard to such settlement;

21.3 The MIOSA will determine a dispute within 30 (thirty) days from the date it has received all the necessary documentation/ information to enable the MIOSA to make an informed decision regarding the complaint.

## 22 MIOSA ACTIONS

22.1 The MIOSA can act upon disputes involving:

22.1.1 consumers;

22.1.2 consumers on the one hand and suppliers and/or

22.1.3 complaints concerning alleged contraventions of the Code or the Act.

22.2 The MIOSA can further act upon disputes where a supplier has referred a dispute on behalf of a consumer with the permission of the consumer.

22.3 Where more than one Ombud has jurisdiction to decide a matter, the MIOSA will have jurisdiction to the extent that the dispute relates to the automotive industry.

## 23 POST RESOLUTION OF DISPUTE

23.1 in the event of a dispute being resolved, the MIOSA must:

23.1.1 record the resolution thereof in the form of an order in terms of section 70 (3)(a) of the Act

23.1.2 at the request of a party to a dispute, submit an order to the Tribunal or the High Court for purposes of a consent order in terms of its rules and of section 70(3)(b), the cost of such order to be borne by the party making such request;

23.1.3 terminate the process by notice to the parties in terms of section 70 (2) of the Act;

23.1.4 report any non-compliance with the Code or the Act by a supplier or service provider to the Automotive Industry Association to which it is a member (if any), in order for that particular Association to investigate the allegations.

23.1.5 Publish on its website, summaries of its significant findings that will be of interest to consumers and suppliers.



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## 24 GENERAL OPERATIONS

24.1 Should resolution of any particular complaint require the input of a specialist authority or technical expert in any field, or advice from any third party, then in order to resolve such dispute before it, the MIOSA may employ or utilize the services of any specialist authority or technical expert to assist the MIOSA with its investigation or in order to produce any required report.

24.2 Should the MIOSA, its staff or any supplier become aware of any criminal act being committed or intended to be committed within the Automotive Industry, or of any practice that may be deemed or alleged to be criminal, then in such event the supplier, and/or the MIOSA and/or its staff will be obliged to report such practice or behaviour to the relevant authority (ies), in which case evidence may have to be given in a court of law.

24.3 Nothing contained herein precludes the MIOSA from developing internal rules, forms and procedures that are not in conflict with the provisions of this document or the Act.

24.4 All information (including settlement offers) provided by one party to a dispute before MIOSA to the other party will be deemed to be provided on a confidential "without prejudice" basis and may not be disclosed to any other party or used in any subsequent arbitration or litigation.

## 25 TRANSITIONAL PERIOD

25.1 The MIOSA is currently established as an Alternative Dispute Resolution body. The incumbent Ombud and the 3 (three) Directors appointed by him will continue in this position for 5 (five) years so as to ensure that the Code can be adequately enforced from the date of approval.



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**SCHEDULE 1: LIST OF CURRENT INDUSTRY ASSOCIATIONS**

| ASSOCIATION | INDUSTRY TYPE |
|---|---|
| AMID – Association of Motorcycle Importers and Distributers | Motorcycle |
| IDA – Independent Dealers Association | Independently Owned Dealers, Inclusive Of Independently Owned Franchisees |
| NAACAM – National association of Automotive Component & Allied Manufacturers | Components |
| NAAMSA – National Association of Automobile Manufacturers of South Africa | Motor Vehicle OEM & Importer And Distributor |
| RMI – Retail Motor Industry Organisation | Umbrella Body For Various Automotive Retail Associations |
| | |



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## SCHEDULE 2: MIOSA COMPLAINTS PROCESS

### Stage 1 — Laying of First Complaint

1 A consumer who has a complaint is advised to address the query in writing to the supplier and/or trade association to which the supplier subscribes.

2 The supplier must provide the consumer with a written acknowledgement of receipt of any complaint submitted to it.

3 The supplier may endeavour to resolve the dispute directly with the consumer. In this regard the supplier will respond to the query substantively, in writing, within 10 (ten) days of receipt of the query. If the supplier is unable to provide a substantive response or resolve the matter within 10 (ten) days thereafter, the supplier shall communicate this to the consumer and provide reasons to the extent possible in writing.

4 If the query is not resolved within the time period as mentioned in clause 2 above or such period as the parties may agree to in writing:

4.1 the consumer shall file a complaint, in writing, with the office of the MIOSA by facsimile, e-mail or pre-paid registered post, stating the nature of the complaint and dispute as well as the action required and expected outcome;

4.2 copies of all relevant documentation shall accompany the complaint.

5 If a consumer requires assistance in understanding the procedures to conduct a dispute with the MIOSA, the MIOSA will assist the consumer in this regard.

### Stage 2A — Lodging a Complaint with Motor Industry Ombud

6 A complainant who:

6.1 referred a complaint to a supplier, and who is dissatisfied with the manner in which the supplier is dealing with it, or how it has been dealt with or with the outcome thereof, or

6.2 has not approached the supplier as this would cause or be likely to cause the complainant undue harm or prejudice,

may refer the complaint to the MIOSA.

7 The complainant must refer the complaint to the MIOSA within a reasonable time.

8 Receipt of each complaint should be acknowledged to the complainant within 2 (two) business days of receipt thereof by way of phone, facsimile or e-mail.

9 The supplier shall file its substantive response with the MIOSA within 10 (ten) days of receipt of the complaint as provided in clause 7. If the supplier is unable to provide a substantive response within 10 (ten) days, the supplier must advise the MIOSA and provide acceptable reasons.

10 All communication between the parties and the MIOSA regarding the dispute must be in writing, unless alternative arrangements have been agreed between the parties, in writing.

11 After receipt, an initial assessment must be made of each complaint to ascertain whether it falls within the jurisdiction of the MIOSA.

12 The MIOSA shall be entitled to request further particulars from the parties. The parties shall provide all relevant information to each other and the MIOSA to deal with the query within 10 (ten) days of such a request. If oral evidence is necessary to resolve the dispute:

12.1 the MIOSA shall request the parties to attend a hearing on not less than 10 (ten) days prior written notice;



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12.2 attendance at the hearing shall be at each party's own expense;

12.3 the languages of MIOSA shall be English and isiZulu and if requested and at the requesting party's expense, arrange for an interpreter for any other language to be present;

12.4 either party shall be entitled to be represented by a suitable party, including a legal representative, with the permission of the MIOSA, to make submissions and cross examine the other party and witnesses at the hearing.

13 All decisions fall exclusively within the discretion of the MIOSA.

14 An up-to-date status should be made available to both the complainant and the supplier at least at the time of pre-set deadlines.

**Stage 2B — Referral by the MIOSA**

15 The MIOSA may refer a complaint to any supplier within the supply chain, or to all suppliers within the supply chain, as the MIOSA considers appropriate in the circumstances.

16 Once the decision has been made to refer the complaint, it must be referred to the relevant party, body or institution within 10 (ten)days of it being received by MIOSA.

17 The MIOSA, and to the extent the MIOSA considers it necessary, will provide the supplier concerned with full details of the complaint, including copies of relevant documentation as submitted to MIOSA.

18 The MIOSA shall keep a register of all the complaints it refers to the suppliers, as well as the appropriate tracking mechanisms and records – to ensure that all of the complaints are able to be tracked at any time and are eventually addressed.

**Stage 3 – Resolution by MIOSA**

19 The supplier must acknowledge receipt of the notification within 10 (ten) days and may do so by letter delivered by hand or sent by post, telefax or e-mail.

20 The MIOSA shall first attempt to mediate the dispute between the parties. If mediation fails to resolve the dispute the MIOSA shall issue a certificate to that effect to the parties.

21 Proceedings may be recorded at the request of a party, provided the requesting party tenders the costs of the recording, payable to the MIOSA at least 10 (ten) days before the hearing takes place.

22 The MIOSA will present its decision within 10 (ten) days of conclusion of the proceedings. The MIOSA is allowed to provide its decision in writing and deliver the findings to the parties' chosen addresses.



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## SCHEDULE 3: INTERNAL COMPLAINTS HANDLING SUGGESTED PROCEDURES

1. When dealing with complaints; customers, complainants and other interested parties should receive the following:
   1.1. necessary information concerning the internal complaints-handling process applicable to the supplier;
   1.2. any relevant MIOSA brochures and pamphlets.

2. All information must be provided in plain language and, where reasonably possible, in an accessible format to ensure that complainants are not disadvantaged by any format in which information is provided.

3. The following are examples of such information:
   3.1. where complaints can be made;
   3.2. how complaints can be made;
   3.3. information to be provided by the complainant (see Schedule 5 for suggested format);
   3.4. the process to be followed when handling complaints;
   3.5. the time periods associated with the various stages in the process;
   3.6. the complainant's options for remedy, including referral to the MIOSA;
   3.7. the manner in which the complainant can obtain feedback on the stage of the complaint.

4. Receipt of complaint:
   4.1. When the complaint is first reported, the complaint must be recorded and a unique identifier code or number must be provided for each complaint.
   4.2. Any other information necessary for the effective handling of the complaint must also be recorded or attached to the complaint, including at least the following:
      4.2.1. a description of the complaint must be made including:
         i. the products or related organization practices complained about;
         ii. information on the persons involved including department, branch, organization and market segment;
      4.2.2. all supporting information, all relevant supporting data and documentation must also be recorded or attached to the complaint;
      4.2.3. the record of the initial complaint should also specify:
         i. the remedy that the complainant is seeking;
         ii. the due date for a response; and
         iii. whether any immediate action was or must be taken (if any).

5. Time limits for Complaint resolution:
   5.1. The supplier should make every effort to resolve the matter within 15 (fifteen) business days.
   5.2. If the supplier is unable to resolve the complaint within that period for reasons such as on-going technical testing, the supplier shall inform the complainant of that fact at least 2 (two) days before the expiry of the 15 (fifteen)-business day deadline.

6. Complaint resolution:
   6.1. The supplier should make every effort to resolve the matter in good faith and in accordance with its internal complaints-handling processes.



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6.2. In doing so, the supplier should deal with the complaint:

6.2.1. politely and courteously;

6.2.2. promptly and efficiently; and

6.2.3. in a confidential manner.

7. Acknowledgement of complaint:

7.1. Receipt of each complaint should be acknowledged to the complainant:

7.1.1. immediately; or

7.1.2. by the latest within 2 (two) business days (for example via post, phone or email).

8. Tracking of complaint:

8.1. The complaint should be tracked from initial receipt through the entire process until the complainant is satisfied or the final decision is made.

8.2. An up-to-date status should be made available to the complainant:

8.2.1. upon request ; and

8.2.2. at regular intervals; or

8.2.3. at least at the time of pre-set deadlines.

9. Initial assessment of complaint:

9.1. After receipt, each complaint should be initially assessed by the supplier in terms of criteria such as:

9.1.1. severity;

9.1.2. safety implication;

9.1.3. complexity;

9.1.4. impact; and

9.1.5. the need and possibility for immediate action.

10. Attempt to settle:

10.1. The supplier should contact the complainant to:

10.1.1. clarify any issue; and

10.1.2. ascertain the essence of the complaint.

11. Investigation of complaints:

11.1. Every reasonable effort should be made by the supplier to investigate all the relevant circumstances and information surrounding a complaint.

11.2. The level of investigation should be commensurate with the seriousness, frequency of occurrence and severity of the complaint.

12. Response to complaints following an investigation:

12.1. Where able and appropriate, the supplier should offer a response, for example that will:

12.1.1. correct the problem and

12.1.2. prevent it from happening in the future.

13. Communicating the decision:

13.1. As soon as is reasonably possible, after a decision has been made regarding the complaint or any action has been taken regarding the complaint, the supplier must advise:

13.1.1. the complainant of such decision made or action taken; and



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13.1.2. any of its staff who may have been involved in the incident (if any).

14. Closing the complaint:

14.1. If the complainant accepts the proposed decision or action, then:

14.1.1. the decision or action should be implemented; and

14.1.2. the decision or action should be recorded.

14.2. If the complainant rejects the proposed decision or action, and the supplier rejects or refuses to implement or take further steps or measures regarding the complaint, then:

14.2.1. this should be recorded by the supplier; and

14.2.2. the complainant should be informed of his/her rights in respect of the referral of the complaint to either:

14.3.2.1 the MIOSA; or

14.3.2.2 other entity with jurisdiction.



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**SCHEDULE 4: COMPLAINT FORMS**

**COMPLAINT NOTIFICATION FORM**

DETAILS

Attention: The Motor Industry Ombudsman of South Africa

post: Suite 156
Private Bag X025
Lynnwood Ridge, 0040

Walk-in: Building 14B
CSIR Campus
Meiring Naude Drive
Pretoria East

e-mail: info@miosa.co.za

website: www.miosa.co.za

telephone: 086 11 MIOSA/ 086 11 64672

fax: 086 630 6141

Date: _____

| **Complainant's Details** | | | | |
|---|---|---|---|---|
| Surname | | First Names | | |
| Postal Address | | | | |
| Contact Details | Cell No | | Home No | |
| | Work No | | Fax No | |
| | e-mail | | | |
| Preferred method of Communication | postal ☐ | e-mail ☐ | fax ☐ | |
| **Transaction Details** | | | | |
| Representative's Name | | Branch | | |
| Product Name | | Reference | | |
| Date of Transaction/Incident | | | | |
| **Summary of Complaint** | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| *Please attach all supporting documentation relevant to the complaint* | | | | |



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| COMPLAINT REGISTER AND PROGRESS REPORT | | | | | | |
|---|---|---|---|---|---|---|
| Company Name | | | | | Date Received | |
| Complaint Handler | | | | | Complaint No | |
| Company Representative | | | | | Designation | |
| NAME OF CLIENT | | | | | | |
| Client Address | | | | | | |
| Client Contact Details | Cell | | Home | | Work | |
| | e-mail | | | | Fax | |
| COMPLAINT DETAIL | | | | | | |
| Complaint received by | Fax ☐ E-Mail ☐ Registered Post ☐ Hand Delivered ☐ Telephone ☐ Other ☐ | | | | | |
| Describe Other | | | | | | |
| Date Received | | | Date of Initial Response | | | |
| Client Expectation | | | | | | |
| SUPPLY CHAIN | Are there any other parties in the supply chain involved? | | | | Yes ☐ No ☐ | |
| Any evidence of 3rd party responsibility? | Yes ☐ No ☐ | | Has contact been made with the 3rd party/ies? | | Yes ☐ No ☐ | |
| Date Contacted | | | Confirmed in writing with supporting documents | | Yes ☐ No ☐ | |
| Initial Response | | | | | | |
| Supply Chain Contact Details | Company Name | | | | Contact Person | |
| | Tel No | | Fax No | | Cell No | |
| | e-mail | | | | Website | |
| Type | OEM ☐ Retailer ☐ Repairer ☐ Sublet Repairer ☐ Sublet Cleaner ☐ Broker ☐ Warranty Administrator ☐ VAP Provider ☐ Credit Provider ☐ Insurer ☐ Other ☐ | | | | | |
| Describe Other | | | | | SLA / Vendor Contract | Yes ☐ No ☐ |
| Client Response | Acceptance ☐ | Rejection ☐ | | | Date | |
| Reason for Rejection | | | | | | |
| Ombud Referral | Yes ☐ | No ☐ | | | Date | |
| Outcome from Ombud | | | | | | |
| Final Result | | | | | Date | |



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| | | | |
|---|---|---|---|
| Date Finalised | | Signed off by | |

| TIME LINE IN RESPECT OF COMPLAINT HANDLING | | | | | |
|---|---|---|---|---|---|
| CLIENT NAME | | | | | |
| COMPLAINT NO | | | | | |
| Date & Time | | Contacted | | Contact No | |
| Comments | | | | | |
| Date & Time | | Contacted | | Contact No | |
| Comments | | | | | |
| Date & Time | | Contacted | | Contact No | |
| Comments | | | | | |



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## SCHEDULE 5: FUNDING OF MIOSA

### BACKGROUND AND EXPLANATION

i. The MIOSA is an established Ombud Scheme and has operated since 2001. Due to this, there is an existing staff contingent, expert knowledge base, premises, telephone infrastructure, certain equipment, assets and stationary and IT network in place and sustainable.

ii. During 2012, the MIOSA received 22,320 complaints with a value of R 156,500,000.00 all of which have been resolved.

iii. Before to the coming into operation of the Act, the MIOSA adjudicated disputes between consumers, OEM's and Retailers. In terms of the Act, the MIOSA has jurisdiction over all the members within the Automotive Industry.

iv. According to the records of the Motor Industry Bargaining Counsel, there are approximately 24 000 entities forming part of the Automotive Industry. In addition there are currently 42 motor vehicle OEM's and Importers forming part of the Automotive Industry.

v. The MIOSA shall vastly expand its current infrastructure to meet the needs of Consumers in line with other Ombud MIOSAs established under various forms of legislation. However as an existing MIOSA, the majority of start-up pressures and challenges will not be present which leads to a cost and efficiency saving from the beginning.

vi. The sustainable funding model below is based on the assumption that, following accreditation, the MIOSA will initially, in the first one to two years only be able to recover contributions from 60% of the retailers and all of the NAAMSA motor vehicle OEM's and importers forming part of the Automotive Industry.

vii. The contribution rate as set out in clause 'vi' above is based on a worst-case scenario and the quantum of each entity's contribution has initially been increased accordingly in order to ensure that the MIOSA is able to fulfil its obligations in terms of its budget requirements without the necessity of collecting more than 60% of required contributions.

viii. Each year the quantum of required contribution will be reviewed in line with the success rate of the previous year's contributions collected along with the revised budget requirements. At no stage will the model rely on a 100% collection success rate.

ix. The cost of collection will at all times be kept to a minimum and decisions regarding outsourced collection or in-house operations will be made with this in mind. The model has been structured to allow for this cost.



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1. **Funding during Transitional Phase from date of accreditation:**

During the transitional period, the MIOSA will be funded as follows:

1.1 The MIOSA will charge and invoice all motor vehicle OEM's and Importers a combined annual fee equalling 50% of the MIOSA budget and each individual OEM or Importer's contribution shall be calculated by dividing 50% of the approved budget by the total number of entities who directly import or manufacture Goods.

1.2 The MIOSA will charge and invoice all retailers a combined annual fee equalling 50% of the MIOSA budget and each individual retailer's contribution shall be calculated by dividing that percentage of the approved budget by the total number of retail premises from which business is being conducted in the Automotive Industry.

2. **Funding from date of accreditation:**

From the first anniversary of the date of accreditation, the MIOSA will be funded as follows:

2.1 The OEM's and Importers shall be liable to contribute 20% of the approved budget and each individual OEM or Importer's contribution shall be calculated by dividing 20% of the approved budget by the total number of entities who directly import or manufacture Goods.

2.2 The retailers shall be liable to contribute 80% of the approved budget and each individual retailer's contribution shall be calculated by dividing 80% of the approved budget by the total number of retail premises from which business is being conducted in the Automotive Industry.



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**NOTICE – CHANGE OF TELEPHONE NUMBERS: GOVERNMENT PRINTING WORKS**

As the mandated government security printer, providing world class security products and services, Government Printing Works has adopted some of the highly innovative technologies to best serve its customers and stakeholders. In line with this task, Government Printing Works has implemented a new telephony system to ensure most effective communication and accessibility. As a result of this development, our telephone numbers will change with effect from 3 February 2014, starting with the Pretoria offices.

The new numbers are as follows:

- Switchboard : 012 748 6001/6002
- Advertising : 012 748 6205/6206/6207/6208/6209/6210/6211/6212
- Publications Enquiries : 012 748 6052/6053/6058 GeneralEnquiries@gpw.gov.za

  Maps : 012 748 6061/6065 BookShop@gpw.gov.za

  Debtors : 012 748 6060/6056/6064 PublicationsDebtors@gpw.gov.za

  Subscription : 012 748 6054/6055/6057 Subscriptions@gpw.gov.za
- SCM : 012 748 6380/6373/6218
- Debtors : 012 748 6236/6242
- Creditors : 012 748 6246/6274

Please consult our website at www.gpwonline.co.za for more contact details.

The numbers for our provincial offices in Polokwane, East London and Mmabatho will not change at this stage.

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