

## The Regulation of Alternative Dispute Resolution Institutions in Consumer Redress and Enforcement: A South African Perspective

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**Abstract :** Effective and accessible consensual dispute resolution and in particular alternative dispute resolution, are central to consumer protection legislation. In this regard, the Consumer Protection Act 68 of 2008 (CPA) of South Africa is no exception. Due to the nature of consumer disputes, alternative dispute resolution (in theory) is an effective vehicle for the adjudication of disputes in a timely manner avoiding overburdening of the courts. The CPA sets down as one of its core purposes the provision of 'an accessible, consistent, harmonized, effective and efficient system of redress for consumers' (section 3(1)(h) of the CPA). Section 69 of the Act provides for the enforcement of consumer rights and provides for the National Consumer Commission to be the Central Authority which streamlines, adjudicates and channels disputes to the appropriate forums which include Alternative Dispute Resolution Agents (ADR-agents). The purpose of this paper is to analyze the regulation of these enforcement and redress mechanisms with particular focus on the Central Authority as well as the ADR-agents and their crucial role in successful and efficient adjudication of disputes in South Africa. The South African position will be discussed comparatively with the European Union (EU) position. In this regard, the European Union (EU) Directive on Alternative Dispute Resolution for Consumer Disputes (2013/11/EU) will be discussed (The ADR Directive). The aim of the ADR Directive is to solve contractual disputes between consumers and traders (suppliers or businesses) regardless of whether the agreement was concluded offline or online or whether or not the trader is situated in another member state (Recitals 4-6). The ADR Directive provides for a set of quality requirements that an ADR body or entity tasked with resolving consumer disputes should adhere to in member states which include regulatory mechanisms for control. Transparency, effectiveness, fairness, liberty and legality are all requirements for a successful ADR body and discussed within this chapter III of the Directive. Chapters III and IV govern the importance of information and co-operation. This includes information between ADR bodies and the European Commission (EC) but also between ADR bodies or entities and national authorities enforcing legal acts on consumer protection and traders. (In South Africa the National Consumer Tribunal, Provincial Consumer Protectors and Industry ombuds come to mind). All of which have a responsibility to keep consumers informed. Ultimately the papers aims to provide recommendations as to the successfulness of the current South African position in light of the comparative position in Europe and the highlight the importance of proper regulation of these redress and enforcement institutions.

**Keywords :** alternative dispute resolution, consumer protection law, enforcement, redress

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