

Statutory Instrument 124 of 2023.

[CAP. 14:44

Consumer Protection (General) Regulations, 2023

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IT is hereby notified that the Minister of Industry and Commerce, in terms of section 91 of the Consumer Protection Act [*Chapter 14:44*], made the following regulations:—

PART I

PRELIMINARY

Title

1. These regulations may be cited as the Consumer Protection (General) Regulations, 2023.

Interpretation

2. In these regulations—
 - “Act” means the Consumer Protection Act [*Chapter 14:44*];
 - “Commission” means the Consumer Protection Commission;

“consumer protection officer” means—

- (a) a person who possesses the relevant qualifications in consumer protection;
- (b) is an employee of the Consumer Protection Commission;
- (c) an employee of accredited advocacy groups and designated consumer protection groups; or
- (d) any other person with demonstrable experience and qualifications in conciliation and arbitration and is registered in terms of section 56 of the Act.

PART II

ACCREDITATION OF CONSUMER PROTECTION ADVOCACY GROUPS

Accreditation of consumer protection advocacy groups

3. (1) In addition to the requirements set out in section 7(1) (a), (b) and (c) of the Act, any group wishing to be accredited as a consumer protection advocacy group shall be a juristic person and shall submit an application for accreditation in form CP1 specified in the First Schedule to the Commission with the following—

- (a) a specification of the category of consumer rights and interests it promotes;
- (b) the nature of the actions it proposes to engage in promoting consumer rights and interests;
- (c) constitutive documents;
- (d) name, qualifications or knowledge and experience of the key personnel of the group;
- (e) any affiliation of the group to any other person, juristic or otherwise, and a declaration of no conflict of interest between the group and any such person as well as any key personnel.

(2) Within fourteen (14) days of the date of receipt of an application, the Commission shall—

- (a) publish in the *Gazette* and in two consecutive issues of a newspaper circulating in the proposed area of operation of the group, notice of the application for accreditation and calling upon any person with any objections to the application to lodge them with the Commission before a date specified in the notice being not more than seven (7) days following the date of the last notice;
- (b) conduct a financial due diligence of the group with a view to ascertain its source of funds to undertake the specified activities;
- (c) conduct a human resources due diligence of the group to ascertain that the key personnel of the applicant—
 - (i) possess appropriate qualifications for the chosen category of consumer rights and interests;
 - (ii) are well-versed in the provisions of the Act and any regulations made under it; and
 - (iii) have no criminal convictions involving dishonesty or violence or, if so has been rehabilitated and reintegrated for a period of not less than five years.

(3) Within fourteen (14) days of the date of the application, after taking into account any objections submitted in terms of subsection (2) (a) and the applicant's response thereto, the Commission may, if it considers that the group is a fit and proper person for accreditation—

- (a) approve the application, register the applicant and issue the applicant with proof of accreditation and registration certificate; or
- (b) request for further particulars; or
- (c) refuse the application, giving reasons thereof.

(4) The Commission may, if it considers it desirable to do so recommend the area of operation of a group and the specific category of consumers to which the advocacy relates.

(5) The Commission may require representatives of the applicant to appear before it for any interviews it considers necessary.

(6) An application fee specified in the Second Schedule shall be payable on application in terms of this section.

(7) Unless cancelled in terms of section 8 of the Act, the accreditation of a group shall be for a period of five (5) years after which a group may submit an application for renewal. The application for renewal shall be submitted at least three (3) months before the expiry of accreditation.

(8) No person shall operate as a consumer advocacy group unless they have been accredited in terms of this section.

(9) Any person who contravenes subsection (8) shall be liable to a civil penalty provided in section 7(5) of the Act.

PART III

CONSUMER PROTECTION ORGANISATIONS, CONSUMER PROTECTION OFFICERS AND ARBITRATORS

Designation of consumer protection organisations

4. (1) Any organisation wishing to be designated as a consumer protection organisation shall apply to the Minister through the Commission and the Minister may designate the applicant as a consumer protection organisation for purposes of section 55 of the Act, if the Minister is satisfied that the applicant—

- (a) is a juristic person which is capable of suing and being sued in its own name;
- (b) has the necessary competence and appropriately qualified and experienced personnel to provide conciliation and arbitration services provided for under the Act.

(2) The Minister may require the production of such documents, certificates, references or any other information as the Minister considers relevant and appropriate in support of the application and as proof of the suitability of the applicant for designation.

(3) Upon receiving an application, the Minister—

- (a) may request for further particulars in order to come up with an informed decision;

- (b) may approve the application and issue the applicant with a certificate of designation for a period of five (5) years;
- (c) may reject the application and give reasons thereof;
- (d) shall keep a register of the designated consumer protection organisations, which shall be updated from time to time.

(4) An application shall be accompanied by a fee specified in the Second Schedule.

(5) Every consumer protection organisation designated in terms of this section shall operate for a period of five years subject to compliance with the requirements of its function.

Rules for consumer protection organisations

5. (1) Every Consumer protection organisation shall—
- (a) submit a quarterly report to the Commission;
 - (b) submit an annual report to the Minister;
 - (c) submit a list of arbitrators under their employ and their qualifications to the Commission seven days after appointment of an arbitrator:

Provided that where there arises a vacancy for a consumer protection officer within the organisation the Consumer Protection Organisation shall notify the Commission;

- (d) keep records of all matters that they handle;
- (e) finalise every matter in accordance with the provisions specified in section 58(3) of the Act and the Arbitration Act [*Chapter 7:15*];
- (f) declare conflict of interest and recuse himself or herself where there is such conflict;
- (g) ensure that confidentiality and impartiality are upheld in every matter.

(2) In addition to the functions in terms of the Act, Consumer Protection Organisations may recommend on any existing or proposed

legislation or other measures which may be considered to affect the interest of the consumer.

Application for registration as Consumer Protection Officer

6. (1) Any person who wishes to be registered as a consumer protection officer may submit an application in form CP3 specified in the First Schedule to the Minister through the Commission accompanied with—

- (a) their educational qualifications;
- (b) a certified copy of their national identification document;
- (c) the name, physical address, contact details and accreditation certificate of the consumer protection organisation to which the applicant is attached, if any;
- (d) an application fee as specified in the Second Schedule.

(2) Upon receipt of the application the Commission shall—

- (a) on behalf of the Minister, request for further particulars, where necessary, as provided in section 57(2)(c) of the Act;
- (b) submit the application to the Minister together with its recommendations and the Minister shall make a decision in terms of section 57(3) of the Act.

Registration of consumer protection officers

7. (1) Where the Minister grants an application for registration of a consumer protection officer, the Commission shall enter into a register established for that purpose—

- (a) the full name and address of the applicant; and
- (b) the applicant's qualifications; and
- (c) the date on which the application was granted; and
- (d) the capacity, whether as a mediator or arbitrator, in which the applicant is registered.

(2) The certificate of a consumer protection officer shall be valid for 5 years subject to an annual renewal fee specified in the Second Schedule.

(3) The certificate of a consumer protection officer may be suspended or cancelled after the consumer protection officer has failed to comply with his or her responsibilities as provided in the Act and the Arbitration Act [*Chapter 7:15*].

(4) Where a consumer protection officer—

- (a) is convicted of an offence, whether under the Act or otherwise; or
- (b) has, in the exercise of any rights under the Act, conducted themselves in a manner; which, renders it necessary to suspend or cancel their registration as a Consumer Protection Officer, the Minister may direct the Commission—
 - (i) to suspend their certificate for a specified period which shall expire before the date on which that certificate is in any event due to expire in terms of subsection (2); or
 - (ii) to cancel their certificate, as the case may be.

(5) Before acting in terms of subsection 4(b)(ii) the Commission shall notify the Consumer Protection Officer concerned of the Commission's intention to cancel his or her certificate and give him or her opportunity to make written representations in connection therewith within twenty-one days of the date of such notification.

(6) The cancellation or suspension of the registration of a person as a consumer protection officer in terms of this section shall be in addition to any other penalty which may be imposed under the Act or any other law.

(7) The Commission shall give written notice to the consumer protection officer concerned of the cancellation or suspension of their registration in terms of this section and the period of suspension.

Additional qualifications for consumer protection officer

8. In order for one to qualify for consumer protection officer position they must have a qualification in conciliation, mediation and arbitration or any other qualification the Minister may consider relevant.

List of arbitrators

9. The list of arbitrators referred to in section 60(5) of the Act shall be notified by a general notice published in the *Gazette*.

PART IV

SUBMISSION, INVESTIGATION AND RESOLUTION OF COMPLAINTS

Submission of complaint to Commission

10. (1) Where a complaint has been initiated in terms of section 65 and any person fails to have their dispute resolved through any of the alternative dispute resolution mechanisms he or she or it may submit his or her or its complaint to the Commission providing—

- (a) the names of the parties involved in the dispute; and
- (b) a description of the nature and cause of the complaint; and
- (c) a description of the facts relating to any initiatives undertaken to have the dispute resolved; and
- (d) any relevant documents or goods relating to the dispute; and
- (e) request the Commission to deal with the dispute.

(2) The notice of referral of a matter to another regulatory authority, the court or the National Prosecution Authority through the police shall be in form CP4 specified in First Schedule.

(3) A non-referral notice issued by the Commission in terms of section 66(5) of the Act shall be in form CP5 specified in the First Schedule and shall inform the complainant and the respondent of its decision not to deal with the matter, giving full reasons therefor based on the contents and substance of the complaint and any information obtained by the Commission from the complainant.

(4) The hearing of a complaint may not be denied solely on the grounds that the complaint is not in the prescribed form or in any way fails to comply with any of the prescribed requirements.

(5) Where the Commission decides to deal with the matter, it shall—

- (a) act swiftly with a view to conclude the matter within a period of thirty (30) days following the date of receipt of the complaint;
- (b) cause a copy of the complaint to be served on the respondent who shall have five (5) days from the date of receipt of the complaint within which to submit their response to the consumer protection officer;
- (c) determine the nature, gravity and urgency of the matter for the purpose of classification and appropriate prioritisation and actioning;
- (d) determine from the complainant whether or not they will be represented as provided for in section 33(2) as read with section 65(1) of the Act;
- (e) determine from the respondent the person authorised to represent them, assist in any investigations and attend to any inquiry or hearing;
- (f) require each party to provide the other with all documents relevant to the matter;
- (g) as may be necessary, require that an investigation of the matter be carried out in order to verify the facts or any matter relating to the complaint through—
 - (i) interviewing any relevant persons;
 - (ii) obtaining any documents relevant to the matter;
 - (iii) determining if an offence has been committed;
 - (iv) ascertaining whether any other regulatory authority or a court is or should be seized with the matter.

(6) An investigator shall submit a report of the investigation to the Commission within a period of ten (10) days) from the date of the request for the investigation and the report may include recommendations on the options for the resolution of the matter, giving reasons for such recommendations:

Provided that where due to extenuating circumstances the investigator may not finalise the investigation within the ten day period he or she may write to the Commission seeking an extension of the period for a period anticipated having the investigation finalised.

(7) Subject to sections (74), (75) and (78) of the Act, investigations shall be conducted in a fair, impartial and transparent manner, affording each party an adequate opportunity to present the information they consider relevant to the matter.

(8) Following the submission of the investigator's report, the Commission may, if it considers it necessary to hold a hearing, notify the parties in writing of the date, time and place of the hearing of the matter and the parties may appear in person, with or through their representatives.

(9) The Commission—

- (a) must afford the person against whom a complaint has been made an opportunity, in writing, to respond to the allegations within 14 days of receipt of the complaint;
- (b) must act impartially in determining the dispute failing which a party who, on reasonable grounds, suspects bias on the part of any officer at a hearing, may object to the hearing of the matter by such person;
- (c) is not bound by the strict rules of evidence and may ascertain any relevant fact by any means which it thinks subject to the rules of natural justice.

(10) At the conclusion of the hearing, in addition to taking any of the actions referred to in subsection (2) or (3), the Commission may—

- (a) with the consent of the parties, issue a provisional consent order in form CP6 as specified in the First Schedule, which shall be provided to each of the parties, for confirmation or otherwise by a court in terms of section 72 of the Act; or
- (b) in terms of section 68 of the Act, issue a compliance notice in form CP7 as specified in the First Schedule which shall be provided to each of the parties.

(11) Where appropriate, the Commission shall advise the complainant of any other remedy that may be available to her or him, including the right to approach a court directly or to appeal to the High Court against the decision of the Commission.

Database of complaints

11. (1) The Commission, any consumer protection organisation, consumer advocacy groups and any court that receives a complaint in terms of section 65 of the Act shall establish a database of such complaints.

(2) The consumer protection organisation, consumer advocacy group, and the courts, shall submit the established data bases to the Commission on monthly bases.

(3) The Commission shall—

- (a) consolidate;
- (b) analyse; and
- (c) publicise on a website or any other media;

all cases received and finalised through consumer protection organisation, consumer advocacy groups, courts and the Commission.

Submission of complaint to consumer protection organisation

12. Where a complaint has been submitted to consumer protection organisation, the consumer protection organisation shall assign the matter to a consumer protection officer who shall attempt to settle the complaint through conciliation.

Procedure on receipt of complaint by consumer protection organisation

13. (1) Where a complaint has been submitted to a consumer protection organisation, the consumer protection officer seized with the matter shall—

- (a) determine whether there is conflict of interest in handling the matter and if so recuse himself or herself;
- (b) act swiftly with a view to concluding the matter within a period of thirty (30) days following the date of receipt of the complaint;
- (c) cause a copy of the complaint to be served on the respondent who shall have five (5) days from the date of the service of the complaint on them within which to submit their response to the consumer protection officer;

- (d) determine from the complainant whether or not they will be represented as provided for in section 33(2) as read with section 65(1) of the Act;
- (e) determine from the respondent the person authorised to represent them;
- (f) require the parties to submit to the consumer protection officer all documents relevant to the matter and provide each party with such documents;
- (g) provide a written report to the parties indicating possible suggestions for resolution and settlement of the dispute and requiring a response from the parties within five (5) days of the provision of the report;
- (h) if necessary, convene a meeting of the parties at which the consumer protection officer will allow each party to make representations and assist the parties to arrive at a settlement of the dispute;
- (i) if after parties have made representations and the consumer protection officer makes a finding that the matter requires further investigations the consumer protection officer shall refer the matter to the Commission for further investigations to be carried out;
- (j) if the parties reach a settlement, record the settlement in form CP8 specified in the First Schedule which shall be provided to the parties;
- (k) if the parties do not settle the dispute within 30 days of the date of submission of the complaint to the consumer protection officer, the consumer protection officer issue a certificate of no settlement in form CP9 specified in the First Schedule;
- (l) if the parties so agree and subject to subsection (2), refer the matter for arbitration by an arbitrator from the list referred to in section 60(5) of the Act, accompanied by all the documents on the matter in his or her possession, excluding the report referred to in paragraph (g) or any information relating to the suggestions for settlement pursued when the matter was before him or her.

(2) The consumer protection officer shall advise the complainant of his or her right to approach the Commission in terms of section 66(1) of the Act or a court for the resolution of the dispute.

(3) A consumer protection officer shall—

- (a) be independent and impartial and may not act as an advocate, advisor or witness of either party;
- (b) properly observe the rules of natural justice;
- (c) adopt procedures suitable for a quick and cost-effective resolution of the dispute with minimum formality.

(4) The fees of a consumer protection officer who is not employed by the Commission or attached to any consumer protection organisation shall be as set out in the Third Schedule.

Arbitration procedure

14. (1) An arbitrator to whom a matter has been referred in terms of section 58(5) of the Act shall, proceed to convene a hearing and determine the dispute in accordance with the requirements and procedures set out in the Arbitration Act [*Chapter 7:15*] with a view to concluding the matter within a period of thirty (30) days following the date of submission of the matter to arbitration.

(2) An order by an arbitrator shall be made in accordance with sections 60(7) and 67 of the Act.

Civil penalty order

15. The Commission may issue a civil penalty order where a default is made in complying with section 51(1)(a) to (i) of the Act as specified in the Fourth Schedule.

PART V

GENERAL

Funds to Commission

16. The Commission shall get a proportion from the Standard development fund established in terms of the Standard Development Fund Act [*Chapter 14:19*] and the Trade Development surcharge

fund, subject to amendment of the Trade development surcharge Act [*Chapter 14:22*].

Forms and documents

17. (1) The forms contained in the First Schedule may be used with such variations as circumstances require.

(2) All process forms and documents delivered to the Commission, consumer protection organisation or consumer protection officer shall be endorsed with the names and addresses of the parties and a case number.

Observance of rights

18. Consumer protection advocacy groups, consumer protection organisations and consumer protection officers shall at all times—

- (a) be cognisant of all the applicable human rights protected under the Constitution; and
- (b) properly observe the rules of natural justice.

Communication

19. (1) Any notice or other communication for the purposes of these regulations may be delivered by hand or may be effected through any facility, that is to say, electronic mail address, website, portal or other interactive electronic links if the addressee involved has an electronic mail address, website, portal or other interactive electronic links that has been advised by the addressee:

Provided that if the sender of any communication sent through an approved electronic facility receives an acknowledgement of receipt from the recipient through that facility, it shall be presumed that the communication has been received and in any other case the burden of proof that any communication was sent through an approved electronic facility shall rest with the sender of the communication.

(2) The authentication of any electronic communication shall be effected by means of electronic signatures, the keeping of certified backup copies of the communication in paper form, or by such other means as may be directed from time to time by the Commission.

Withdrawal of complainant

20. A complainant may elect before arbitration to withdraw his or her complaint and shall provide reasons in writing for the termination.

Maintenance of records

21. The Commission, consumer protection advocacy groups and consumer protection organisations shall establish and maintain an efficient system for the satisfactory keeping and maintenance of complete records at their principal place of business and at their own cost and expense, records **with respect** to all matters dealt with in terms of the Act and these regulations for which they are responsible **for a period of five (5) years** after the records are created, including, without limitation, records of all payments with respect to any matter and all other dealings

FIRST SCHEDULE

Form CP1

FORMS

CONSUMER PROTECTION COMMISSION

(Section 3(1))

APPLICATION FOR ACCREDITATION OF CONSUMER PROTECTION
ADVOCACY GROUP

To: The Consumer Protection Commission

.....
....., **HARARE**

A. Particulars of group

Name of applicant:

Nature of group: (*company/other business corporation/ universitas*)

Physical address and principal place of business:.....

Telephone numbers:

Email address:

Website:.....

Affiliated to:

B. Key persons

<i>Name and ID No.</i>	<i>Contact details</i>	<i>Qualifications</i>	<i>Designation</i>

A. Category/ies of consumer rights and interests

1.
2.
3.
4.

B. Nature of activities to be undertaken

1.
2.
3.
4.

C. Area of operation

.....
.....
.....
.....

D. References

Provide at least three traceable references pertinent to this application.

E. Other supporting documents

To be attached.

F. Declaration

I/We, the undersigned do hereby declare that all the information provided herein is true and accurate.

Signed:.....Date:

Full Name:.....

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Designation:.....

Phone (landline and/or cell):.....E-mail:

Date:

Form CP2

CONSUMER PROTECTION COMMISSION

Section 6(1)

REGISTRATION OF DESIGNATED CONSUMER PROTECTION
ORGANISATION

Registration No.

..... (*name of group*)
of (*address and
principal place of business*)

is designated as a Consumer Protection Organisation in terms of section 55 of the
Consumer Protection Act [*Chapter 14:37*] as read with section 4 of the Consumer
Protection (General) Regulations, 2023 and is so registered.

Category of consumer rights and interests accredited for:

.....

.....

.....

Area of operation:

Date of designation and registration:

Signed:

Secretary for Industry and Commerce

CONSUMER PROTECTION COMMISSION

(Section 6(1))

APPLICATION FOR REGISTRATION AS A CONSUMER PROTECTION OFFICER

TO: **The Secretary**

Ministry of Industry and Commerce

.....
..... **HARARE**

A. Particulars of applicant

Name of applicant:

Date of birth:

Identity Document Number:

Physical address and principal place of business:.....
.....

Telephone:

Email address:

Qualifications:

Previous experience:

B. References

Provide atleast three traceable references in support of your application.

C. Consumer protection organisation to which you are attached, if any:

Name:

Contact details:.....

Signed: Date:

Full Name:

Designation:

Phone(land and/or cell):

E-mail:.....

Date:

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For official use

Comments:
.....
.....

Form CP 4

CONSUMER PROTECTION COMMISSION

(Section 9(2))

NOTICE OF REFERRAL OF MATTER

TO:*Complainant*
.....
.....*contact details*

And

To:*Respondent*
.....*contact details*

This serves to notify youth at the consumer complaint submitted by the Complainant to the Consumer Protection Commission/Consumer Protection Officer on(date) has Been referred to:

.....(*name of contact details of regulatory authority*)
or

.....in terms of section 58(5) of the Consumer Protection Act [*Chapter14:37*] for arbitration;

or

.....Court in terms of section 71(1) (c) or section 71(2) (a) of Consumer Protection Act [*Chapter14:37*] (*specify the appropriate court*);

or

the National Prosecution Authority in terms of section71(1)(b) of Consumer Protection Act [*Chapter14:37*];

for determination as maybe appropriate.

Signed:Date:.....

Consumer Protection Commission/Consumer Protection Officer

CONSUMER PROTECTION COMMISSION

(Section 10(3))

NOTICE OF NON-REFERRAL OF MATTER

TO: Complainant
.....
..... (contact details)

This serves to notify you in terms of section 67(5) of the Consumer Protection Act [Chapter 14:37] that the determination of the consumer complaint submitted by you to the Consumer Protection Commission/Consumer Protection Officer (name of officer) on (date) has

Been declined for the following reason:

(a) The case appears to be frivolous and vexatious because of the following reasons:.....
.....
.....

or

(b) The facts alleged in the case do not constitute grounds for a remedy in terms of Consumer Protection Act [Chapter 14:37] because of the following reasons:
.....
.....

or

(c) The case has prescribed in terms of the Prescription Act [Chapter 8:11] as read with section 59 of the Consumer Protection Act [Chapter 14:37] because
.....
.....

Signed:.....Date:.....

Consumer Protection Commission/ Consumer Protection Officer

CONSUMER PROTECTION COMMISSION
(Section (10) (10(a)))

PROVISIONAL CONSENT ORDER

In the matter between:

....., *complainant*
.....
..... *contact details*

and

....., *respondent*
.....
.....*contact details*

Pursuant to the investigation and hearing of the matter by the Consumer Protection Commission, the parties agree to the following Provisional Consent Order:

That

.....

.....

.....

.....

The order shall be final upon confirmation by the court in terms of section 72 of the Consumer Protection Act [*Chapter 14:37*] whereupon the Complainant may, as necessary, execute upon the order if not fulfilled by the Respondent.

Signed:.....Date:.....

CONSUMER PROTECTION COMMISSION

(Section 10(10)(b))

COMPLIANCE NOTICE

In the matter between:

....., complainant
.....
.....contact details
and
....., respondent
.....
.....contact details

Pursuant to the investigation and hearing of the matter by the Consumer Protection Commission, the Commission has issued the following Compliance Order:

1. Description of the goods or services concerned:.....
.....
2. The section(s) of the Act that has/have been contravened:
.....
3. Details of the nature of the contravention:
.....
.....
.....
4. Description of the rectification required:
.....
.....
.....
5. Within a period of:
6. Penalty to be imposed for failure of rectification:
 - (a) Application to court for an administrative fine; or
 - (b) Reference of matter to National Prosecution Authority for prosecution.

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7. Whether or not Respondent must publish any public warning regarding any goods or services:

The Respondent is hereby advised of the right to apply to court within 14 days of receipt of this notice for a review of the compliance notice.

Signed:.....Date:.....

Consumer Protection Commission

Form CP8

CONSUMER PROTECTION COMMISSION

Section 13(1)(j)

RECORD OF SETTLEMENT

In the matter between:

....., complainant

.....

..... contact details

and

....., respondent

....., contact details

Pursuant to conciliation proceedings in terms of section 58(1) of the Consumer Protection Act [Chapter 14:37] as read with section 13(1)(j) of the Consumer Protection (General) Regulations, 2023, the parties have reached the following settlement:

.....
.....
.....
.....
.....
.....

1. In reaching this settlement, the parties confirm that no undue influence or duress has been exerted on either of them.
2. This settlement is in full and final settlement of the claim(s) arising from the dispute in the matter.
3. The settlement is binding on the parties and in the event that a party fails to comply with the terms of the settlement, the aggrieved party may

apply to court in terms of section 65(2) of the Act for enforcement of the settlement.

Signed:..... Date:.....

Consumer Protection Officer

Signed:

Full names

Signature

Date

Complainant:.....

Respondent:

.....

.....

Form CP9

CONSUMER PROTECTION COMMISSION
(Section 13(1)(k))
CERTIFICATE OF NO SETTLEMENT

In the matter between:

..... *Complainant*

.....
..... *contact details*

and

..... *Respondent*

.....
..... *contact details*

1. Pursuant to conciliation proceedings in terms of section 58(1) of the Consumer Protection Act [Chapter 14:37] as read with section 13 (1) (k) of the Consumer Protection (General) Regulations, 2023, I certify that no settlement was reached in the matter.
2. The parties have AGREED /NOT AGREED that the dispute be referred to arbitration in terms of section 60 of the Consumer Protection Act [Chapter 14:37].

Signed: Date:

Consumer Protection Officer

Consumer Protection (General) Regulations, 2023

Signed:

<i>Full names</i>	<i>Signature</i>	<i>Date</i>
Complainant:
Respondent:

SECOND SCHEDULE

(Sections 4 and 5)

FEES

		US \$
1.	For application for accreditation and registration of consumer protection advocacy group	100
2.	For application for designation and registration of consumer protection organisation	1000
3.	For application for registration of consumer protection officer under an organisation	50
4.	Annual renewal fee for consumer protection officer certificate	10

The above fees may be payable in United States Dollars (USD) or in Zimbabwean Dollars at the prevailing market rate.

THIRD SCHEDULE

(Section 13(4))

TARIFF OF FEES OF CONSUMER PROTECTION ORGANISATIONS OFFICERS

Item	Process	Fee US\$
1.	Inspection of documents on file	5
2.	Making a copy of any document, per page	0.50
3.	Supplying upon request transcript of the record of proceedings, per page	0.50
4.	Preparation of records for review or appeal, per page	0.50

The above fees may be payable in United States Dollars (USD) or in Zimbabwean Dollars at the prevailing market rate.

FOURTH SCHEDULE (*Section 15*)

CIVIL PENALTY ORDERS

Interpretation

1. In this Schedule, unless the context otherwise requires—

- “citation clause”, in relation to a civil penalty order, is the part of the order in which the Commission names the defaulter and cites the provision of the Act in respect of which the default was made or is alleged, together with (if necessary) a brief statement of the facts constituting the default;
- “civil penalty register” means the register referred to in paragraph 6 (“Evidentiary provisions in connection with civil penalty orders”);
- “continuing default” means a default in complying with any statutory obligation or duty which is continuous in nature at the time it is detected and of which the remediation consists exclusively or primarily in ceasing to do the action complained of;
- “corporate defaulter” means a defaulter which is a company, syndicate or other corporate person (and includes a partnership for the purpose of paragraph 3(3) and (5));
- “date of issuance”, in relation to the service of a civil penalty order, means the date on which it is served;
- “defaulter” means the person on account of whose default a civil penalty order is served, and includes an alleged defaulter;
- “level”, in relation to a fine, means a level on the standard scale;
- “officer”, in relation to a corporate defaulter, means a member of the Commission or other governing body (by whatever name called), and if there is no such board or governing body, any employee or agent of the corporate defaulter acting on behalf of the corporate defaulter;
- “standard scale” means the standard scale of fines referred to in section 280 of the Criminal Law Code the First Schedule thereto;
- “penalty clause”, in relation to a civil penalty order, is the part of the order that fixes the penalty to be paid by the defaulter, and “fixed penalty clause” and “cumulative penalty clause” shall be construed accordingly;
- “remediation clause” in relation to a civil penalty order, is the part of the order that stipulates the remedial action to be taken by the defaulter;

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“show cause clause” in relation to a civil penalty order is the part of the order that requires the defaulter to show cause why the civil penalty order should not have been served or should be withdrawn.

Power of Commission to issue civil penalty orders and categories thereof

2. (1) Where a default is made in complying with section 51(1)(a) to (i) of the Act the Commission may, serve upon the defaulter a civil penalty order of the appropriate category specified in subsection (2), (3), (4), (5) or (6) or any combination of such orders as the provision in question may allow.

(2) A category 1 civil penalty order provides for—

- (a) a combination of a fixed penalty and a cumulative penalty over a period not exceeding ninety days for a specified completed and irremediable default (that is to say a default in respect of which no remediation is sought by the Commission or is possible), of which—
 - (i) the fixed penalty shall be the maximum amount specified for level 7 (or the penalty specified in paragraph 3, as the case may be); and
 - (ii) the cumulative penalty shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the fixed penalty under paragraph (a);
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the Commission why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it is shown that the order was issued in error the Commission shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

(3) A category 2 civil penalty order provides for—

- (a) a cumulative civil penalty for a specified completed but remediable default which—
 - (i) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her);

- (ii) upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide for a penalty of the maximum amount of level three for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action);
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the Commission why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;
 - (ii) if within that period it is shown that the order was issued in error the Commission shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (4) A category 3 civil penalty order provides—
- (a) for a combination of a fixed penalty and potentially two cumulative penalties for a specified completed but partially remediable default, of which—
 - (i) the fixed penalty shall be the maximum amount specified for level five; and
 - (ii) the cumulative penalty—
 - A. relating to subparagraph (i) shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under subparagraph (i); and
 - B. relating to the taking of the specified remedial action—
 - I. shall be the maximum amount of level three for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date; and
 - II. must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;
 - (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter

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to show cause to the Commission why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period, the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it shown that the order was issued in error, the Commission shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

(5) A category 4 civil penalty order provides for—

- (a) a cumulative penalty for a continuing default which—
 - (i) must be suspended conditionally upon the defaulter immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) ceasing the default;
 - (ii) upon the civil penalty becoming operative because of failure to cease the default immediately, shall be the maximum amount fixed for level six for each day during which the default continues, not exceeding a period of ninety days;
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the Commission why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it shown that the order was issued in error the Commission shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

(6) A category 5 civil penalty order provides for—

- (a) a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—
 - (i) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately (that is, within 24 hours of the issuance of the order, or a lesser specified time specified in the order);

- (ii) which, upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide—
 - A. a fixed penalty of the maximum amount for level seven for not meeting the specified deadline; and
 - B. a cumulative penalty of the maximum amount of level three for each day, not exceeding ninety days during which the defaulter fails to pay the amount of the fixed penalty specified in—
 - I. subparagraph (i); and
 - II. subparagraph A;
- (b) the suspension of the operation of the civil penalty order for a period of 24 hours from the date of its issuance to enable the alleged defaulter to show cause to the Commission why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it shown that the order was issued in error the Commission shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

Service and enforcement of civil penalties and destination of proceeds thereof

3. (1) References to the Commission serving upon a defaulter any civil penalty order in terms of these regulations, are to be interpreted as requiring the Commission to serve such order (or such notice) in writing to the defaulter concerned in the following manner—

- (a) hand delivery to the defaulter or his or her director, manager, secretary or accounting officer in person (or through an inspector or other person employed in the office of the Commission, or a police officer), or to a responsible individual at the place of business of the defaulter; or
- (b) delivery through a commercial courier service to the defaulter's place of province concerned or his or her principal office in Zimbabwe or other place of business of the defaulter; or
- (c) electronic mail address furnished by the defaulter to the Commission; or

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- (d) if after diligent inquiry service of the civil penalty order by any of the foregoing means has not been made, the defaulter shall be deemed to be notified of the civil penalty order if the Commission posts a copy of it for fourteen continuous days on the notice board at his or her Office (in which event the civil penalty order shall be deemed to be served on the defaulter on the first date of such posting):

Provided that in this case the Commission shall also depose in an affidavit to the following facts, namely that—

- (i) service of the civil penalty order could not be made by any of the means referred to in subparagraphs (a), (b), (c) or (d); and
- (ii) the first date on which the copy of the civil penalty order was posted on the notice board of his or her Office;

and the Commission shall file such affidavit for record.

(2) The Commission shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted (not exceeding in any case 30 days) shall be noted by the Commission in the civil penalty register.

(3) The Commission may, if the defaulter is a corporate defaulter—

- (a) in the same civil penalty order, name the corporate defaulter and every officer of the company, syndicate, other corporate person or partnership concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulter and each of the officers concerned;
- (b) choose to serve the order only upon the corporate defaulter without naming the officers if, in his or her opinion (which opinion the Commission shall note in the civil penalty register, there may be a substantial dispute of fact about the identity of the particular officer or officers who may be in default:

Provided that nothing in this subparagraph affects the default liability of officers of the defaulter mentioned in subparagraph (6).

(4) The Commission may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of the Act if the defaults in question—

- (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
- (b) arose in connection with the same set of facts.

(5) Where in the Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the Commission may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

- (a) summons is issued to the accused person for the prosecution of the offence; or
- (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or
- (c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded if they result in a conviction or acquittal, even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings).

(6) Every officer of a corporate defaulter mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the Commission to pay the civil penalty in the event that the defaulter does not pay.

(7) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid or complied with, the defaulter shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both (in the case of a corporate defaulter, every one of its officer is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

(8) The amount of any civil penalty shall—

- (a) be payable to the Commission and shall form part of the Consumer Protection Fund; and
- (b) be a debt due to the State and shall be sued for in any proceedings in the name of the Commission acting for the State in any court of competent civil jurisdiction:

Provided that for this purpose, the court of the provincial magistrate for the province concerned shall be deemed to have jurisdiction to hear the suit even if the monetary amount sought would otherwise exceed its prescribed jurisdiction.

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(9) If the Commission in terms of subparagraph (8)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, the Commission may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties—

- (a) were all served within the period of twelve months preceding the institution of the proceedings; and
- (b) were served—
 - (i) on the same defaulter; or
 - (ii) in relation to the same default or set of defaults, whether committed by the same defaulter or different defaulters; or
 - (iii) on two or more defaulters whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(10) Unless the Commission has earlier recovered in a civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subparagraph (7), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the Commission for the amount of any outstanding civil penalty due from the convicted defaulter.

Limitation on issuance and enforcement of civil penalty orders

4. (1) No civil penalty order may be issued more than twelve months from the date when the default or alleged default occurred or ceased to occur.

(2) A single civil penalty order may be served in respect of two or more defaults committed by the defaulter within a single period not exceeding six months, but if the aggregate of such defaults results in the defaulter becoming liable to a penalty or combined penalties in excess of the equivalent of one hundred and twenty thousand dollars, the Commission may select one or any combination of those defaults which will not result in the defaulter becoming so liable, while reserving the right to serve a second or further additional civil penalty orders in respect of the defaults not so selected if the defaulter does not comply with the first civil penalty order.

(3) Any amount owing under a civil penalty order is a debt owed to the State for the purposes of section 15(b) of the Prescription Act [*Chapter 8:11*].

When hearings on question whether to serve civil penalty orders may be held

5. (1) If, in response to a show cause clause, an alleged defaulter satisfies the Commission, that it is not possible within 48 hours to demonstrate that the civil

penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control, the Commission shall afford the alleged defaulter an opportunity to be heard by making oral representations before the Commission, for which purpose—

- (a) no later than 96 hours after the issuance of the civil penalty order, the alleged defaulter must furnish to the Commission an affidavit sworn by him or her giving reasons to show that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control;
- (b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the Commission—
 - (i) may serve copies of the affidavit on any person who, in the Commission's opinion, is affected by or may be a party to the default, together with an invitation to the parties to attend at the meeting to be presided over by the Commission (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question whether the civil penalty order was issued in error to the alleged defaulter and whether it should be issued to some other miner or not issued at all;
 - (ii) post an invitation to interested persons within the area to attend at the meeting referred to in subparagraph (i) (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on the question whether to grant or refuse provisional registration for the site or sites concerned:

Provided that in such invitation (referred to in subparagraph (i) or (ii)) or at the meeting the Commission may restrict the parties to submitting written representations only, before or no later than 48 hours after the conclusion of the meeting.

(2) The following provisions apply to every hearing in connection with the issuance of a civil penalty order—

- (a) if the alleged defaulter fails to attend at the hearing the Commission will generally decide the issue against him or her and proceed to issue the civil penalty order, unless doing so, given the specific facts and circumstances of the case, would be contrary to the Act or result in injustice;
- (b) the alleged defaulter bears the burden of showing on a balance of probabilities that the civil penalty order was issued in error due to a

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material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control;

- (c) at the conclusion of the hearing Commission may—
 - (i) in the presence of the parties (if any) at the meeting announce his or her decision verbally whether or not to issue a civil penalty order, and if so to upon whom, and if the Commission decides to issue the civil penalty order the Commission shall do so within twenty-four hours;
 - (ii) cancel the civil penalty order or re-issue it with effect from the date of his or her decision on the same or another defaulter, or re-issue it with effect from the date on which it was initially issued if the Commission finds that the defaulter's objections to its issuance were baseless, vexatious or frivolous:

Provided that the Commission may defer making a decision by no more than 48 hours after the conclusion of the hearing and give notice of his or her decision, and the reasons for it (together with the civil penalty order, if any), to the alleged defaulter to be liable for the civil penalty, and post a copy of the decision together with the civil penalty order, if any) and the reasons for it on the public notice board of the Director's office.

(3) An alleged defaulter or substituted alleged defaulter who wishes to appeal against the Commission's decision in terms of subsection (2) (c) must—

- (a) lodge an appeal in writing with the High Court, no later than seven working days he has received notification decision under the proviso to subsection (2)(c); and
- (b) incorporate in the appeal grounds justifying why the Commission's decision should be set aside and what decision ought to be substituted for it.

(4) The effect of lodging an appeal shall be to suspend the decision appealed against until the appeal is determined.

(5) Upon receiving an appeal in terms of subsection (3) the High Court shall promptly (and in any event no later than fourteen working days of receiving it)—

- (a) dismiss the appeal by upholding the decision of the Commission; or
- (b) refer the decision back to the Commission for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the Commission to investigate the matter further and make a further report and recommendations) on any one

or more of the following grounds—

- (i) allowing extraneous or irrelevant considerations to affect the decision; or
 - (ii) failure to take into account relevant considerations in arriving at the decision; or
 - (iii) any material mistake of fact or law that tainted the decision; or
- (c) uphold the appeal and substitute any other decision for that of the Commission, if the High Court finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the High Court shall not make a finding on this ground without affording the Commission an opportunity to respond to the proposed finding.

Evidentiary provisions in connection with civil penalty orders

6. (1) For the purposes of these regulations, the Commission shall keep a civil penalty register wherein shall be recorded—

- (a) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty there under was recovered as the case may be;
- (b) if the alleged defaulter responded to the show cause clause in the civil penalty order with the result that—
 - (i) the order was cancelled because it was issued in error, the fact and the date of such cancellation; or
 - (ii) a hearing was held in accordance with paragraph 5, then—
 - A. a record or an adequate summary of any representations made at the hearing by way of an entry or cross-reference in, or annexure to, the register (and if recorded by way of annexure or cross-reference, the representations must be preserved for a period of at least six years from the date when they were made to the Commission);
 - B. a record of the outcome of the hearing, that is to say, whether or not the civil penalty order was cancelled, and if not the date from which it was to have effect and whether a different defaulter was served with it.

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(2) A copy of—

- (a) any entry in the civil penalty register, and of any annexure thereto or record cross-referenced therein, authenticated by the Commission as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the contents therein; or
- (b) any civil penalty order that has been served in terms of these regulations, authenticated by the Commission as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the service of the order on the date stated therein upon the defaulter named therein, and of the contents of the order.

OFFENCES IN TERMS OF SECTION 51 OF THE ACT

	OFFENCE	CIVIL PENALTY CATEGORY
1	failure to provide fair value, good quality and safe products to consumers	Category 5
2	failure to provide warranty on all goods or services	Category 2
3	failure to ensure that all supplied goods or services are delivered on the agreed date at the agreed time and in the case of delivery of goods at the cost of the supplier, and goods to be delivered remain at the supplier's risk until the consumer has accepted delivery of them	Category 5
4	failure to allow consumers reasonable opportunity to examine all supplied goods so as to ascertain that they are of the type and quality reasonably contemplated in their agreement;	Category 1
5	failure to offer to supply, or enter into an agreement to supply any goods or services at fair, reasonable and just prices and terms	Category 5

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6	<p>entering or attempting to enter into any transactions or agreements whose general purpose or effect is to—</p> <ul style="list-style-type: none"> (i) mislead or deceive the consumer; or (ii) subject the consumer to fraudulent conduct; or (iii) waive or deprive a consumer of a right in terms of this Act; or (iv) avoid a supplier’s obligation or duty in terms of this Act; or (v) setting aside or overriding the effect of any provision of this Act; or (vi) doing anything that is unlawful in terms of this Act; or (vii) failure to do anything that is required in terms of this Act; or (viii) limiting or exempting a supplier of goods or services from liability for and loss directly or indirectly attributable to the gross negligence of the supplier or any person acting for or controlled by the supplier; or (ix) constituting an assumption of risk or liability by the consumer for any contemplated or actual loss; or (x) imposing an obligation on a consumer to pay for damage to, or otherwise assume the risk of handling, any goods displayed by the supplier; 	Category 5
7	failure to co-operate with the Government or local authorities in the execution of policies relating to consumer protection;	Category 5
8	engaging in any unfair trade practices	Category 5
9	failure to produce and show a business record, when requested to do so in terms of this Act, to a member of the Commission or a person duly authorised by the Commission.	Category 3

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