

CONSUMER PROTECTION BILL

Bill No. 2 of 2014

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The following Bill which is set out for introduction into the National Assembly is published for general information.

THE CONSUMER PROTECTION BILL (No. II of 2014)

Explanatory Memorandum

The overall objective of this Bill is to promote and safeguard the economic and social welfare of consumers by establishing a legal framework for the achievement and maintenance of a consumer market which is accessible, fair, efficient, responsible and sustainable for the benefit of consumers generally, and which provides adequate protection to consumers.

2. The Bill, *inter alia*, provides for —

- (a) the protection of consumers from discriminatory practices;
- (b) the setting up of a National Consumer Council whose main objective shall be to promote and protect consumer rights;
- (c) the repeal of the Consumer Protection Act and the Fair Trading Act and the inclusion, in an improved form, of the provisions of those Acts;
- (d) a framework whereby a registered association or the supervising officer may institute civil proceedings on behalf of a consumer;
- (e) a system of fixed penalty with respect to contravention of specified offences under

certain consumer protection laws,

- (f) the supervising officer to issue prohibition or enforcement notices where this Act is being, or is likely to be, contravened,
- (g) the Minister to issue recall notices where goods do not comply with safety standards;
- (h) the setting up of a Consumer Protection Tribunal with a view to securing expeditious justice for consumers and traders,
- (i) authorised officers to swear an information and conduct prosecutions before the District and Intermediate Courts in connection with breaches of certain consumer protection laws;
- (j) authorised officers to be vested with enhanced and wider powers of investigation, search and seizure;
- (k) the prohibition on traders to charge unfair prices, or engage in unconscionable and other prohibited conducts or activities;
- (l) the liability of manufacturers with respect to express warranties;
- (m) terms to be implied in consumer agreements for the supply of goods and services, and the remedies in connection with breaches~ thereof~
- (n) the prohibition against unfair terms in consumer agreements, and related matters.

04 April 2014

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*Minister of Industry, Commerce
and Consumer Protection*

THE CONSUMER PROTECTION BILL
(No. II of 2014)

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A BILL

To consolidate and widen the scope of consumer protection legislation so as to make better provision for the promotion and protection of consumer rights and welfare, and for related matters

ENACTED by the Parliament of Mauritius, as follows —

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Consumer Protection Act 2014.

2. Interpretation

In this Act —

“authorised officer” means an officer designated under section 14;

“certificate of identification” means a certificate referred to in section 17;

“Certificate of Warranty” means a certificate issued under section 39;

“Chairperson” means the Chairperson of the Tribunal;

“civil suit” means a civil suit arising out of, or in connection with, a consumer agreement;

“commercial practice” includes —

(a) any practice in connection with the production of goods or the supply of goods or services, whether by way of sale, advertisement, marketing or otherwise, which relates to —

(i) the terms and conditions, as to price or otherwise, on or subject to which

goods or services are supplied;

- (ii) the manner in which those terms and conditions are communicated to consumers;
- (iii) the methods of promotion of the supply of goods or services;
- (iv) the methods of salesmanship employed in dealing with consumers;
- (v) the way in which goods are packed, bottled, canned, labelled, marked or otherwise prepared for the purpose of being supplied;
- (vi) the methods of demanding or securing payment for goods or services supplied; or
- (vii) anything connected with the matters specified in subparagraphs (i) to (vi);

(b) such other practice as may be prescribed;

“consumer” —

- (a) means a person to whom goods or services are, or are to be, supplied; and
- (b) includes a customer; but
- (c) does not include a person who —
 - (i) obtains goods for resale or for any other commercial purpose; or
 - (ii) benefits from services for a commercial purpose;

“consumer agreement” —

(a) means an agreement between a trader and a consumer for the supply of goods or

services; and

(b) includes a credit sale agreement or a hire purchase agreement;

“consumer protection law” includes —

(a) the Consumer Protection (Price and Supplies Control) Act; and

(b) the Hire Purchase and Credit Sale Act;

“Council” means the National Consumer Council referred to in section 4;

“credit sale agreement” has the same meaning as in the Hire Purchase and Credit Sale Act;

“customer” means a person who may potentially purchase goods or services from a trader;

“defect”, in relation to goods, includes —

(a) any fault or malfunction which has not arisen —

(i) due to reasonable wear and tear through usage or the passage of time; or

(ii) from the reasonable and proper use of the goods;

(b) non-compliance with a safety standard; or

(c) where no safety standard has been prescribed, breach of a reasonable standard of safety;

“distance selling” means an agreement concluded between a trader and a consumer under an organised distance sales or services provision scheme run by the trader who, for the purposes of the agreement, makes use of one or more means of distance communication up to, and including, the moment the agreement is made;

“drug” has the same meaning as in the Pharmacy Act;

“enforcement notice” means a notice referred to in section 50;

“export” and “import” have the same meaning as in the Excise Act;

“express warranty”, in relation to any goods, means any undertaking, assertion or representation with regard to —

- (a) the quality, performance or characteristics of any goods other than food;
- (b) the provision of services that are or may at any time be required in respect of the goods;
- (c) the supply of parts that are or may at any time be required for the goods;
- (d) the future availability of identical goods, or of goods constituting or forming part of a set of the goods in relation to which the undertaking, assertion or representation is given; or
- (e) the return of money or other consideration, should the goods not meet any undertaking by the guarantor, given or made in connection with the supply of the goods or in connection with the promotion by any means of the supply or use of the goods;

“food” has the same meaning as in the Food Act;

“Fund” means the Consumer Welfare Fund established under section 13;

“goods” —

- (a) means a tangible item or article which is the subject of trade or business; and
- (b) for the purposes of—

(i) section 23 and Sub-part D of Part IV, does not include —

(A) crops or things comprised in land by virtue of being attached to it;

(B) water, food, animal feed, pesticides or chemical fertilisers;

(C) aircraft;

(D) drugs or medicine;

(E) tobacco;

(F) goods intended exclusively for export; and

(G) such other goods as may be prescribed;

(ii) Parts VI and VII, does not include —

(A) the goods specified in subparagraph (i); and

(B) second-hand goods;

“hire purchase agreement” has the same meaning as in the Hire Purchase and Credit Sale Act;

“identity card” has the same meaning as in the National Identity Card Act;

“information” includes accounts, estimates, returns, registers, records and documents;

“manufacturer” —

(a) means any person who —

(i) manufactures, assembles or processes goods; or

(ii) attaches his brand name to goods that are manufactured, assembled or

processed by another person; and

- (b) includes, in the case of imported goods, the manufacturer's representative or, in his absence, the importer;

"mark" has the same meaning as in the Patents, Industrial Designs and Trademarks Act;

"material standard" means an information standard set in accordance with section 21;

"medicine" has the same meaning as in the Pharmacy Act;

"member" —

- (a) means a member of the Tribunal, or as the case may be, the Council; and

- (b) includes the Chairperson or the Vice-chairperson;

"Minister" means the Minister to whom responsibility for the subject of consumer protection is assigned;

"NIC Number" has the same meaning as in the Civil Status Act; "passport" has the same meaning as in the Passports Act;

"prize competition" means a lottery referred to in Part XVII of the Gambling Regulatory Authority Act;

"prohibition notice" means a notice referred to in section 50;

"promotion", in relation to the supply of goods or services, means promotion by way of advertising, canvassing, exhibiting, labelling, organising of prize competitions or otherwise;

"pyramid promotional scheme" means a scheme by which a person gives consideration in money or money's worth, or makes a gift in money or money's worth, for an opportunity to receive compensation derived primarily from the introduction of other persons to the scheme

rather than from the supply or consumption of goods;

“recall notice” means a notice issued under section 24;

“record” includes any book, document or record in non-documentary form;

“referral selling” means inducing a person to acquire goods or services by representing that the person will, after an agreement for the acquisition is made, receive a rebate, commission, or other benefit in return for giving the person making the representation the names of prospective consumers or otherwise assisting that person to supply goods or services to other users or consumers, where receipt of the rebate, commission, or other benefit is contingent on an event occurring after the agreement is made;

“registered association” means an association, comprising such number of members as may be prescribed, registered under the Registrar of Associations Act, the objects of which include the promotion and protection of consumer rights and welfare;

“safety standard” means —

- (a) a standard which has been prescribed in relation to the safety of goods; or
- (b) where no such standard has been prescribed, a reasonable standard of safety with respect to the goods;

“services” —

- (a) subject to paragraph (b), does not include the services specified in the First Schedule;
- (b) in Part IV, includes the services so specified; “supervising officer” means the supervising officer of the Ministry;

“supply” —

- (a) includes an offer to supply; and
- (b) in relation to goods, includes —
 - (i) the supply or resupply by way of sale, trade, distribution, exchange, lease, credit sale agreement, hire or hire purchase agreement; and
 - (ii) the giving of goods as a prize or gift;

“tobacco” includes —

- (a) any tobacco or tobacco product within the meaning of the National Agricultural Products Regulatory Office Act 2013; and
- (b) any article or substance containing tobacco and intended for oral or nasal use;

“trade” includes —

- (a) the manufacture, production, distribution, sale, supply, transfer, import, export, use or other dealing in goods; and
- (b) the supply of services;

“trader” —

- (a) means a person engaged in a trade; and
- (b) includes the agent of any such person;

“Tribunal” means the Consumer Protection Tribunal established under section 8;

“unsolicited goods” means goods delivered by a trader to a person with a view to the person acquiring them, but where the person has no reasonable cause to believe that they were delivered for legitimate business and had not previously agreed to acquire them;

“unsolicited services” means services supplied by a trader to a person with a view to the person making use of them, but where the person has no reasonable cause to believe that they were supplied for legitimate business and had not previously agreed for them to be supplied;

“Vice-chairperson” means the Vice-chairperson of the Tribunal.

3. Application of Act

(1) This Act shall, unless otherwise provided for, be in addition to, and not in derogation from, any right, obligation, duty or remedy which a trader or a consumer may have under any other enactment.

(2) The liability of a person to another person who has suffered prejudice caused wholly or partly, directly or indirectly, by a defect in any goods or any other non-compliance with this Act shall not be limited or excluded by any term or condition of a consumer agreement.

PART II- CONSUMER PROTECTION INSTITUTIONS

4. National Consumer Council

There shall be a National Consumer Council, the objects of which shall be to promote and protect consumer rights and welfare.

5. Functions of Council

The Council shall —

- (a) encourage, by the formation of associations or otherwise, consumer participation in decision-making processes concerning the marketplace and the interests of consumers;
- (b) advise the Minister on research to be conducted on consumer related issues;
- (c) formulate and submit to the Minister policy and legislative proposals in the interest

of consumers;

- (d) advise the Minister on consumer education and information programmes and activities;
- (e) promote the setting up of associations intended to be involved in the promotion and protection of consumer rights;
- (f) submit to the Minister an annual report on its activities; and
- (g) exercise such other functions as may be conferred upon it under this Act or any other enactment.

6. Constitution of Council

(1) The Council shall consist of—

- (a) a Chairperson;
- (b) a representative of the Ministry;
- (c) a representative of the Ministry responsible for the subject of commerce;
- (d) a representative of the Ministry responsible for the subject of quality of life;
- (e) 3 representatives of non-governmental organisations involved in the field of consumer protection;
- (f) 3 representatives of business organisations; and
- (g) 2 representatives of the civil society to represent the interests of consumers.

(2) The members of the Council referred to in subsection (1)(a), (e), (f) and (g) shall be appointed by the Minister on such terms and conditions, and be paid such allowance, as the

Minister may determine.

7. Meetings of Council

(1) (a) The Council shall meet as often as is necessary and at least once every 2 months at such time and place as the Chairperson shall determine.

(b) The Chairperson shall, within 15 days of receipt of a request signed by not less than 5 members, convene a meeting of the Council.

(2) (a) In the absence of the Chairperson at a meeting of the Council, the members present shall elect a member to chair the meeting.

(b) At a meeting of the Council, 7 members shall constitute a quorum.

(3) (a) Where the Council is satisfied that a person's experience or qualifications are likely to assist the Council with regard to a specific matter, it may co-opt that person to attend a meeting dealing with that matter.

(b) A person co-opted under paragraph (a) may take part in the Council's proceedings in relation to that specific matter but shall have no right to vote.

(c) A person co-opted under paragraph (a) shall be paid such allowance as the Minister may determine.

(4) Subject to this section, the Council shall regulate its proceedings in such manner as it thinks fit.

8. Establishment of Consumer Protection Tribunal

(1) There is established for the purposes of this Act a Tribunal to be known as the Consumer Protection Tribunal which shall consist of —

(a) a Chairperson, who shall be a barrister of not less than 10 years' standing, appointed by the Public Service Commission;

- (b). one or more Vice-chairpersons, who shall be a barrister or barristers of not less than 5 years' standing, appointed by the Public Service Commission;
- (c) such other members having wide experience in consumer protection matters, who are not —
 - (i) public officers of the Ministry;
 - (ii) members of, or candidates for election to, the Assembly, the Rodrigues Regional Assembly or a local authority, or persons otherwise actively engaged in politics.

(2) The Chairperson and a Vice-chairperson may, where appropriate, be called upon by the Public Service Commission to act as Chairperson or Vice-chairperson of any tribunal established under any other enactment and to which appointment is made by the Public Service Commission.

(3) The members referred to in subsection (1)(c) shall -

- (a) be appointed by the Minister, on a full-time or ad hoc basis and for such period as he considers necessary;
- (b) be paid an all-inclusive allowance, subject to the approval of the Minister to whom responsibility for the subject of finance is assigned; and
- (c) be under the administrative control of the Chairperson.

(4) Where the subject matter of a civil suit relates to a technical field, the Minister may, on the recommendation of the Chairperson, enlist the services of a suitable expert in the field, to act as member of the Tribunal on an ad hoc basis for such period as he considers necessary.

(5) (a) The Tribunal shall sit in one or more divisions.

(b) A division shall consist of the Chairperson, or a Vice-chairperson, and 2 other

members selected by the Chairperson.

(c) A division may be set up on a temporary basis for a period not exceeding one year where there is a backlog of cases before the Tribunal and such division shall be chaired by a Senior District Magistrate, who shall be designated by the Chief Justice, to act as Vice-chairperson of the Tribunal during that period.

(d) Any decision of a division of the Tribunal shall be considered to be the decision of the Tribunal.

(6) (a) There shall be a Secretary to the Tribunal who shall be appointed by the Public Service Commission and who shall be responsible for —

- (i) keeping a record of the proceedings of the Tribunal;
- (ii) keeping in safe custody the papers and documents of the Tribunal;
- (iii) issuing summonses and recording statements of witnesses called before the Tribunal; and
- (iv) performing such other duties as the Tribunal may require.

(b) The Secretary to Cabinet and Head of the Civil Service may, at the request of the Chairperson, designate such public officers as may be necessary to enable the Tribunal to discharge its functions under this Act.

(c) The Secretary and public officers referred to in this subsection shall be under the administrative control of the Chairperson.

(7) For the proper discharge of the functions of the Tribunal, the Master and Registrar shall designate such number of ushers as, in the opinion of the Chairperson, are required for that purpose.

9. Jurisdiction and powers of Tribunal

(1) The Tribunal shall —

(a) hear and determine any civil suit;

(b) exercise such other jurisdiction as may be prescribed.

(2) Subject to subsection (3), the Tribunal shall have power to make orders in the same manner as a District Court.

(3) The Chairperson or, in his absence, the Vice-chairperson, may, in respect of any matter which is due to be heard by the Tribunal, on application made to him by a party, sit alone for the purpose of making such orders, including an order in the nature of an injunction, as he thinks fit, where he is of opinion that, for reasons of urgency and the likelihood of undue prejudice, it is necessary to do so pending the hearing of the matter.

10. Proceedings before Tribunal

(1) A trader, a consumer, the supervising officer, a registered association, or such other person as may be prescribed, may lodge a civil suit before the Tribunal.

(2) Subject to this Act, a civil suit shall be lodged in such form and manner as the Tribunal may determine.

(3) (a) Subject to this Act and to any rules made under section 11, the Tribunal shall regulate the manner in which proceedings shall take place before it.

(b) The proceedings of the Tribunal shall be conducted, as far as possible, in accordance with the procedural and evidential rules pertaining to a District Court.

(c) A determination of a division shall, unless all the persons constituting a division are agreed, be that of the majority.

(4) (a) Where a civil suit is lodged under subsection (1), the Chairperson shall refer the matter to a division for hearing and a determination.

(b) A division shall sit at such time and place as the Chairperson may determine.

(c) Where a division adjourns any proceedings, it shall resume them at such place and time as the Chairperson or the Vice-chairperson, as the case may be, may determine.

(5) Any proceedings of a division shall —

(a) be held in public;

(b) be conducted with as little formality and technicality as possible; and

(c) not preclude an endeavour by the Tribunal to effect an amicable settlement between the parties.

(6) Any proceedings ancillary to a civil suit before the Tribunal shall be initiated by way of proceipe and affidavit.

(7) A party before the Tribunal may—

(a) be represented —

(i) by a barrister or an attorney; or

(ii) where a civil suit has been lodged under section 58, by the supervising officer or such officer of the Ministry as he may designate; or

(b) with the leave of the Tribunal, be assisted by a person having expertise in consumer protection matters.

(8) The Tribunal —

(a) may make such orders for requiring the attendance of any person or the production of any article or document as it thinks necessary or expedient; and

(b) shall take evidence on oath and, for that purpose, administer an oath.

(9) The Tribunal shall make a determination not later than 90 days after the start of the hearing of the civil suit, except where there is a valid reason, or with the consent of the parties.

(10) (a) The Tribunal may make such orders as it thinks fit as to the costs payable by any party to its proceedings.

(b) Any judgment, order or determination of the Tribunal shall be enforced in the same manner as any such judgment, order or determination of a District Court.

11. Rules

(1) The Tribunal may make such rules for the purpose of the institution and hearing of civil suits before the Tribunal as it thinks fit.

(2) Any rules made under subsection (1) may provide for the taking of fees or the levying of charges.

12. Appeal to Supreme Court

(1) (a) Any party who is dissatisfied with a final decision of the Tribunal may appeal to the Supreme Court.

(b) Any party wishing to appeal under paragraph (a) shall, within 21 days of the date of the final decision of the Tribunal, give notice in writing of such appeal to the Secretary and lodge his appeal in the Registry of the Supreme Court.

(2) An appeal under this section shall be prosecuted in the manner provided for in respect of an appeal from the final judgment of a District Court in civil matters.

13. Consumer Welfare Fund

(1) There is established for the purposes of this Act a Fund which shall be known as the Consumer Welfare Fund.

(2) The Fund shall be a body corporate.

(3) The objects of the Fund shall be to -

(a) manage the financial and other resources of the Fund;

(b) set up and operate schemes and projects for the welfare of consumers;

(c) do all such things as appear to be necessary and conducive to —

(i) the promotion of the welfare of consumers; and

(ii) the empowerment of organisations involved in the field of consumer protection.

(4) The Minister may make such regulations as he thinks fit for the purposes of the administration, management, organisation, functions and powers of the Fund.

PART III - POWERS OF AUTHORISED OFFICERS

14. Authorised officers

(1) The supervising officer may designate such number of public officers as may be required to be authorised officers for the purpose of ensuring compliance with this Act or any other consumer protection law.

(2) An authorised officer may conduct an enquiry, swear an information and conduct a prosecution before a District Court or the Intermediate Court in respect of an offence under this Act or any other consumer protection law.

(3) (a) For the purposes of an enquiry, an authorised officer may require any person to furnish such information as he may require for the purpose of ensuring compliance with this Act.

(b) For the purposes of paragraph (a), the authorised officer shall serve a notice on the person and may require that the information be furnished within a specified time.

(4) (a) An authorised officer who has direct or indirect interest in a matter arising out of the performance of any of his functions under this Act shall forthwith, or as soon as is practicable after the relevant facts have come to his knowledge —

- (i) disclose in writing the nature of his interest to the supervising officer; and
- (ii) cease to perform any such functions pending the determination of the supervising officer under paragraph (b).

(b) The supervising officer shall, on being informed by an authorised officer of his interest under paragraph (a), and having regard to all relevant circumstances, determine whether or not the officer may continue to perform his functions.

15. Search and seizure

(1) Where a Magistrate, on information on oath, is satisfied that there is reasonable ground to believe that there are, on any premises, any goods, information or other article —

- (a) obtained by means of an offence under this Act or any other consumer protection law; or
- (b) used or likely to be used in the commission of an offence under this Act or any other consumer protection law,

he may issue a warrant authorising an authorised officer to enter and search the premises and —

- (i) seize any such goods, information or article;
- (ii) take a sample of the goods or article; and

(iii) make a copy of, or take an extract of, the information.

(2) An authorised officer may, in the exercise of his powers under this section, use reasonable force to —

(a) enter any premises; and

(b) remove any obstruction to entry, search or seizure.

(3) An authorised officer may, without warrant —

(a) enter any premises used for the purpose of a trade at any time when the premises are open for the purpose of such trade;

(b) seize any goods, document or other article which he has reasonable ground to believe may be the subject matter of an offence under this Act or any other consumer protection law; and

(c) detain the article —

(i) for so long as is necessary for the purpose of an enquiry into an offence under this Act or any other consumer protection law; or

(ii) where necessary, for its production in Court in criminal proceedings.

(4) Where, by reason of its nature, size or amount, it is not practicable to remove any article seized under this section, an authorised officer may seal the article on the premises where it is found.

(5) Where any article seized under this section is of a perishable nature, the supervising officer may, in such manner as he considers appropriate, authorise the sale of the article and cause the proceeds of the sale to be deposited with the Accountant-General.

(6) Where a person charged with an offence is convicted, the Court may order the forfeiture of any —

(a) article seized under this section; or

(b) sum deposited under subsection (5).

(7) Where a Court dismisses the charge against the owner of any article seized under this section, it shall order —

(a) the return of the article to the owner; or

(b) the refund of any sum deposited under subsection (5) with interest at the legal rate from the date of the seizure to the date of the refund.

16. Test purchases

Notwithstanding any other enactment, an authorised officer may, with the written authorisation of the supervising officer, for purposes of analysis or control, purchase any goods or other article that may be required for the purpose of determining whether or not this Act, or any other consumer protection law, is being or has been complied with.

17. Identification of certain persons

(1) Any person who —

(a) is engaged in trading at the premises of another person;

(b) performs any service for a consumer at the premises of the consumer;

(c) delivers goods to, or installs goods for, a consumer at the premises of the consumer; or

(d) trades as a hawker,

shall, on demand by an authorised officer, produce his identity card or passport, and any

document acceptable to the authorised officer showing the business in which he is involved.

(2) Where a person referred to in subsection (1) is employed by another person, he shall, on demand, produce to an authorised officer a certificate of identification in the form set out in the Second Schedule, issued by his employer.

PART IV - CONSUMER PROTECTION

Sub-Part A — Consumer Education

18. Consumer education

(1) The Ministry shall promote and support the dissemination of consumer education through consumer education programmes.

(2) Consumer education programmes may include —

- (a) supporting activities for training and informing consumers both at formal and informal levels;
- (b) allowing or enabling consumer groups to disseminate or broadcast material on consumer issues;
- (c) supporting the media in publishing, broadcasting and disseminating consumer material and providing them with the necessary skills, funds, equipment and facilities; and
- (d) facilitating the development and dissemination of special programmes for the benefit of illiterate, physically and mentally disabled and disadvantaged groups.

(3) Consumer education programmes shall deal with matters covered by this Act and any other consumer protection law, including —

- (a) the rights and responsibilities of consumers;

- (b) the safety of goods and hazards associated with them;
- (c) the labelling of goods;
- (d) material on weights and measures, prices and quality, availability of basic necessities, and environmental pollution;
- (e) the mechanisms available to a consumer to obtain redress; and
- (f) the role of registered associations and other agencies dealing with consumer protection.

Sub-Part B — Prohibition of Discriminatory Practices

19. Discriminatory practices

A trader shall not, without reasonable cause —

- (a) exclude a consumer from accessing goods or services offered by him;
- (b) grant to a consumer exclusive access to goods or services offered by him;
- (c) assign priority of supply of goods or services offered by him to a consumer;
- (d) supply a different quality of goods or services to a consumer;
- (e) target a consumer for exclusive, priority or preferential supply of goods or services;
or
- (f) directly or indirectly treat a consumer differently from any other when —
 - (i) assessing the ability of the consumer to pay the cost, or otherwise meet the obligations, of a proposed consumer agreement;

- (ii) deciding whether to enter into a consumer agreement, or to offer to enter into an agreement;
- (iii) determining any aspect of the cost of a consumer agreement to a consumer;
- (iv) interacting with a consumer in the course of —
 - (A) displaying or demonstrating any goods;
 - (B) testing or fitting any goods; or
 - (C) negotiating the terms of a consumer agreement;
- (v) selecting, preparing, packaging or delivering any goods to a consumer, or providing any services to a consumer;
- (vi) proposing or agreeing the terms and conditions of a consumer agreement;
- (vii) assessing or requiring compliance by a consumer with the terms of a consumer agreement;
- (viii) exercising any of his rights under a consumer agreement in terms of this Act or any other consumer protection law;
- (ix) determining whether to continue, enforce or seek judgment in respect of, or terminate, a consumer agreement;
- (x) determining whether to lodge a civil suit before the Tribunal; or
- (xi) determining whether to disclose, or disclosing, any personal information concerning the consumer.

Sub-Part C — Standards

20. Consumer material -

- (1) Every trader shall —
 - (a) provide consumers with true, sufficient, clear and timely material in relation to goods and services to enable them to make a proper and reasonable choice; and
 - (b) where material standards have been set in relation to goods or services, provide the material in accordance with those standards.
- (2) Subject to any other enactment —
 - (a) where a trader has entered into a consumer agreement in respect of goods or services specified in the Third Schedule, he shall provide the consumer with a document, printed in indelible ink and in the appropriate font size, witnessing the agreement and containing —
 - (i) the terms and conditions of the agreement; and
 - (ii) the name, address and contact details of the trader;
 - (b) any labelling or other writing on goods supplied by a trader to a consumer shall —
 - (i) be legible and of the appropriate font size; and
 - (ii) contain appropriate translation in English or French, where the label or writing is not in English or French; and
 - (c) a trader shall affix the price of goods or services which shall include any duty, tax, charge, fee or levy.

(3) (a) Where goods are not delivered immediately on a consumer agreement being entered into, the trader shall, in the document witnessing the transaction, specify the date and place of delivery.

(b) The trader shall deliver the goods referred to in paragraph (a) at the date and place specified in accordance with that paragraph, unless both the trader and the consumer agree that the date and place of delivery are to be varied, in which case the trader shall comply with the varied date and place of delivery.

(c) A trader shall not be required to comply with paragraphs (a) and (b) where the consumer fails to make the necessary arrangements to accept delivery of the goods in accordance with those paragraphs.

(d) The consumer may refuse to accept the goods where the trader fails to comply with paragraph (a) or (b).

(e) Where the consumer elects to refuse to accept the goods, the trader shall forthwith refund to the consumer any sum already paid by the consumer to the trader in connection with the agreement.

21. Material standard

(1) The Minister may, by notice published in the *Gazette*, set a material standard with respect to goods or services.

(2) A material standard for goods or services may —

(a) provide for the content of material relating to the goods or services;

(b) require the provision of specific material about goods or services;

(c) provide for the manner or form in which the material is to be provided;

(d) provide that material of a specific kind is not to be provided about goods or

services; and

- (e) assign a meaning to specific material about goods or services.

22. Non-compliance with material standard

(1) Subject to subsection (2), no person shall import, manufacture or supply any goods or services or offer to do so, unless the appropriate material standard relating to those goods or services is complied with.

(2) Subsection (1) shall not apply to —

- (a) a manufacturer or importer of goods, or a person offering to supply or supplying goods intended to be used outside Mauritius;
- (b) a manufacturer or importer of goods, if he proves that the goods were not intended to be supplied.

(3) Where a trader supplies goods or services in breach of subsection (1) and another person suffers prejudice as a result of the breach, the trader shall be liable to compensate that person accordingly.

23. Other standards

(1) The Minister may prescribe —

- (a) standards, other than safety standards, of any goods; or
- (b) safety standards of goods.

(2) Standards prescribed under subsection (1) may, in particular, provide for —

- (a) the composition, design, construction, finish or packing of goods;

- (b) the giving, refusing, alteration, cancellation or approval of goods;
- (c) the prohibition from supplying goods to which this section applies, including their components and raw materials;
- (d) standards to be applied in carrying out any test or inspection of goods; and
- (e) requiring a mark, warning or instruction to be put on or to accompany goods.

(3) Where no safety standards have been prescribed under subsection (1), the goods or services supplied shall be of a reasonable standard of safety, having regard to —

- (a) the nature of the goods;
- (b) the manner in which, and the purpose for which, the goods are being or will be marketed;
- (c) the use of any brand name or mark in relation to the goods; and
- (d) instructions or warnings in respect of the keeping, use or consumption of the goods.

(4) No person shall supply, or advertise for supply, any goods which do not comply with a safety standard or any other prescribed standard, or are not reasonably safe.

Sub-Part D — Recall of Goods

24. Compulsory recall

(1) The Minister may, by written notice, issue a recall notice for goods which a trader offers or proposes to supply, where —

- (a) it appears to the Minister that the goods may cause injury to any person or that a reasonably foreseeable use or misuse of the goods may cause injury to

any person; or

(b) the goods do not comply with safety standards.

(2) A recall notice shall be published in 2 daily newspapers having wide circulation.

(3) A recall notice may require a trader to —

(a) cease to offer or propose to supply the goods;

(b) disclose to the public, or to a class of persons specified in the notice —

(i) the nature of a defect in, or a dangerous characteristic of, the goods identified in the notice; and

(ii) the circumstances identified in the notice in which a reasonably foreseeable use or misuse of the goods may be dangerous;

(c) inform the public, or a class of persons specified in the notice, that he undertakes to —

(i) repair the goods;

(ii) replace the goods; or

(iii) refund to a consumer to whom the goods were supplied the price of the goods;

(d) destroy the goods; or

(e) take such other action as the circumstances may require.

25. Obligations of trader in relation to recall notice

(1) A trader who has supplied goods which are the subject of a recall notice shall —

(a) at his expense, repair them within a reasonable time unless —

(i) the goods are not capable of being repaired;

(ii) the recall notice has specified a time for the repair; or

(iii) the recall notice requires the destruction of the goods;

(b) at his expense, replace the goods by similar goods; or

(c) forthwith refund —

(i) where the goods were not the subject matter of a hire purchase agreement or a credit sale agreement, the price at which the goods were sold to the consumer; or

(ii) where the goods were the subject matter of a hire purchase agreement or a credit sale agreement, all payments previously made by the consumer in pursuance of the agreement.

(2) Where a trader elects to repair goods under subsection (1)(a), he shall cause the goods to be repaired so that —

(a) any defect in the goods identified in the recall notice is remedied; and

(b) the goods comply with the appropriate safety standard.

(3) Where a trader elects to replace goods under subsection (1)(b) —

(a) the replacement goods shall —

- (i) be considered to be new goods for all intents and purposes;
 - (ii) not contain any defect or dangerous characteristic, whether identified in the recall notice or not;
 - (iii) comply with the appropriate safety standard;
- (b) the terms and conditions of the consumer agreement of which the initial goods were the subject matter, shall apply, *mutatis mutandis*, to the replacement goods; and
- (c) any hire purchase agreement or credit sale agreement, of which the initial goods were the subject matter, shall continue to apply to the replacement goods.

26. Voluntary notification for recall of goods

- (1) Where a trader has reasonable ground to believe that any goods supplied by him —
- (a) do not comply with the appropriate safety standard;
 - (b) will or may cause injury to any other person; or
 - (c) may, despite their reasonably foreseeable use or misuse by any person, cause injury to any other person,

he shall forthwith notify the Minister in writing to that effect.

(2) On receipt of a notification under subsection (1), the Minister may issue a recall notice in respect of the goods.

Sub-Part E — Prohibitions and Unfairness

27. Prohibited goods

(1) The Minister may prescribe goods which shall be prohibited goods.

(2) Notwithstanding any other enactment, no person shall import, sell, offer to supply, supply, advertise or otherwise deal in prohibited goods.

28. Prohibited terms and conditions

(1) A term or condition of a consumer agreement shall be void to the extent that —

(a) its purpose or effect is to —

(i) defeat the purposes and policy of this Act;

(ii) mislead or deceive a consumer; or

(iii) subject a consumer to fraudulent conduct;

(b) it directly or indirectly purports to —

(i) waive or deprive a consumer of a right available to him under this Act;

(ii) avoid a trader's obligation or duty under this Act;

(iii) limit or exempt a trader from liability for any prejudice, directly or indirectly arising out of any non-compliance with this Act or any other consumer protection law;

(iv) constitute an assumption of risk or liability by a consumer for any prejudice contemplated in subparagraph (iii); or

- (v) impose an obligation on a consumer to pay for damage to, or otherwise assume a risk by handling, any goods displayed by the trader;
- (c) it falsely expresses an acknowledgement by a consumer that he has received goods or services, or a document that is required by this Act to be delivered to the consumer;
- (d) it requires a consumer to forfeit any money to the trader —
 - (i) if the consumer exercises any right under this Act; and
 - (ii) to which the latter is not entitled under this Act or any other consumer protection law;
- (e) it imposes the referral to arbitration pursuant to a unilateral arbitration clause;
- (f) it authorises the trader to unilaterally rescind the consumer agreement in the absence of any breach on the part of the consumer; or
- (g) it is prohibited by any other enactment.

(2) Every consumer agreement shall continue to bind the parties where it is capable of operating without any term or condition prohibited under subsection (1).

29. Unfair price

(1) Subject to subsection (2), a trader shall not supply any goods or services at a price that is unfair.

(2) Subsection (1) shall not apply where the price of the goods or services has been fixed by a Court or any other enactment.

(3) Where the price of any goods or services supplied is unfair, any consumer agreement relating to the goods or services shall be void.

(4) In determining whether the price of goods is unfair, regard may be had to —

- (a) the cost of manufacturing the goods;
- (b) the country of origin of the goods;
- (c) the price paid by, and the mark-up of, the trader;
- (d) any cost associated with the advertisement, transportation, and delivery of the goods;
- (e) any tax, levy or duty payable on the goods;
- (f) any brand name or mark associated with the goods;
- (g) the market price of similar goods;
- (h) the functions and accessories of the goods;
- (i) any defect in the goods;
- (j) the demand and supply for the goods;
- (k) the value added with respect to the supply of the goods; and
- (l) any other criteria that may be prescribed.

30. Unfair terms and conditions

(1) A term or condition of a consumer agreement shall be void if the term or condition is unfair.

(2) The consumer agreement shall continue to bind the parties where it is capable of operating without the unfair term or condition.

(3) (a) A term or condition of a consumer agreement shall be unfair where —

- (i) it would cause a significant imbalance in the parties' rights and obligations arising under the agreement;
- (ii) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term or condition, and it would cause detriment to a party if it were to be applied or relied on; or
- (iii) it is so prescribed.

(b) For the purposes of paragraph (a)(ii), a term or condition of a consumer agreement is presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by it, unless that party proves otherwise.

(4) In determining whether a term or condition of a consumer agreement is unfair, regard may be had to whether the term or condition —

- (a) permits one party to avoid or limit the performance of the agreement;
- (b) permits one party to vary or terminate the agreement;
- (c) penalises one party for a breach or termination of the agreement;
- (d) permits one party to renew or not renew the agreement;
- (e) permits one party to determine whether the agreement has been breached or to interpret its meaning;
- (f) limits one party's vicarious liability for its agents;

- (g) permits one party to assign the agreement to the detriment of another party without that other party's consent;
- (h) limits the right of a party to sue another party; or
- (i) is such that its effect is one that is prescribed.

31. Unconscionable conduct

(1) No trader shall, in connection with the supply of goods or services, engage in conduct that is unconscionable.

(2) In determining whether conduct is unconscionable, regard may, subject to subsections (3) and (4), be had to —

- (a) the relative strengths of the bargaining positions of the trader and the consumer;
- (b) whether, as a result of conduct engaged in by the trader, the consumer was required to comply with a condition that was not reasonably necessary for the protection of the legitimate interests of the trader;
- (c) whether the consumer was able to understand any document relating to the supply or possible supply of the goods or services;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer by the trader, in relation to the supply or possible supply of the goods or services;
- (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from another person;

- (f) the extent to which the trader's conduct towards the consumer was consistent with the trader's conduct in similar transactions with other like consumers;
- (g) the extent to which the trader unreasonably failed to disclose a material fact to the consumer;
- (h) any risk to the consumer arising from the trader's intended conduct; and
- (i) the terms and conditions of a consumer agreement, the parties' willingness to negotiate and their subsequent conduct.

(3) A trader shall not, for the purposes of this section, be considered as engaging in unconscionable conduct in connection with the supply or possible supply of goods or services to another person by reason only that he institutes legal proceedings in relation to that supply or possible supply, or refers to arbitration a dispute or claim in relation to that supply or possible supply.

(4) In determining whether a person has contravened subsection (1), regard shall not be had to any circumstances that were not reasonably foreseeable at the time of the alleged contravention.

Sub-Part F — Fair Trading

32. Unlawful conditions

(1) Subject to subsection (2), no trader shall, when supplying goods or services, impose any condition except —

- (a) the charging of cash payment at the current ruling rate or, as the case may be, at the price which is fixed by law;
- (b) any limitation, restriction or other condition —
 - (i) provided for in any other enactment; or

(ii) authorised by the Minister.

(2) Subsection (1) shall not apply where —

(a) a trader charges a promotional price with respect to goods or services; and

(b) a notice is displayed in a conspicuous place stating the conditions of the promotion.

33. Unfair commercial practices

(1) No trader shall, in the course of trade, engage in an unfair commercial practice.

(2) A commercial practice shall be unfair where it is —

(a) contrary to —

(i) the principle of good faith in the trader's field of activity; or

(ii) the standard of care and skill that the trader may reasonably be expected to exercise in respect of consumers; and

(b) likely to cause, in relation to any goods or services —

(i) an impairment of a reasonable consumer's ability to make an informed choice; or

(ii) a consumer to make a choice that a reasonable consumer would not otherwise make.

34. Misleading commercial practices

(1) No trader shall, in the course of trade, engage in a misleading commercial practice.

(2) A commercial practice shall be misleading where a trader —

- (a) omits or conceals material information that a reasonable consumer needs to make an informed choice; or
- (b) provides false or misleading information to a consumer which may lead that consumer to make a choice that a reasonable consumer would not otherwise make.

(3) In determining whether a commercial practice is misleading, regard may be had to

—

- (a) the geographical or commercial origin of any goods;
- (b) the availability of goods or services;
- (c) the quantity, weight or volume and specifications of any goods;
- (d) the benefits or fitness of the goods or services for a particular purpose;
- (e) the risks that any goods present to consumers;
- (f) the usage or prior history of the goods or services;
- (g) the composition, ingredients or other component of any goods and any of their accessories;
- (h) any after-sales assistance available;
- (i) the handling of consumer complaints;
- (j) the method or date of the delivery, supply or manufacture of any goods;

- (k) the results and material features of tests or checks carried out on the goods;
- (l) in relation to services, their execution or performance;

- (m) the price of the goods or services, the manner in which that price is calculated or the existence or nature of a specific price advantage;

- (n) the existence, extent or nature of any approval or sponsorship, direct or indirect, in relation to the goods or services;

- (o) the nature, attributes or rights of the trader, including —
 - (i) the trader's identity, qualifications, assets or status;
 - (ii) relevant affiliations of the trader;
 - (iii) the existence, extent or nature of—
 - (A) any industrial, commercial or intellectual property rights the trader may have; or
 - (B) any award, distinction, approval or sponsorship, direct or indirect, the trader has or has obtained;

- (p) the trader's motives for the commercial practice;

- (q) the nature of the trader's supply process;

- (r) the likelihood of a person confusing —
 - (i) a competitor's goods with the trader's goods; or
 - (ii) a competitor's trade name, trade mark or some other distinguishing feature or mark with that of the trader; and

(s) such other criteria as may be prescribed.

(4) In determining the geographical origin of any goods, the manufacture or production of which involves more than one country, regard shall be had to the geographical location where the goods underwent their last substantial and economically viable processing or working, and which —

(a) led to the manufacture of the goods; or

(b) represented an important stage of the manufacture of the goods.

(5) Where a commercial practice involves a representation or creates an impression that —

(a) goods were previously offered at a different price or at a particular price, regard may be had to whether the goods were previously offered openly and in good faith at that price and at the same place for a reasonable period of time before the representation was made;

(b) goods are being offered by a trader at or below a price recommended by the manufacturer or another trader of the goods, regard may be had to whether that recommended price was recommended in good faith by that manufacturer or other trader.

35. Aggressive commercial practices

(1) No trader shall, in the course of trade, engage in an aggressive commercial practice.

(2) A commercial practice shall be aggressive where, by harassment, coercion or undue influence, it is likely to cause —

(a) significant impairment of a reasonable consumer's freedom of choice or conduct in relation to the goods or services concerned; and

- (b) a reasonable consumer to make a transactional decision that he would not otherwise make.

(3) (a) In determining whether a commercial practice is aggressive, the commercial practice shall be considered in its factual context, taking account of all of its features and the circumstances.

(b) In determining whether a commercial practice involves harassment, coercion or undue influence, regard may be had to —

- (i) the timing, location, nature or persistence of the commercial practice;
- (ii) the use of threat or abusive language by the trader towards a consumer;
- (iii) the exploitation of a consumer's misfortune or circumstance when the trader is aware that the consumer's judgment is impaired as a result of the gravity of the misfortune or circumstance, in order to influence the consumer's transactional decision; and
- (iv) the imposition of onerous or disproportionate non-contractual barriers by the trader when the consumer wishes to terminate a consumer agreement, exercise a contractual right or switch to other goods or services.

(4) In this section —

“undue influence” means the exploitation of a position of power in relation to a consumer so as to apply pressure, without necessarily involving the use of force, or the threat to use physical force, in a way that significantly limits the consumer's ability to make an informed choice in relation to the trader's goods or services.

36. Prohibited commercial practices

A trader shall not, in the course of trade, engage in any of the following practices —

- (a) a representation that he has an approval, authorisation or endorsement which he does not have, or making such a representation when the trader is not in compliance with that approval, authorisation or endorsement;
- (b) a representation that the trader is about to cease trading or move premises, where he is not about to do so;
- (c) a representation that any goods or service may facilitate winning in games of chance;
- (d) a representation that the supply of any goods is legal, where it is not;
- (e) a representation that any goods are able to cure an illness, dysfunction or malformation, where it cannot;
- (f) a representation that describes goods as “gratis”, “free”, “without charge” or any similar representation, where a consumer has to pay anything other than the necessary and reasonable cost of—
 - (i) responding to the representation; or
 - (ii) collecting the goods or having it delivered;
- (g) the displaying of a quality, standard or mark or symbol, without having obtained necessary authorisation to do so;
- (h) an invitation to purchase goods without disclosing the existence of any reasonable ground the trader may have for believing that he may not be able to supply the goods or equivalent goods at the price specified in the invitation, or to do so for a reasonable period of time or in reasonable quantities, having regard to the scale of any marketing or advertising of the goods and the price specified;
- (i) an invitation to purchase goods followed by —

- (i) a demonstration of a defective sample of the goods; or (ii) a refusal to —
 - (A) show or display any goods to the consumer;
 - (B) take an order from the consumer for the goods; or
 - (C) deliver the goods to the consumer within a reasonable period of time, with the intention of promoting different goods;
- (j) a false representation that goods or services are available only for a limited time, on particular terms for a limited time or in a limited quantity or amount, in order to elicit an immediate decision from a consumer, thus depriving the consumer of sufficient opportunity or time to make an informed choice in relation to the goods or services;
- (k) a representation that a right given to consumers under an enactment is a distinctive feature of the trader's promotion or supply;
- (l) using the media to promote goods or services where a trader has paid for that promotion, if it is not made clear that the promotion is a paid promotion, whether in the content itself or in any oral, written, visual or descriptive representation in the promotion;
- (m) a representation to a consumer that is materially inaccurate, in respect of the nature and extent of risk to the consumer's personal security, or that of other members of the consumer's household, if the consumer does not purchase the trader's goods;
- (n) promoting goods, similar to those of another manufacturer, in such a manner as to deliberately mislead or deceive a consumer into thinking that the goods are manufactured by that manufacturer, when they are not;
- (o) a representation to a consumer that is materially inaccurate in respect of market conditions or the possibility of finding goods, with the intention of inducing the consumer to purchase goods at conditions less favourable than normal market

- conditions;
- (p) operating, running or promoting a prize competition without awarding the prizes described or reasonable equivalents;
 - (q) including in marketing material an invoice or similar document seeking payment from a consumer for goods that the consumer has not ordered;
 - (r) a representation that the trader —
 - (i) is not acting for purposes related to the trader's trade, business or profession, when the trader is so acting; or
 - (ii) is acting as a consumer, when the trader is not;
 - (s) a representation that after-supply service in relation to goods is available, when it is not so available;
 - (t) persistently failing to comply with a consumer's request to cease —
 - (i) communicating or initiating unwanted or unsolicited contact with him; or
 - (ii) making or sending unwanted or unsolicited representations to the consumer, by telephone, fax, email or any other electronic means or remote media, except, in circumstances and to the extent justified or permitted by or under law in order to enforce a contractual obligation;
 - (u) including in an advertisement a direct exhortation to children to —
 - (i) purchase goods; or
 - (ii) persuade a parent or adult to purchase the goods for them;
 - (v) in relation to any goods that a consumer does not solicit, demanding that the consumer —

- (i) make immediate or deferred payment for the goods; or
- (ii) return or keep the goods safe; or
- (w) explicitly informing a consumer that if the consumer does not purchase goods, the trader's business, job or livelihood will be in jeopardy.

PART V - UNSOLICITED GOODS AND SERVICES

37. Unsolicited goods

(1) Any person to whom unsolicited goods are supplied by a trader shall not be liable to make any payment for the loss of, or damage to, the goods other than loss or damage resulting from the doing by the person of an unlawful act in relation to the goods during the period specified in subsection (3).

(2) (a) Subject to paragraph (b), where a trader sends unsolicited goods to any person

—

- (i) he shall not be entitled, after the expiration of the time specified in subsection (3), to take any action for the recovery of the goods from the person to whom the goods were sent; and
- (ii) the goods shall, on the expiration of that time, become the property of the person to whom the goods were sent, free and discharged from all liens and charges of any description.

(b) Paragraph (a) shall not apply to, or in relation to, unsolicited goods sent to a person where —

- (i) the person has, during the period specified in subsection (3), unreasonably refused to permit the sender or the owner of the goods to take possession of the goods;

- (ii) the sender or the owner of the goods has, within that time, taken possession of the goods; or
- (iii) the goods were received by the person in circumstances in which he knew, or might reasonably be expected to have known, that the goods were not intended for him.

(3) The period referred to in subsections (1) and (2) is —

(a) where the person who receives the unsolicited goods gives notice with respect to the goods to the sender in accordance with subsection (4) —

- (i) a period of one month following the day on which the notice is given; or
- (ii) a period of 3 months following the day on which the person received the goods,

whichever first expires;

(b) in any other case, a period of 3 months following the day on which the person received the goods.

(4) A notice under subsection (3) shall be in writing and shall —

- (a) state the name and address of the person who received the goods;
- (b) state the address at which possession may be taken of the goods if it is an address other than that of that person; and
- (c) contain a statement to the effect that the goods are unsolicited goods.

(5) Every trader shall be liable to pay to the recipient of unsolicited goods such reasonable costs as are incurred in respect of the storage, maintenance or preservation of those goods.

38. Unsolicited services

Where a trader supplies unsolicited services to a person, that person shall not be liable —

- (a) to make any payment for the services; or
- (b) for any loss or damage as a result of the supply of the services.

PART VI - IMPLIED TERMS

Sub-Part A — Implied Terms for Goods

39. Implied term as to acceptable quality

(1) In every consumer agreement for the supply of goods, there shall be an implied term that the goods are of acceptable quality.

(2) Subject to subsection (4), no trader shall supply goods that are not of acceptable quality.

(3) For the purposes of this section, goods shall be of acceptable quality —

- (a) where they are —
 - (i) fit for all the purposes for which goods of the type in question are commonly supplied;
 - (ii) acceptable in appearance and finish;
 - (iii) free from any defect; and
 - (iv) durable;

- (b) where a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defect, would consider the goods as of acceptable quality having regard to —
 - (i) the nature and price of the goods;
 - (ii) any statement made about the goods on any packaging or label;
 - (iii) any representation made about the goods by the trader or the manufacturer;
 - (iv) any other relevant circumstance of the supply of the goods;
 - (v) the manner in which, and the purpose for which, the goods have been marketed;
 - (vi) the use of any brand name or mark in relation to the goods;
 - (vii) any instruction for, or warning with respect to, doing or refraining from doing anything with or in relation to the goods;
 - (viii) the time when the goods were supplied by its manufacturer to another person; and
 - (ix) the risk of death or personal injury from the keeping, use or consumption of the goods.

(4) (a) Where the attention of a consumer has been expressly drawn to the existence of a defect in any goods, which does not involve non-compliance with a safety standard, before he agrees to be supplied with the goods, the goods shall not be considered to have failed to comply with the implied term specified in subsection (1) by reason only of that defect.

(b) Where goods are displayed for supply and any defect in the goods is conspicuously disclosed on a written notice displayed on them, the defect shall be taken to have

been expressly drawn to the consumer's attention for the purpose of paragraph (a).

(5) (a) The implied term specified in subsection (1) shall, with respect to the goods specified in the Fourth Schedule, be valid for the minimum period specified in that Schedule, unless an extended period is agreed between the trader and the consumer.

(b) Where a trader supplies to the consumer any goods specified in the Fourth Schedule, he shall issue a Certificate of Warranty in the form set out in the Fifth Schedule.

40. Implied term as to fitness for particular purpose

(1) In every consumer agreement for the supply of goods, there shall, subject to subsection (2), be an implied term that the goods are reasonably fit for any particular purpose which —

(a) the consumer states, expressly or by implication, to the trader as the purpose for which the goods are being acquired by him; or

(b) the trader represents that they are or will be fit for that purpose.

(2) A trader shall not be in breach of the implied term referred to in subsection (1) where —

(a) the consumer does not rely on the trader's skill or judgment; or

(b) it is unreasonable for the consumer to rely on the trader's skill or judgment,

to represent that the goods are fit for a particular purpose.

(3) No trader shall supply any goods which are not reasonably fit for a purpose —

(a) for which the trader represents that they are fit; or

(b) which the consumer states, expressly or by implication, to the trader as the purpose for which the goods are being acquired by him.

41. Implied term that goods comply with description

(1) Where a trader gives the description of any goods to a consumer, there shall be an implied term in a consumer agreement that any goods supplied, on the basis of the description, shall correspond with that description, subject to any minor variation.

(2) Where a trader gives the description of any goods to a consumer, any goods supplied on the basis of the description shall correspond with that description, subject to any minor variation.

42. Implied term that goods comply with sample

(1) Where a trader supplies goods to a consumer by reference to a sample or demonstration model, there shall be an implied term in a consumer agreement that —

- (a) the goods so supplied will correspond with the sample or demonstration model, subject to any minor variation; and
- (b) the consumer will have a reasonable opportunity to compare the goods with the sample or demonstration model.

(2) Where a trader supplies goods to a consumer in the manner specified in subsection (1) —

- (a) the goods supplied shall correspond with the sample or demonstration model subject to any minor variation; and
- (b) the trader shall give the consumer a reasonable opportunity to compare the goods so supplied with the sample or demonstration model.

43. Implied term as to repairs and spare parts

(1) Where goods are supplied to a consumer, there shall be an implied term in a

consumer agreement that the trader shall ensure that facilities for the repair of the goods and the supply of spare parts are available —

- (a) for such period as may be prescribed; or
- (b) where no period has been prescribed, for such period as may be mutually agreed by the consumer and the trader.

(2) Where goods are supplied to a consumer, the trader shall ensure that facilities for the repair of the goods and the supply of spare parts are available —

- (a) for such period as may be prescribed; or
- (b) where no period has been prescribed, for such period as may be mutually agreed by the consumer and the trader.

44. Liability for breach of certain implied terms -

(1) Every trader who has supplied goods in breach of an implied term specified in section 39 or 40 shall —

- (a) unless the goods are not capable of being repaired, repair them at his own expense —
 - (i) in such manner and within such period as may be prescribed; or
 - (ii) where no time has been prescribed under subparagraph (i), within a reasonable time;
- (b) subject to subsection (2), at his own expense replace the goods by similar goods; or
- (c) forthwith refund —

- (i) where the goods were not the subject matter of a hire purchase agreement or a credit sale agreement, the price at which the goods were sold to the consumer; or
- (ii) where the goods were the subject matter of a hire purchase agreement or a credit sale agreement, all payments previously made by the consumer in pursuance of the agreement.

(2) Where a trader elects to repair the goods under subsection (1)(a), he shall cause the goods to be repaired so that —

- (a) any defect in the goods is remedied; and
- (b) the goods comply with the appropriate safety standard.

(3) Where a trader elects to replace goods under subsection (1)(b) —

- (a) the replacement goods shall —
 - (i) be considered to be new goods for all intents and purposes;
 - (ii) not contain any defect or dangerous characteristic, whether identified in the recall notice or not;
 - (iii) comply with the appropriate safety standard;
- (b) the terms and conditions of the consumer agreement of which the initial goods was the subject matter, shall apply, *mutatis mutandis*, to the replacement goods; and
- (c) any hire purchase agreement or credit sale agreement, of which the initial goods was the subject matter, shall continue to apply to the replacement goods.

(4) Every trader who has supplied goods in breach of the implied terms specified in sections 41 and 42 shall —

(a) subject to subsection (5), at his expense replace the goods by similar goods;
or

(b) forthwith refund —

(i) where the goods were not the subject matter of a hire purchase agreement or a credit sale agreement, the price at which the goods were sold to the consumer; or

(ii) where the goods were the subject matter of a hire purchase agreement or a credit sale agreement, all payments previously made by the consumer in pursuance of the agreement.

(5) Where a trader elects to replace the goods under subsection (4)(a) —

(a) the replacement goods shall —

(i) be considered to be new goods for all intents and purposes;

(ii) not contain any defect or dangerous characteristic, whether identified in the recall notice or not;

(iii) comply with the appropriate safety standard;

(b) the terms and conditions of the consumer agreement, of which the initial goods were the subject matter, shall apply, *mutatis mutandis*, to the replacement goods; and

(c) any hire purchase agreement or credit sale agreement of which the initial goods were the subject matter, shall continue to apply to the replacement goods.

(6) (a) Where a trader has supplied goods in breach of the implied term specified in section 43, he shall adequately compensate the consumer.

(b) In determining whether compensation is adequate under paragraph (a), regard may be had to —

- (i) the time during which the consumer has had full enjoyment of the goods;
- (ii) the nature and characteristics of the goods;
- (iii) the impact of the lack of repair facility or lack of spare parts on the functioning and operation of the goods;
- (iv) the availability, accessibility and costs of repair facilities and spare parts with a person other than the trader; and
- (v) such other relevant consideration as may be prescribed.

Sub-Part B — Implied Terms for Services

45. Implied term as to reasonable care and skill

(1) Where services are supplied to a consumer, there shall be an implied term in the consumer agreement that the services will be carried out with reasonable care and skill.

(2) No trader shall supply services in contravention of subsection (1).

46. Implied term as to fitness for particular purpose

(1) Subject to subsection (2), where services are supplied to a consumer, there shall be an implied term in the consumer agreement that the services, and any goods resulting from supply of the services, shall be fit for —

- (a) all the purposes for which goods of the type in question are commonly supplied; or
- (b) the purpose that the consumer expressly makes known to the trader, before or at the time the consumer agreement is made, as the purpose for which the consumer desires the services to achieve.

(2) The implied term referred to in subsection (1) shall not apply where the circumstances show that —

- (a) the consumer does not rely on the trader's skill or judgment; or
- (b) it is unreasonable for the consumer to rely on the trader's skill or judgment.

(3) No trader shall supply services in contravention of subsection (1).

47. Implied term as to time of completion

(1) Where services are supplied to a consumer, there shall be an implied term in the consumer agreement that the services shall be completed within a reasonable time, where the time for the services to be performed is —

- (a) not determined by the consumer agreement;
- (b) to be determined by the course of dealing between the parties.

(2) No trader shall supply services in contravention of subsection (1).

Sub-Part C — Right of Return

48. Right to return goods

(1) Notwithstanding any enactment and subject to this section, any consumer who has

purchased goods from a trader shall be entitled to return these goods to the trader within 3 working days from the delivery of such goods.

- (2) A consumer shall only be entitled to exercise his right of return —
 - (a) provided the goods —
 - (i) have not been utilised; and
 - (ii) are in the same condition as when they were delivered; and
 - (b) provided the consumer pays to the trader any costs associated with the delivery of the goods.
- (3) Subsection (2)(b) shall not apply where —
 - (a) the consumer has informed the trader, in writing, of his intention to exercise his right of return; and
 - (b) the trader has not yet taken steps to deliver the goods.
- (4) Where a consumer is entitled to exercise his right of return under this section, the trader shall forthwith refund to the consumer any payment made in connection with the goods.

PART VII- WARRANTY BY MANUFACTURER

49. Liability of manufacturer

- (1) (a) An express warranty given by a manufacturer of goods which are supplied to a consumer shall bind the manufacturer where the warranty provided by the manufacturer covers goods to be sold anywhere in Mauritius.
- (b) An express warranty given by a manufacturer in a document shall bind the manufacturer where the document is given to a consumer with such actual or apparent authority

of the manufacturer in connection with the supply by a trader of those goods to the consumer.

(c) An express warranty which is included in a document relating to the goods and which appears to have been drawn up by the manufacturer of the goods shall, in the absence of proof to the contrary, be presumed to have been given by the manufacturer.

(d) Where a consumer is given a document containing an express warranty by a manufacturer in respect of goods, in connection with the supply of those goods, the document shall, in the absence of proof to the contrary, constitute proof that it was given to the consumer with the authority of the manufacturer.

(2) Subject to subsection (3), a consumer shall have a right of redress against a manufacturer of goods where the goods are defective or fail to comply with an express warranty given by the manufacturer that is binding on him.

(3) There shall be no right of redress against a manufacturer under this Act in respect of goods which fail to comply with the implied guarantee as to acceptable quality or compliance with description where the failure is due to —

- (a) an act, default or omission of, or any representation made by, a person other than the manufacturer; or
- (b) a cause independent of human control, occurring after the goods have left the control of the manufacturer.

(4) Where a consumer is entitled by an express warranty given by the manufacturer to require the manufacturer to remedy the failure by —

- (a) repairing the goods; or
- (b) replacing the goods with goods of similar type,

no action shall be commenced under subsection (2), unless the consumer has required the manufacturer to remedy the failure and the manufacturer has refused or neglected to remedy, or has not succeeded in remedying, the failure within such time as may be prescribed or, where no

period has been prescribed, within a reasonable time.

(5) (a) Subject to this Act, where a manufacturer of goods extends an express warranty to a trader covering goods to be available in Mauritius, the trader shall be bound to extend that express warranty to every consumer with whom he enters a consumer agreement for the supply of those goods.

(b) A trader who is bound to extend an express warranty in pursuance of paragraph (a) shall have the same obligations and be liable to a consumer in the same manner as a manufacturer under this section.

(6) A manufacturer of goods shall be liable to indemnify a trader who supplies the goods to a consumer where —

(a) the trader is liable to pay damages to the consumer for loss or damage suffered by the consumer; and

(b) the manufacturer is or would be liable under this Act to pay damages to the consumer for the same loss or damage.

(7) A manufacturer of goods shall be liable to indemnify a trader who supplies the goods to a consumer where the trader incurs losses and costs because he is liable for a failure to comply with an express warranty that applies to the supply.

(8) A term of an agreement, including a term that is not set out in the agreement but is incorporated in it by another term of the agreement, shall be void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying the

—

(a) application of any provision of this section;

(b) exercise of a right conferred by this section; or

(c) liability of a person in relation to a failure to comply with an express warranty.

**PART VIII- ENFORCEMENT POWERS OF
SUPERVISING OFFICER**

50. Enforcement notice and prohibition notice

(1) Where the supervising officer is of the opinion that a trader is contravening or is likely to contravene this Act, he may cause an enforcement notice to be served on the trader.

(2) An enforcement notice shall —

- (a) state the opinion of the supervising officer as to contravention or likely contravention of this Act;
- (b) specify the matter constituting the contravention, or the matter making it likely that the contravention will arise;
- (c) set out the measures which the trader should take to remedy the contravention, or to remedy or eliminate the matter making it likely that the contravention will arise; and
- (d) specify a period within which those measures shall be implemented.

(3) No person shall be prosecuted for a contravention of this Act in respect of which an enforcement notice has been issued as long as the notice is in force.

(4) Where the supervising officer is of the opinion that —

- (a) a trader is contravening or is likely to contravene this Act; and
- (b) that there is, or there is likely to be, an imminent and serious prejudice to consumers,

he may cause a prohibition notice to be served on the trader.

(5) A prohibition notice may be served whether or not there are proceedings before any Court involving the matter in relation to which the notice is being issued, unless the Court has issued an order preventing the supervising officer from serving the notice.

(6) A prohibition notice shall —

- (a) state the opinion of the supervising officer as to contravention or likely contravention of this Act;
- (b) specify the serious prejudice, or the risk of serious prejudice, as well as the manner in which the trader's activity is suspected to give rise to the risk;
- (c) set out the measures which the trader should take to eliminate the serious prejudice caused, or the risk of serious prejudice, and specify the period within which they shall be implemented; and
- (d) specify—
 - (i) the activity, or any aspect of the activity of the trader, that is prohibited from operation or performance; or
 - (ii) any condition subject to which the activity may be resumed.

(7) A person who has been served with a prohibition notice may, within 10 days of its receipt, make representations in writing to the Minister, specifying the grounds on which he relies.

(8) On receipt of any representations under subsection (7), the Minister shall, within 14 days, hear the person who made the representations and take a decision.

51. Application to Judge

Where a recall notice, an enforcement notice or a prohibition notice has been issued and

a trader fails to comply with any obligation arising out of, or in connection with, the notice, the supervising officer may apply to a Judge for an order directing the trader to fulfill his obligation or such other order as may be necessary.

PART IX - OFFENCES AND FIXED PENALTIES

Sub-Part A — Offences

52. Offences

(1) Any person who —

(a) without lawful authority —

(i) breaks, tampers with or damages a seal affixed in accordance with section 15;

(ii) removes any article to which a seal has been affixed in pursuance of section 15; or

(b) when served with a recall, an enforcement or a prohibition notice —

(i) fails without reasonable cause to comply with the notice; or

(ii) furnishes information which he knows is false in a material particular; or

(c) otherwise contravenes this Act,

shall commit an offence and shall, on conviction, be liable —

(i) in the case of a first offence, to a fine of not less than 10,000 rupees and not exceeding 100,000 rupees and to imprisonment for a term not exceeding 12 months; and

(ii) in the case of a second or subsequent offence, to a fine of not less than

25,000 rupees and not exceeding 250,000 rupees and to imprisonment for a term not exceeding 3 years.

(2) Any person who —

- (a) wilfully fails to attend a sitting of the Tribunal on being required to do so;
- (b) refuses to take an oath before the Tribunal or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Tribunal or to produce any article or document when required to do so by the Tribunal;
- (c) knowingly gives false evidence or evidence which he knows to be misleading before the Tribunal; or
- (d) at any sitting of the Tribunal —
 - (i) wilfully insults a member; or
 - (ii) wilfully interrupts the proceedings, or commits any contempt, of the Tribunal,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

(3) Any person who —

- (a) obstructs an authorised officer in the performance of his functions under this Act or any other consumer protection law;
- (b) without reasonable cause, fails or refuses to give to an authorised officer such information as he may reasonably require in the performance of his functions under this Act or any other consumer protection law,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

(4) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under this Act and may impose any penalty provided by this Act.

(5) In any prosecution for an offence under this Act, a Court may, in addition to any penalty imposed, order —

- (a) the forfeiture of any goods, document or other article seized in connection with the offence, where it is satisfied that such goods, document or other article were or was the subject matter of, or were or was used in the commission of, the offence;
- (b) that any goods, document or other article so seized be restored to the person from whom they were or it was taken, where it is not satisfied that such goods, document or other article were or was the subject matter of, or were or was used in the commission of, the offence;
- (c) the suspension or revocation of any trading licence held by or issued to the person under any enactment;
- (d) the closure of the premises, or part of the premises, in relation to which the offence was committed, for a period of not less than 7 days and not more than 3 months.

(6) Sections 152 and 153 of the Criminal Procedure Act shall not apply to an offence under this Act.

53. Disposal of goods, documents or other articles seized

(1) Where any goods, document or other article are or is seized in connection with an offence under this Act, and —

- (a) are or is, on examination, found not to have been obtained by means of an offence or used in the commission of an offence; or
- (b) no prosecution for an offence is instituted,

the goods, document or other article shall be restored to the person from whom they were or it was taken.

(2) Where it appears that the goods, document or other article were or was obtained by means of an offence, or used in the commission of an offence, the goods, book, document, record or other article shall, on the prosecution of the alleged offender, be produced to the Court and shall be dealt with as the Court may direct.

Sub-Part B — Fixed Penalties

54. Fixed penalty notice

(1) Notwithstanding this Act or any other enactment, where a person commits an offence specified in the first column of the Sixth Schedule, an authorised officer who detects the offence may immediately serve on that person a notice, or where that person refuses the notice, serve the notice on that person by sending it by registered post at his usual or last known place of residence or business within 14 days of the commission of the offence, calling upon him to pay the appropriate fine specified in the third column of that Schedule.

(2) A notice under subsection (1) shall —

- (a) be in such form as may be prescribed;
- (b) be drawn up in quadruplicate; and
- (c) specify —
 - (i) the name and address of the person committing the offence, where the

name and address have been ascertained;

- (ii) the date, time and place of the offence;
- (iii) the nature of the offence;
- (iv) the fixed penalty provided for the offence and the period within which it is to be paid;
- (v) the District Court where the fine is payable; and (vi) the name and identification number of the authorised officer who detected the offence.

(3) The authorised officer who detects the offence shall —

- (a) cause the original of the notice to be served on the offender;
- (b) forward one copy to the supervising officer and another copy to the appropriate District Court; and
- (c) retain one copy.

55. Payment of fixed penalty

Every person who is served with a notice under section 54(1) shall, within 20 days of the service and upon production of the notice, pay the appropriate fine in the prescribed manner at the appropriate District Court.

56. Non-payment of fixed penalty

Where a person who has been served with a notice under section 54(1) fails to pay the appropriate fine within the time limit mentioned in the notice and criminal proceedings are instituted against him for the offence in respect of which he was served with the notice, he shall, notwithstanding this Act or any other enactment, be liable, on conviction, to a fine which shall not be less than twice the amount specified in the third column of the Sixth Schedule in respect

of that offence.

PART X - MISCELLANEOUS

57. Proceedings by registered association

(1) A registered association may, with the consent of a consumer, and with respect to any matter arising out of, or in connection with, a consumer agreement —

- (a) institute such civil suit as it thinks necessary and conduct such suit before the Tribunal for or in the name of that consumer; and
- (b) where applicable, represent the consumer in appellate proceedings connected with such civil suit.

(2) In any proceedings under subsection (1), the Tribunal or the Supreme Court, as the case may be —

- (a) may award costs against a registered association; but
- (b) shall not award costs against a consumer.

(3) Where the Tribunal or Supreme Court, as the case may be, awards costs against the registered association, the costs may be recovered in the same manner as if the costs had been awarded against the consumer.

58. Proceedings by supervising officer

(1) The supervising officer may, with the consent of a consumer, and with respect to any matter arising out of, or in connection with, a consumer agreement —

- (a) institute such civil suit as he thinks necessary and conduct such suit before the Tribunal for or in the name of that consumer; and
- (b) where applicable, represent the consumer in appellate proceedings connected

with such civil suit.

(2) Where several consumers have complaints of the same nature, the supervising officer may consolidate the complaints of all the consumers into one cause of action.

(3) No fees shall be chargeable before the Tribunal on any proceedings commenced under subsection (1).

(4) In any proceedings under subsection (1) —

(a) the Tribunal shall not award costs against the supervising officer or a consumer;

(b) the Supreme Court may award costs against the supervising officer only.

(5) Where the Supreme Court awards costs against the supervising officer, the costs may be recovered in the same manner as if the costs had been awarded against the consumer.

59. Defences

In any civil or criminal proceedings, it shall be a defence for a trader or manufacturer to establish that —

(a) goods did not comply with a safety standard or other prescribed standard only because there was compliance with a mandatory safety standard or other prescribed standard with respect to the goods laid down in any other enactment;

(b) where no safety standard has been prescribed with respect to any goods, the state of scientific or technical knowledge, at the time when the goods were supplied by their manufacturer, was not such as to enable that safety defect to be discovered;

(c) any prejudice suffered in connection with goods was the result of an act or omission of, or any representation made by, a person other than the manufacturer or trader, or a cause independent of human control, occurring after the goods had left the

- control of the manufacturer or trader; or
- (d) the defect in the goods that is alleged to have caused any loss or damage did not exist at the time when the goods were supplied by the manufacturer.

60. Immunity

(1) No liability, civil or criminal, shall attach to the supervising officer, a member or an authorised officer in respect of anything done in good faith in the performance of his duties, or in the exercise of his powers under this Act.

(2) This section shall be in addition to, and not in derogation from, the Public Officers' Protection Act.

61. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide —

(a) for the levying of fees;

(b) for the amendment of the Schedules;

(c) for prescribing anything that is to be prescribed;

(d) for the issue of a licence, permit, clearance or similar authorisation in connection with —

(i) the importation, exportation, sale, supply or distribution of goods; or

(ii) the supply of services;

(e) for the control of referral and distance selling, and pyramid promotional schemes;

- (f) for any matter relating to an express warranty; and
- (g) that any person who commits an offence shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to a term of imprisonment not exceeding 3 months.

62. Repeals

The enactments specified —

- (a) in Part I of the Seventh Schedule are repealed;
- (b) in Part II of the Seventh Schedule are revoked.

63. Consequential amendments

(1) In any enactment, any reference to the Fair Trading Act shall be considered as a reference to this Act.

(2) The Hire Purchase and Credit Sales Act is amended, in section 9 —

- (a) in subsection (1), by repealing paragraph (d), the words “; and” at the end of paragraph(c) being replaced by a full stop;
- (b) by repealing subsection (2);
- (c) in subsection (3), by deleting the words “, and the dealer shall not be entitled to rely on any provision in the agreement or credit sale agreement excluding or modifying the condition set out in subsection (2) unless he proves that, before the hire purchase or credit sale agreement was made, the provision was brought to the notice of the hirer and its effect made clear to him”.

64. Transitional provisions

(1) Any licence, certificate, clearance, permit or authorisation granted under the repealed or revoked enactments specified in the Seventh Schedule, and which is valid at the commencement this Act, shall be taken to have been issued under this Act.

(2) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

65. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

FIRST SCHEDULE

[Section 2]

SERVICES UNDER PART IV

Professional services, including legal, medical, dental, engineering, accountancy, architectural, quantity surveying, land surveying, valuation services

Banking

Insurance

Transport

SECOND SCHEDULE

[Section 17]

CERTIFICATE OF IDENTIFICATION

[Section 17 of Consumer Protection Act]

Name of person employed by trader.....
.....

Address.....

MC Number.....

Name of trader.....

NIC Number

Trade name.....



Address

Tel. No.....

Business Registration Number

VAT No.....

.....

Signature of trader

.....

Signature of person employed

.....

Date of issue

.....

Seal of trader

THIRD SCHEDULE

[Section 20]

SPECIFIED GOODS OR SERVICES

1. Goods or services of the value of 2,000 rupees or more
2. Goods or services of the value of more than 500 rupees but less than 2,000 rupees, at the consumer's request

FOURTH SCHEDULE

[Section 39]

MINIMUM WARRANTY PERIOD IN RESPECT OF GOODS

Goods	Minimum period of validity of implied term as from date of delivery
Air conditioner	24 months
Blender/Mixer	12 months
Bread/Sandwich maker	12 months
Bush cutter	12 months
Coffee maker	12 months
Digital camera	12 months
Dishwasher	12 months
DVD/Blue ray player	12 months
Electric cutter	12 months
Electric fan	12 months
Electric fryer	12 months
Electric iron	12 months
Electric kettle	12 months
Electric oven	12 months
Electric plate	12 months
Electric razor	12 months
Electric water heater	12 months
Electric/Gas barbecue	12 months
Exerciser	12 months
Food processor	12 months
<i>Friteuse</i>	12 months
Gas stove	12 months
Gas water heater	12 months

SCHEDULE — *continued*

Goods	Minimum period of validity of implied term as from date of delivery
Hair dryer/curler/straightener	12 months
Hi Fi apparatus	12 months
Home theatre	12 months
Juicer	12 months
Kitchen hood	12 months
Laptop	12 months
Lawnmower	12 months
Microwave/Oven	12 months
Mixer/Grinder/Blender	12 months
Mobile phone	12 months
Personal computer	12 months
Pressure washer	12 months
Printer and scanner	12 months
Refrigerator	24 months
Rice cooker	12 months
Sewing machine	12 months
Solar water heater	60 months
Steamer	12 months
Tablet	12 months
TNT player	12 months
Toaster	12 months
Trimmer	12 months
TV set	24 months
Vacuum cleaner	12 months
Washing machine	24 months

FIFTH SCHEDULE

[Section 39]

CERTIFICATE OF WARRANTY

[Section 39 of Consumer Protection Act]

Warranty Card No.....

Name of trader.....

Address of trader.....

Business Registration Number.....

VAT no.....

Telephone no.....

Description of goods.....

Brand/Make/Model of goods.....

Serial number.....

IMEI number (where *applicable*).....

Date of sale.....

Sales Invoice no.....

Date of delivery.....

Period of warranty.....

Terms and conditions of warranty
.....
.....

Name and signature of purchaser.....

Name and signature of trader.....

NIC Number of trader

Date.....

Seal of trader

SIXTH SCHEDULE

[Sections 54 and 56]

FIXED PENALTIES

Offences under the Consumer Protection (Price and Supplies Control) Act		Fine (Rs)
Selling controlled goods at a price higher than that fixed	section 3	2,000
Selling controlled goods at a price which includes a mark-up which exceeds the maximum mark-up	section 4	2,000
Illegal charging of VAT	section 6	2,000
Failing to affix price labels on goods		

exposed for sale	section 7	1,000
Failing to put up notice in a conspicuous place to indicate the price of goods that cannot be exposed for sale		
Selling goods at a price higher than that displayed	section 8	2,000
Misleading price indication	section 9	2,000
Failing to register warehouse	section 10	1,000
Failing to renew certificate of registration for warehouse	section 11	1,000
Failing to produce on demand to an authorised officer a certificate of registration for a warehouse	section 11 (3)(b)	1,000
Failing to affix a signboard in respect of registered warehouse	section 15	1,000
Failing to expose goods kept for sale on that part of the trading premises to which the public has access	section 17	2,000

Offences under the Consumer Protection (Price Label) Regulations 1998 -

Failing to affix price label, white in colour, on goods exposed for sale where VAT is chargeable	regulation 3(a)	1,000
Failing to affix price label, blue in colour, on goods exposed for sale where VAT is		

not chargeable . regulation 3(b) 1,000

**Offence under the Consumer Protection (Consumer Goods) (Maximum Mark-Up)
Regulations 1998**

Failing to submit a return in respect of
consumer goods within 10 working days
from the date of passing of the bill of entry regulation 3(1) 5,000

**Offences under the Consumer Protection (Product Advertisement
and Promotion) Regulations 2012**

Failing to indicate, in relation to the
advertising of or promotion on goods,
the selling price of the goods inclusive of
VAT together with the words
“VAT INCLUSIVE” where VAT is
chargeable regulation 3(1)(b) 1,000

Failing to indicate, in relation to the
advertising of or promotion on goods,
the selling price of the goods inclusive
of VAT together with the words
“VAT NIL” where VAT is not chargeable regulation 3(1)(c) 1,000

**Offence under the Consumer Protection (Use of Liquefied
Petroleum Gas in Small Cylinders) Regulations 2012**

Using liquefied petroleum gas in small
cylinders other than for domestic purposes regulation 3(a) 2,000

SEVENTH SCHEDULE

[Section 62]

ENACTMENTS

PART I

Advisory Committee on Prices and Consumer Protection Act

Consumer Protection Act

Fair Trading Act

PART II

Commodities (Registration of Traders) Regulations 1978

Traders Warranty Regulations 1981

Prepackaged Food Regulations 1989

