

Part One

Introducing the Grocery Supply Code



Introduction

The new [Grocery Supply Code \(Code\)](#) has come into force, and regulated grocery retailers have until 28 March 2024 to ensure their contracts are Code compliant.

It's important that suppliers are familiar with their rights under the Code. The Grocery Commissioner, Pierre van Heerden, is committed to encouraging more choice, better pricing and better innovation in the market. He has pledged to "pull out the big penalty levers" to give the Code teeth to level the playing field.

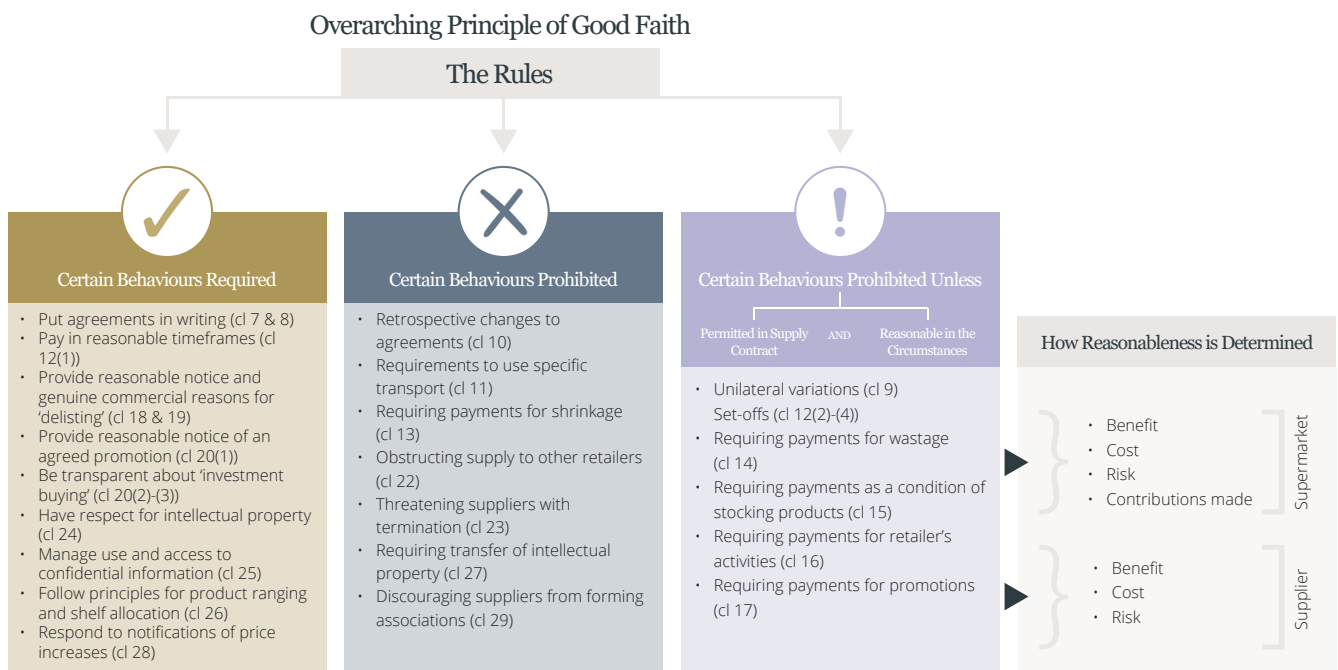
This T|W Insights is the first in a three-part weekly series on the Code, designed to give insights into how the Code will work, and how it can be leveraged to inform commercial discussions.

In this **Part 1**, we look at the structure of the Code, the grocery retailers the Code applies to, and outline what the Code does and does *not* do.

The overarching principle of "good faith" is discussed in **Part 2** and there are some tips to keep in mind when negotiating supply contracts with grocery retailers.

Finally in **Part 3**, we consider what is "reasonable in the circumstances" and how this new Code requirement can be applied in practice.

The Rules of the Grocery Supply Code



The Code sets out the 'rules' for how suppliers and grocery retailers must behave during their commercial dealings with each other. It attempts to level the playing field, but 'hard bargaining' is still needed.

Who must comply with the Code?

All regulated grocery retailers must comply with the Code.

Who is currently a regulated grocery retailer	Who is not currently a regulated grocery retailer
<ul style="list-style-type: none"> • Foodstuffs North Island * 	<ul style="list-style-type: none"> • The Warehouse
<ul style="list-style-type: none"> • Foodstuffs South Island Limited * 	<ul style="list-style-type: none"> • Costco
<ul style="list-style-type: none"> • Woolworths New Zealand Limited * 	<ul style="list-style-type: none"> • Petrol stations
	<ul style="list-style-type: none"> • Dairies

* Including any person that is an “interconnected body corporate”, successor, franchisee or transacting shareholder of Foodstuffs or Woolworths.

What the Code does and does not do

What the Code does	The Code does not
<ul style="list-style-type: none"> ✓ Sets a broad ‘principles based’ expectation of how grocery retailers should behave. 	<ul style="list-style-type: none"> ✗ Replace the need for a written contract with the grocery retailer.
<ul style="list-style-type: none"> ✓ Requires grocery retailers to act in “good faith”. 	<ul style="list-style-type: none"> ✗ Require the outcome to be “fair”.
<ul style="list-style-type: none"> ✓ Requires grocery retailers to show that certain conduct is “reasonable in the circumstances” before the conduct is exercised, even if the conduct is permitted under the supply contract. 	<ul style="list-style-type: none"> ✗ Take away the need for suppliers to provide clear and reasonable explanations for their commercial position.
<ul style="list-style-type: none"> ✓ Prohibits certain conduct by grocery retailers, eg stopping suppliers from supplying a competitor retailer, or making threats to terminate the supply contract. 	<ul style="list-style-type: none"> ✗ Remove the need for suppliers to comply with the law when dealing with grocery retailers (ie competition law still applies).
<ul style="list-style-type: none"> ✓ Imposes a monetary penalty against grocery retailers for breaches of the Code. * 	<ul style="list-style-type: none"> ✗ Negate suppliers’ rights and remedies under the terms of their supply contract and at law.
<ul style="list-style-type: none"> ✓ Gives suppliers escalation options if there are disputes with grocery retailers. ** 	<ul style="list-style-type: none"> ✗ Take away suppliers’ ability to enforce their contractual rights against the grocery retailer, or their ability to utilise the dispute resolution mechanism under the supply contract.

* For an individual, a maximum of \$200,000. In any other case, the greater of \$3 million or the commercial gain, or if commercial gain cannot be easily established, 3% of turnover of the grocery retailer.

** Negotiate with the grocery retailer; Refer the dispute to the dispute resolution scheme; Any other dispute resolution process provided in the supply contract; Complain to the Grocery Commissioner; Issue court proceedings.

Remember:

In addition to the Code:

1. Suppliers still have all their contractual rights and remedies under their supply contracts with the grocery retailer, and the ability to enforce those in the event of a breach.
2. Suppliers may have recourse under the Fair Trading Act 1986 if they consider that:
 - a. the supermarket's 'standard form' grocery supply contract breaches the unfair contract terms regime,
 - b. the grocery retailer has acted unconscionably in trade, or
 - c. the grocery retailer has made false or misleading representations in the course of its commercial dealings with suppliers.

Next week in **Part 2** we will examine how the principle of "good faith" underpins all behaviour set out in the Code and how it can be leveraged in commercial negotiations.

Contacts

If you have questions about the Code or would like more information, please contact one of our experts:



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