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GENERAL NOTICES

NOTICE 1320 OF 2003

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of investigations made by the Committee pursuant to General Notice 2232 of 2001 as published in Government Gazette No. 22826 dated 9 November 2001 and General Notice 2233 of 2001 as published in Government Gazette No. 22827 dated 9 November 2001, as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

**REPORT IN TERMS OF SECTION 10(1) OF THE CONSUMER AFFAIRS
(UNFAIR BUSINESS PRACTICES) ACT, 1988 (ACT NO 71 OF 1988)**

REPORT NO 103

Investigation in terms of section 8(1) (a) of the Consumer Affairs (Unfair Business Practices) Act, 1988, into the business practices of Jan van Jaarsveldt Management Consultants CC, Mr JWF van Jaarsveldt, Foster Financial Services CC and Mr P S Welgemoed

1. THE CONSUMER AFFAIRS COMMITTEE

The Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act), is administered by the Consumer Affairs Committee (the Committee), a statutory body in the Department of Trade and Industry. The purpose of the Act is to provide for the prohibition or control of certain business practices. An unfair business practice is defined as any business practice which could harm the relationship between businesses and consumers or which will unreasonably prejudice, deceive or unfairly affect consumers.¹

The Act is enabling and not prescriptive. The main body of the Act is devoted to various administrative procedures, the investigative powers of its investigating officials, the types of investigations the Committee can undertake and the powers of the Minister of Trade and Industry (the Minister). The Act confers wide investigative powers on the Committee. There are two types of investigations which the Committee may undertake when examining the business practices of an individual or a particular business namely: an "informal" section 4(1)(c) investigation² or a "formal" section 8(1)(a) investigation³. The usual procedure when the Committee receives a complaint from a consumer, is to undertake a 4(1)(c) investigation. This investigation enables the investigators to make preliminary enquiries in order to establish how the business operates. Notice of a 4(1)(c) investigation is not published in the *Government Gazette* details of the investigation are not made public. However, if the Committee is of the view that there is evidence of an unfair business practice and it decides to investigate the matter further, notice of the 8 (1) (a) investigation is published in the *Government Gazette*.⁴ The Minister is not empowered to make any decisions about the discontinuance of a particular business practice on the strength of a 4(1)(c) investigation. He may do so following an 8(1)(a) investigation.

¹ See section 1 for the definition of an unfair business practice

² These investigations are commonly referred to as 4(1) (c) investigations

³ These investigations are commonly referred to as 8 (1) (a) investigations

⁴ In many instances the Committee is able to resolve the matter and it is not necessary for the matter to proceed to a formal investigation.

The Act does not stipulate that an 8(1)(a) investigation must be preceded by a 4(1)(c) investigation. If the Committee is of the opinion that *prima facie* evidence of an unfair business practice exists, it usually dispenses with the 4(1)(c) investigation.

Should the Committee, after an 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action to the Minister to ensure the discontinuance of that practice.⁵ The Minister's order is published in the *Government Gazette*. An infringement of the order is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both a fine and imprisonment.

2. Events leading to the investigation

An official of a financial institution, who worked as an attorney and a co-ordinator of a consumer affairs desk, approached the Committee regarding the business practices of certain businesses which she believed might be misleading and harmful to consumers. The Committee requested these businesses, including Jan van Jaarsveldt Management Consultants CC (JvJ) and Foster Financial Services CC to explain their business activities.

3. Preliminary investigations

JvJ forwarded certain "background information" to the Committee. One pamphlet read as follows:

"WE INVESTIGATE THE ADMINISTRATION OF ALL MICRO LOANS AND RECLAIM THE AMOUNT THAT YOU HAD PROBABLY OVERPAID OR THAT YOU REPAY THE CORRECT AMOUNT.

To force them to supply us with the necessary requested information, we assist you to suspend the deduction from you(sic) salaries (which is in any case being done in an illegal manner.)"

Attached to the pamphlet was *inter alia* a "power of attorney" and a form which had to be handed to the person responsible for paying the client's salary (paymaster) in order

⁵ The powers of the Minister are set out in section 12