

# NCC NEWS

Issue: June 2020

## *Spot Pyramid Schemes*

### **Complaints in the era of Covid 19**

Consumer Tribunal rules against unfair Price Hiking



NATIONAL CONSUMER COMMISSION

a member of the dti group



# THE EDITOR'S DESK

The past three months has seen the world gripped by the novel corona virus and many have lost their lives. The market for goods and services required new ways of doing business in response to the environment. The new normal presented unique challenges for consumers and suppliers in these times of the pandemic and economic lockdown.

As we all try to stretch our hard-earned cash, some are often tempted to participate in pyramid schemes. Pyramid schemes are illegal operations and continue to mushroom in our communities. The promoters of these schemes keep changing manner and form but the basic principles and business modelling remains the same. We give you pointers on how to spot pyramid schemes from a distance.

Businesses were also hit hard as some had to shut down, affecting profit. We provide some guidelines to business as more and more consumers embrace the digital economy and shop online to comply with social distancing requirements. As responsible corporate citizens, business has to adopt practises that are fair and in line with the Consumer Protection Act in order to protect consumers.

As humans we learn every day. We invite you to read about the latest jargon, such as "price gouging", that we found ourselves having to understand and to also have a glance at the consumer complaints picture painted from March up to May 2020.

It is business as usual for the Commission even in these trying times. We also have our usual comic strip to further breakdown some of your consumer rights

Our hearts go out to all the families that lost loved one to this virus. Remember to wear a mask, adhere to social distancing, and wash hands regularly with soap and water or hand sanitiser. Keep well.

NCC ONLINE NEWSLETTER  
[www.thencc.gov.za](http://www.thencc.gov.za)

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# Word

from the Acting Commissioner

**Ms Thezi Mabuza**  
Acting Commissioner

Let me welcome you all to this edition. You have relied on the Commission during the most testing time; when the country was faced with the novel Covid-19. The national lockdown came with its challenges from suppliers excessively increasing their prices, consumers stock-piling on essential goods, as well as consumers being unable to exercise their right to choose.

The Department of Trade, Industry and Competition moved swiftly in trying to protect South African consumers against unscrupulous suppliers who were looking at exploiting consumers. The department issued Regulation 350, giving the NCC more power to investigate allegations into unfair price hikes of fast moving goods. Other suppliers ceased the opportunity based on the economic principles of demand and supply. This resulted in unjustified price increase.

To ease the financial burden for consumers, we established a toll free number, to allow consumers to report alleged cases of price gouging. Since the declaration of the state

of National Disaster by the President of the country, the Commission through its call center recorded more than 3000 calls of alleged price gouging.

Unfair or unconscionable pricing cases are difficult to prosecute in ordinary times. In times of crisis, such as a Covid-19 disaster, it can be even more challenging. The first week of the national lockdown saw a number of investigations against big and small suppliers. We are investigating 127 matters of which 49 have been completed.

The Consumer Protection Act encourages redress where a supplier had engaged in a prohibited conduct or where the supplier's actions are found to be inconsistent with the provision of the Act. Our ongoing investigations reveal that some suppliers acted unconscionably by increasing their prices particularly of essential goods like facial masks, emergency products and services as well as cleaning products by anything between 50% to 1300% and making profits that they were not supposed to make.

In a normal situation, the Consumer Protection Act encourages redress to consumers in a form of a refund. However, due to the nature of the commodities (fast moving goods) sold, it became difficult to instruct suppliers found to have been in contravention of the CPA and Regulations 350 to refund consumers.

I am proud to announce that the Commission has charged a number of suppliers for price gouging and referred the matters to the National Consumer Tribunal, reached settlement agreements with two suppliers; Mopani and People's pharmacy. Both suppliers have paid an administrative fine of R56 000 and R10 000, respectively. As part of the settlements, these suppliers have also donated personal protective equipment to three NGO's in their areas of operation. On the other hand, the Tribunal has fined Belegi Workwear R100 000 after we found this supplier guilty of sharply increasing prices for facial masks.

To ensure that we reach the majority of consumers, we have decided to participate in social media by subscribing to Twitter. I would like to invite you all to take the journey with us, follow us on twitter @NCC\_Covid19 and continue to follow the work of the Commission.

We will work tirelessly to ensure that we protect consumers from unconscionable, unfair, unreasonable, unjust or improper trade practices.

# How to spot

# a Pyramid Scheme

## 1. What are Pyramid Schemes/ Ponzi Schemes?

A pure pyramid scheme is a scheme where participants receive compensation derived primarily from recruiting other people into the scheme. Monies exchange hands and participants make money by recruiting new participants into the scheme. Ponzi schemes on the other hand will incorporate an element of fraud promising high rate returns on investment into the scheme. Often these will not exist in their purest form but will co-exist within the same scheme. Pyramid schemes/ Ponzi schemes are not investments vehicles or genuine business opportunities.

## 2. How do these schemes work?

These schemes usually require participants to recruit one or more people into the scheme in order to receive compensation or return on investment. Money is raised through recruiting other people to participate by putting more money into the scheme rather than from buying/selling any investment. This means that the more people a person recruits into the scheme the more money is made by everyone who joined the scheme earlier. The problems start when "recruitment" dries up. Participants start losing their money and the late joiner often suffers the loss. These schemes are in their nature not sustainable and are guaranteed to collapse.

## 3. How do I identify a Pyramid/Ponzi Scheme from a Real Investment?

### Investment



### Pyramid/ Ponzi Schemes

A consumer is not required to recruit other participants into the scheme.

A consumer knows where his monies are invested and the rate of return.

Investment broker is registered with the Financial Sector Conduct Authority (FSCA).

The broker is traceable and accountable for his actions and advice.

Legal and safe way of investing money.

Participants are always required to recruit others into the scheme.

- Participants are promised huge unrealistic returns within a short period of time.
- Money simply exchanges hands with no real economic activity attached to it or there is no underlying asset
- Where products are sold they are simply a smoke screen to hide the scheme.
- Participants risk losing money.
- Participants are sometimes called to donate money.

Promoters are not registered with any relevant regulator.

There are no means of tracing the scheme or the promoter's origins. It is illegal to participate in or promote a pyramid/ ponzi scheme.

## 4. How do I Protect Myself?

Gather information on the promoter or company that is running the scheme. Get their contact details, physical address and pay them a visit if possible. A website is not necessarily proof that the company exists and is legitimate. Check with the Financial Sector Conduct Authority (FSCA) if they are authorised to act as investment brokers. Check with the Companies and Intellectual Property Registration Office (CIPC) for company registration and its directors.

## 5. What should I ask a person that wants me to invest in a scheme?

- How long have you been in the investment business?
- What are your qualifications?
- Am I required to introduce/ recruit other investors?
- Are you registered with the Financial Sector Conduct Authority?
- What are the guaranteed returns?
- Will I receive signed documentation after I sign up?

## 6. What to do when you suspect that an investment is a Pyramid/Ponzi Scheme?

- Verify the legitimacy of an investment broker before you invest by calling the Financial Sector Conduct Authority on 0800 203 722 or email to [FSCACommunications@fsc.co.za](mailto:FSCACommunications@fsc.co.za).
- Report these schemes to the National Consumer Commission (NCC) on 012 428 7000 or visit their website: on [www.ncc.gov.za](http://www.ncc.gov.za).

OR

South African Reserve Bank (Bank Supervision Department)  
contact details: 012 313-3911  
0861 12 SARB (0861 12 7272)

OR

Tip off Reserve Bank: 0800 67 7772  
E-Mail: [SARBCBSU@resbank.co.za](mailto:SARBCBSU@resbank.co.za)



# Consumer Complaints in the Era of COVID 19

The world has been introduced to new terminology since the insurgence by the COVID 19 pandemic. Words like “price gouging” and “panic buying” have dominated our TV screens, conversation and for some of us, our work too. Shortly, after President Ramaphosa declared a state of national disaster on 15 March 2020, scores of consumers were seen stock piling vitamins, foodstuff, hygiene products, and COVID 19 preventative items such as masks, gloves and hand sanitisers. This was done in anticipation of perceived looming stock shortages in the market. We soon learned that what we were observing was actually called panic buying.

Unprecedented increases in the price of goods and services soon followed on the supply side leading to the Minister of Trade and Industry making Regulation 350 of Government Gazette No. 11057 of 19 March, to direct the supply of goods and services during the period of the national disaster. In other words, to stop price gouging practices by some suppliers who were unjustifiably increasing the prices of goods and services during the period of the declared national disaster.

The purpose of the regulation is to promote concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster and protect consumers and customers from unconscionable, unfair, unreasonable, unjust, or improper practices during the national disaster and called on suppliers to implement reasonable measures to ensure equitable distribution of goods to consumers and to maintain adequate stocks of:

- Basic foods and consumer items;
- Emergency products and services;
- Medical and hygiene supplies;
- Emergency clean-up products and services.

A toll free number was introduced by the National Consumer Commission to monitor the price increases and to provide a platform for consumers to lodge complaints against suppliers for alleged violation of Regulation 350. Below is a snapshot of consumer complaints received by the Commission since the introduction of the toll free number (0800 014 880) on 23 March 2020 till 31 May 2020.

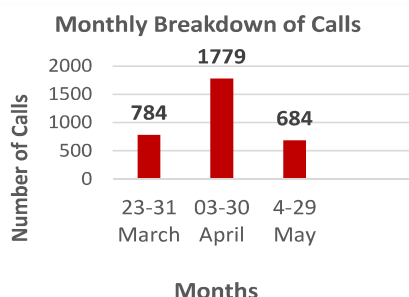


Fig 1: The COVID-19 toll free line became operational on 23 March 2020. A public awareness campaign was undertaken in April throughout SABC radio stations to alert consumers about the toll free line and Reg. 350. During the month of May, a decline in the number calls to the toll free line was observed.

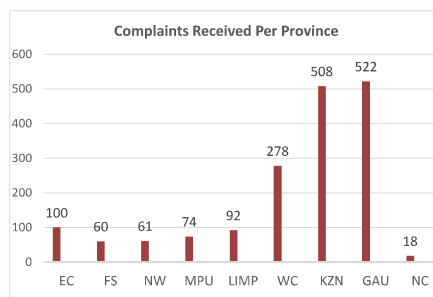


Fig 2: Gauteng province has registered the most complaints up to May 2020. The top three (3) provinces with the most complaints were KwaZulu Natal, Gauteng and the Western Cape.

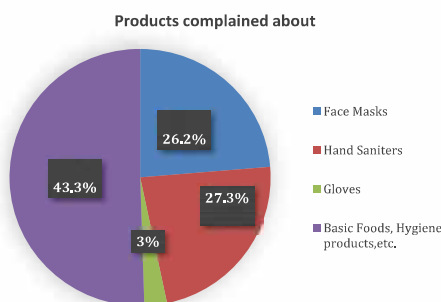


Fig 3.1: During the March 2020 the protective gear used for prevention of COVID-19 transmission was most complained about.

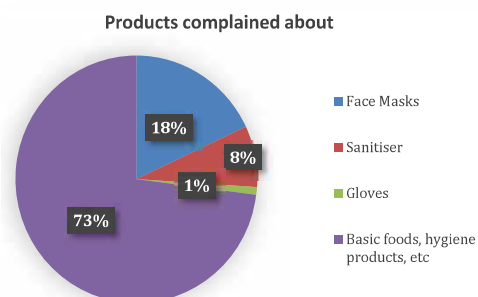


Fig 3.2: A shift was observed in April as the majority of complaints received related to basic foodstuff and hygienic products.

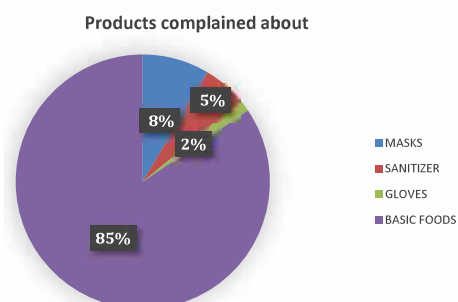


Fig 3.3 There is a continued trend in the month of May where basic foodstuff and hygiene product form the bulk of products complained about.

The toll free number is still operational and Regulation 350 is still applicable until the end of the national disaster. Consumers are encouraged to be on the lookout and lodge complaints with the National Consumer Commission for their consumer rights to be protected.



The NCC has done it again at the Consumer Tribunal. In a case between the National Consumer Commission and Belegi Workwear and Industrial Supplies Proprietary Limited, the Consumer Tribunal granted a finding of prohibited conduct for price hiking as well as fined the company an administration penalty to the tune of R100 000.00 (One Hundred Thousand Rands).

In the 1st quarter of this year, South Africa was hit by a deadly virus named the COVID 19, which ultimately resulted in our government declaring a state of national disaster, implementing stage one national lockdown. Subsequent to the declaration of state of National Disaster, on March 19, government issued Regulation 350 in terms of (amongst other legislations), Sections 120(1) (d) and 40 and 48 of the Consumer Protection Act. The Regulations indicated amongst other things;

*5.1.2 that a supplier may not offer to supply, supply or enter into an agreement to supply any goods and service at a price that is unfair, unreasonable or unjust.*

*5.2.1 a price that does not correspond to or is not equivalent to the increase in the cost of providing that good or service; or*

*5.2.2 increase in net margin or markup on that good or service above the average margin or mark-up for that good or service in the three-month period prior to 1 March 2020, is unconscionable, unfair, unreasonable and unjust and a supplier is prohibited from effecting such price increase.*

## Consumer Tribunal rules against unfair Price Hiking

Over and above the lockdown, consumers were shocked to find themselves having to deal with unprecedented high prices. During this time, the Commission was also inundated with a high number of complaints from ordinary consumers complaining about high prices on amongst other things, basic foods and sanitary masks which were much needed to provide protection against the virus.

One such complaint was received alleging that on the 24th March 2020 the consumer received a quotation of R874.00 from Belegi for a box of 20 FFP2 face masks he had bought previously for R76.00. This appeared to be in contravention of the Disaster Regulation (19 March), hence the NCC decided to lodge an investigation.

Indeed, the investigation uncovered what appeared to be gross price hiking. Between February to March 2020 Belegi sold 36 boxes of the masks to 21 clients for prices ranging from R100 to R760 excluding vat. There was no evidence provided indicating that the cost of providing the same had increased. Clearly this amounted to unjustified, unreasonable and unfair price hiking.

Though some of the transactions took place before the Regulations were promulgated, the Tribunal was able to make a finding against the company for those transactions that were concluded after the Regulations were in force. Belegi did not dispute any of the evidence provided by the NCC before the Tribunal. From the evidence presented the Tribunal concluded that indeed Belegi contravened the Disaster Regulations and that such actions constituted prohibited conduct. Further, the Tribunal imposed a R100 000.00 administrative fine as a deterrent to other suppliers. In arriving at this amount the Tribunal had to consider various factors such:

- ☒ The nature, gravity, duration and extent of the contravention;
- ☒ Loss or damage suffered;
- ☒ Level of profit derived;
- ☒ Market conditions at the time;
- ☒ The degree of cooperation by the defendant etc.

The Commission has welcomed the Tribunal's decision and hopes that going forward suppliers will refrain from taking advantage of consumers who are already facing dire financial and health crisis due to the lockdown brought by Covid 19.

# Business Guide to Online disclosures

The COVID 19 virus has had a negative impact on the South African economy. In reaction to the pandemic, Government issued regulations that imposed a national lockdown, closing business and limiting movement of citizens as a way to limit the spread of the virus. The resultant effect was a significant slowing down of the economy due to certain businesses shutting down. This led to business seeking other ways to ensure business continuity and cementing its participation in the digital economy through online supply of goods and services.

This business guide is based on international best practice using guidelines from the Organisation of Economic Cooperation and Development (OECD), and local legislations like the Electronic Communications Act 25 of 2002 and the Consumer Protection Act 68 of 2008. It is designed to ensure that consumers are protected and businesses that sell products online have an obligation to ensure that the following principles are observed.

## a) Information in plain and understandable language,

Plain and simple information is crucial in ensuring that consumers can make informed decisions when shopping online. If more than one language is available to conduct a transaction, business should make available in those language all information necessary for consumers to make an informed decision regarding a transaction.

## b) No Misleading Information

Suppliers should refrain from directly or indirectly providing misleading information about a material fact of the product to a consumer in relation to amongst other things; the quality, standard, ingredients, performance etc.

## c) Accurate pricing

Accurate pricing is important so that consumers know upfront what price they are going to pay or what is the total price of the contract they are getting into. The different payment options must be disclosed upfront to allow consumers to understand the cost implications of each option.

## d) Not relying on terms and conditions to convey important information

Material and key information should not be buried in terms and conditions that consumers seldom read. Such information

should be presented in a plain and understandable language upfront, not after the contract has been concluded. This will assist consumers to have a look and feel of the product and check its compatibility with other products.

## e) Express consumer consent

Businesses must obtain consumer's express consent before charging for goods or services purchased online. They must not rely only on pre-checked boxes as this is not a meaningful way to get consumer consent. This is based on the fact that often consumers will leave the pre-checked boxes checked without necessarily applying their minds on the implications thereof. The same would apply to negative option marketing where a consumer has to decline an offer to supply goods or services failing which the supplier would view such failure as consent for the supply of the goods or services. In terms of Section 31(2) such an offer is void.

Similarly, automatic renewal of contracts is unfair, unlawful and against the spirit of the CPA. However, suppliers are allowed to maintain the new contract on a month to month basis should the consumer fail to indicate in writing whether to renew or cancel the contract at the end of the contract term (Sect 14(2) (d)). In the same token, business has an obligation to inform the consumer no less than 40 days prior to the impending end of the contract, as well as about the new terms or options should the consumer hope to maintain the same contract.

## f) Timing of information i.e. sending the right information at the right time

In most cases, businesses provide information to consumers before a purchase is made, but in the case where a consumer has an ongoing contract with a provider, timely reminders are more effective than relying on information that was provided before the contract was signed. E.g. when a contract is coming to an end, the new pricing options and terms and conditions, new packages offered etc., need to be communicated timeously to allow the consumer to make an informed decision.

## g) Return and Refund policies

Businesses must provide consumers with their "return and refund" policy up front. These policies need to be in simple and understandable language, conspicuous and easily accessible. The CPA in Section 55(2) requires that goods supplied must be suitable for purposes for which they are generally intended, of good quality, in



good working order and free from defects. Should the goods be found to be faulty within six months after delivery to a consumer, the consumer may return the goods back to the supplier, without a penalty, at the supplier's risk and expense and demand that the supplier must at the direction of the consumer, either to:

- ☒ Replace the defective goods
- ☒ Repair, or
- ☒ Refund the price paid for the goods.

## h) Information about the Business

Business engaged in online marketing with consumers should make readily available information about themselves that is sufficient to allow, at a minimum:

- ☒ Full Name and Legal Status
- ☒ In the case of a Legal person, its registered number, names of office bearers, and place of registration;
- ☒ Business contact details (telephone or fax numbers, email address, website or other electronic means of contact);
- ☒ Physical Address where the supplier will receive legal service of documents ;
- ☒ Membership of any self-regulatory body, accreditation; the business should provide contact information for such body;
- ☒ Any code of conduct of such a body to which the supplier subscribes, and how that code of conduct can be accessed by the consumer.

## i) Information about the transaction

Businesses must provide the consumer with a clear full statement of the transaction i.e. price, optional charges imposed, costs imposed by third parties, contract terms and conditions, method of payment, ways to opt out, terms of delivery etc.) Business must also disclose upfront information relating to all the related charges attached, including

- ☒ Customs duties (International transactions)
- ☒ Clearance charges
- ☒ Postage costs etc.

## RIGHT TO FAIR AND HONEST DEALINGS.

TEBOHO & LUCKY

Hey dude, check out this investment, you get R2000 if you invest R150 and get an extra R600 if you bring other people to invest too.

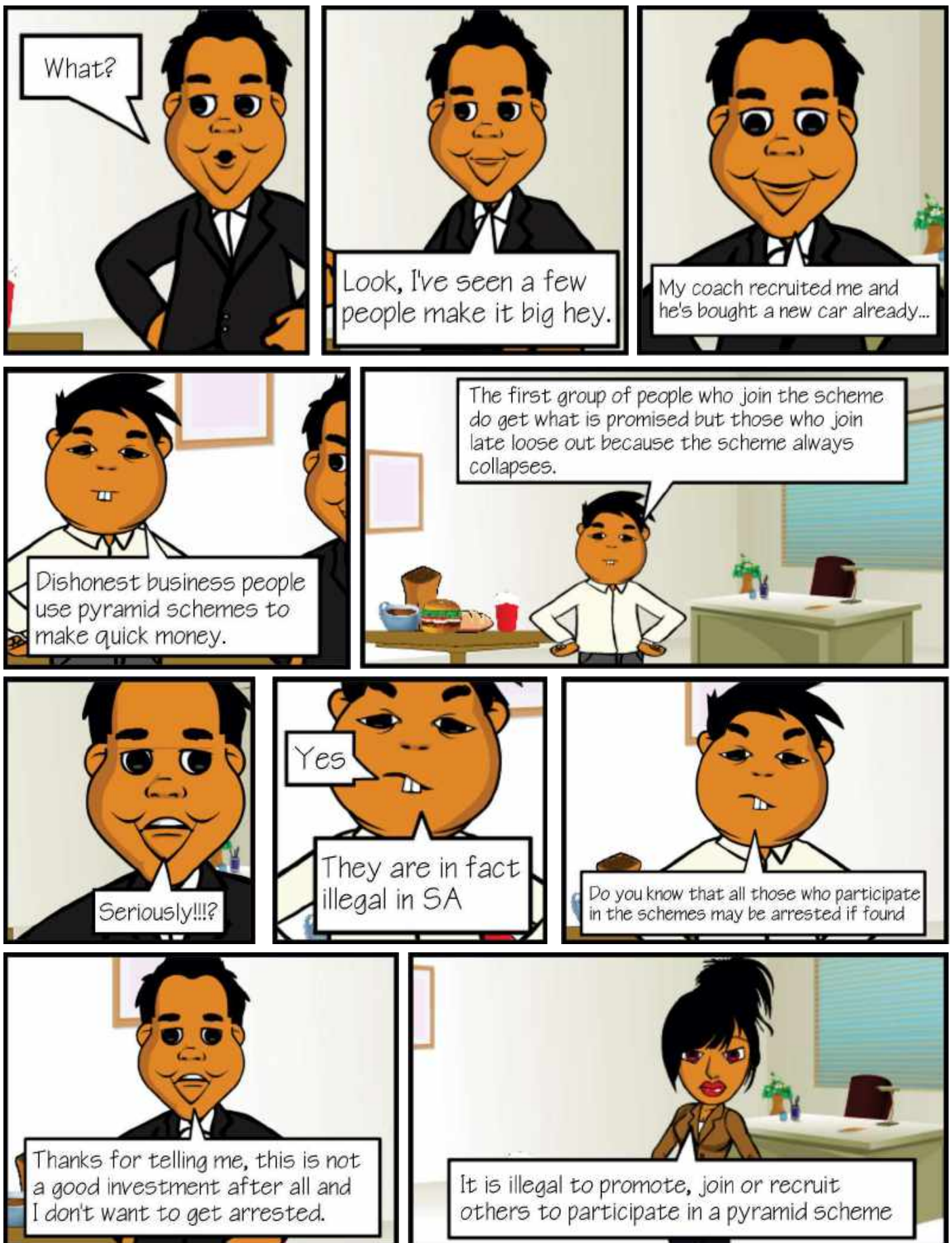
What? Let me see. How? Impossible!!

INVESTMENT

I knew it! It's a pyramid scheme

Do you know that these investment plans of yours are illegal?

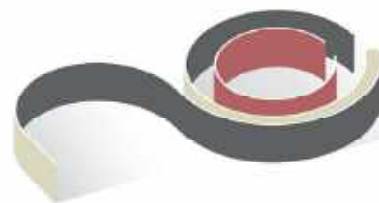
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# NCC NEWS

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## Provincial offices of the consumer protector

Province	Telephone	Website	E-mail address
Eastern Cape	(043) 605 7057 / (040) 498 3050	<a href="http://www.dedea.gov.za">www.dedea.gov.za</a>	<a href="mailto:consumer.protector@dedea.gov.za">consumer.protector@dedea.gov.za</a>
Gauteng	(011) 355- 8006	<a href="http://www.ecodev.gov.za">www.ecodev.gov.za</a>	<a href="mailto:consumer@gauteng.gov.za">consumer@gauteng.gov.za</a>
Mpumalanga	(013) 766 -4952	<a href="http://www.mpg.gov.za">www.mpg.gov.za</a>	<a href="mailto:MNkosi@mpg.gov.za">MNkosi@mpg.gov.za</a>
Limpopo	082 802 4171	<a href="http://www.lededt.gov.za">www.lededt.gov.za</a>	<a href="mailto:findo@ledet.gov.za">findo@ledet.gov.za</a>
North West	(018) 387 -7872 /083 409 -3804	<a href="http://www.nwpg.gov.za">www.nwpg.gov.za</a>	<a href="mailto:rbalepile@nwpg.gov.za">rbalepile@nwpg.gov.za</a>
Free State	(051) 400 -9611	<a href="http://www.detea.fs.gov.za">www.detea.fs.gov.za</a>	<a href="mailto:radikelt@detea.gov.za">radikelt@detea.gov.za</a>
KwaZulu-Natal	(033) 264 -2716 / (033) 264 -2824	<a href="http://www.kznded.gov.za">www.kznded.gov.za</a>	<a href="mailto:Tshepiso.Selepe@kzndedtea.gov.za">Tshepiso.Selepe@kzndedtea.gov.za</a>
Northern Cape	(053) 831 -5562	<a href="http://www.ncpg.gov.za">www.ncpg.gov.za</a>	<a href="mailto:Aleciaph100@yahoo.com">Aleciaph100@yahoo.com</a>
Western Cape	(021) 483 -5133	<a href="http://www.westerncape.gov.za">www.westerncape.gov.za</a>	<a href="mailto:consumer.protector@westerncape.gov.za">consumer.protector@westerncape.gov.za</a>

## Dispute resolution agents / accredited ombud bodies

Province	Telephone	Website	E-mail address
Ombud	Telephone	fax	E-mail address
Motor Industry Ombud of South Africa (MIOSA)	0861 164 672 0861MIOSA	0866 630 141	<a href="mailto:info@miosa.co.za">info@miosa.co.za</a>
Consumer Goods and Services Ombudsman (CGSO)	0860 000 272	0862 061 999	<a href="mailto:info@cgso.org.za">info@cgso.org.za</a>

**Publication:** National Consumer Commission

**Editorial team:**

Phumeza Mlungu  
Keitheng Mothemela  
Nedson Popiwa

Bulelwa Hewu  
Phetho Ntaba  
Sizwe Buthelezi



Physical Address

South African Bureau of Standards Campus  
1 Dr. Lategan Road  
Groenkloof  
Pretoria



Postal address

The National Consumer Commission  
P.O Box 36628  
Menlo park  
0102



Call centre: 012 428 7000

Switchboard: 012 428 7726

E-mail: [complaints@thencc.org.za](mailto:complaints@thencc.org.za)



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