



GUYANA

ACT NO. 13 OF 2011

CONSUMER AFFAIRS ACT 2011

I assent.

Bharat Jagdeo
Bharat Jagdeo,
President.

September 27, 2011

ARRANGEMENT OF SECTIONS

SECTION

PART I
PRELIMINARY

1. Short title and commencement.
2. Interpretation.
3. Application to public utilities.

PART II
COMPETITION AND CONSUMER AFFAIRS COMMISSION

4. Competition Commission renamed.
5. Objective of Commission.
6. Functions of Commission.
7. General powers of Commission.

PART III
INVESTIGATION OF COMPLAINTS

8. Meaning of investigation.
9. Complaints to Commission.
10. Discretion not to investigate.
11. Power to investigate not precluded by other redress.

PRICE: \$7,800.00 – To be purchased from Parliament Office, Georgetown, Guyana.

PRINTED BY GUYANA NATIONAL PRINTERS LIMITED.

12. Power to summon persons to give evidence.
13. Obligation and entitlement of persons summoned.
14. Documents to be received as *prima facie* evidence.

PART IV

DUTIES OF SUPPLIERS

15. Information to consumers.
16. Measurements of goods.
17. Prices and fees.
18. Receipts to be given to consumers.
19. Warranties.
20. Damage resulting from use of goods or services provided.
21. Return of goods.
22. Return of defective goods.
23. Return of materially different goods.
24. Notices on return of goods.
25. Supplier to provide only requested goods or services.
26. Repair and maintenance providers to keep records.
27. Compensation for loss.
28. Lay away purchase sale.
29. Where consumer does not get benefit of services.
30. Entertainment.

PART V**UNFAIR TRADE PRACTICES**

31. Misleading or deceptive conduct.
32. Misleading public as to nature, etc. of goods or services.
33. False representation.
34. Offering gifts and prizes.
35. Full cost to be stated in certain cases.
36. Dual pricing.
37. Non-delivery of goods or services.
38. Advertising.
39. Referral selling.
40. Falsely accepting payment.
41. Misleading statements.
42. Pyramid selling.
43. Assertion of right of payment prohibited in certain cases.
44. Liability of receipt of unsolicited goods.
45. Advertised delivery date.
46. Demanding or accepting payment.
47. Tied goods or services.
48. Bundled goods or services.
49. Defence.

PART VI**UNFAIR CONTRACTS**

50. Interpretation.
51. Terms that have not been individually negotiated.
52. Burden of proof.
53. Written terms to be clear and intelligible.
54. Unfair terms.
55. Assessment of unfairness.
56. Effect of unfair term.
57. Proper law.
58. Application of this Part.
59. Requirement of reasonableness.
60. Effect of termination or affirmation on requirement of reasonableness.
61. Excluding or restricting liability for negligence.
62. Reliance on contract.
63. Indemnity.
64. Guarantee cannot exclude liability.
65. Statutory condition or warranty.
66. Restriction of liability under this Part is unenforceable.
67. Transitional provisions in respect of certain guarantees and contract.

PART VII**CONTROL OF DISTANCE SELLING**

68. Interpretation.

69. Regulations.

PART VIII

ELECTRONIC SALE

70. Guidelines for electronic sale transactions.
71. Regulations.

PART IX

PRODUCT LIABILITY

72. Interpretation.
73. Liability for defective product.
74. Defect inferred.
75. Incurring of damage.
76. Defences.

PART X

CONSUMER SAFETY

77. Interpretation.
78. Products must be safe.
79. Supplier's premises must be safe.
80. Defence.

PART XI

RECALL OF GOODS

81. Compulsory recall of goods.
82. Compliance with recall notice.
83. Loss or damage caused by failure to comply with notice.

84. Notice to provide documents, information, etc.
85. Entering supplier's premises.
86. Commission to apply to a Magistrate.
87. Commission to provide reasons.
88. Voluntary recall of goods.
89. Copy of notice.
90. Mandatory recall of goods.
91. Repair or replacement or refund of goods.
92. Liability of insurer.

PART XII

INDUSTRY CODES

93. Interpretation.
94. Regulations on codes.
95. Voluntary codes are binding.

PART XIII

ENFORCEMENT, REMEDIES AND APPEALS

96. Right of Commission to enforce this Act.
97. Commission may not take action.
98. Commission may issue immunity from prosecution with the approval of the Director of Public Prosecutions.
99. Search and seizure warrants.
100. Assisting police.
101. Record of and access to seized goods.

102. Offences and penalties.
103. Criteria for determining penalty.
104. Supplier conduct.
105. Right of supplier to appeal to the Court.

PART XIV
MISCELLANEOUS

106. Recovery of movable assets pledged.
107. Criteria for organisation purporting to provide services for protection of consumers.
108. Consumer personal information.
109. Alternative dispute resolution by Commission.
110. A supplier and consumer may seek the Commission mediation.
111. Regulations.
112. Transitional.
113. Amendments to the Competition and Fair Trading Act 2006.
114. Arbitration.
115. Conflicts with the Competition and Fair Trading Act 2006.

SCHEDULES

FIRST SCHEDULE – Provisions Relating to Competition and Consumer Affairs Commission

SECOND SCHEDULE – Form A – Summons by Competition and Consumer Affairs

Commission

Form B – Notice to Produce Documents in Relation to an Investigation by the
Competition and Consumer Affairs Commission

THIRD SCHEDULE -- Contract Terms which are unfair if not individually negotiated

FOURTH SCHEDULE -- Consumer Safety Regulations

An Act to promote and protect consumer interests in relation to the supply of goods and services and for related purposes.

A.D. 2011

Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

Short title and
commencement.

1. This Act may be cited as the Consumer Affairs Act 2011 and shall come into operation on a date appointed by order of the Minister.

Interpretation.

2. (1) In this Act –

(a) “acquire” in relation to –

(i) goods, includes obtaining by way of purchase or exchange, the taking on lease, hire and lay-away; and

(ii) services, includes accepting the provision of services;

(b) “advertisement” means communication made to the public or a section of the public for the purpose of

- promoting goods and services;
- (c) “business” includes a trade or profession and the activities of a professional or trade association or of a public authority or any other undertaking –
- (i) that is carried on for gain or reward; or
 - (ii) in the course of which goods and services are supplied for payment;
- (d) “commencement date” means the date on which this Act comes into operation;
- (e) “Commission” means the Competition and Consumer Affairs Commission referred to in section 4;
- (f) “conditional sale agreement” means a contract for the sale of goods or services under which –
- (i) the purchase price or a part of it is payable by instalments; and
 - (ii) the property in the goods is to remain in the supplier, notwithstanding that the purchaser may be in possession of the goods until conditions specified in the contract (such as the payment of instalments) are fulfilled;
- (g) “consumer” in relation to –
- (i) any goods, means a person who acquires or wishes to acquire goods for that person’s or

- another person's private use or private consumption;
- (ii) any services, means a person who wishes to be provided with services other than for the purpose of a business of that person; and
- (iii) any industry, means a consumer of goods or services supplied by providers in that industry;
- (h) "consumer goods" means goods which are or duly intended for private use or consumption;
- (i) "Court" means the High Court;
- (j) "damage" means --
- (i) loss of or damage to any property, including movable and immovable property;
- (ii) pecuniary loss; or
- (iii) death or personal injury;
- (k) "deposit" means a deposit in cash or kind;
- (l) "documents" includes hard and electronic records and material items used as evidence;
- (m) "*force majeure*" means an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, or "act of God" such as flooding, earthquake, or volcanic eruption, that prevents one or both parties from fulfilling their

- obligations under the contract;
- (n) “goods” includes any kind of movable property except money and securities, regardless whether the property is used or unused;
 - (o) “guarantor” in relation to a person to or for whom goods or services are supplied, includes a person who undertakes to indemnify the supplier against any loss which that supplier may incur in respect of the supply of the goods or provision of the services to or for the first-mentioned person;
 - (p) “instalment payments” are a series of payments that a consumer makes instead of a lump-sum or one-off payment to compensate the supplier in full for goods or services;
 - (q) “intellectual products” includes software, works of art (music, films, books), jewels, patents and copyrights;
 - (r) “lay-away” means a plan under which the consumer pays the supplier for the identified and available goods or services in an agreed number of instalments, sums and intervals;
 - (s) “manufactured products” includes intellectual products;
 - (t) “manufacturer’s warranty” means the standard warranty

issued by a manufacturer (whether local or foreign)
in relation to goods or service;

- (u) "Minister" means the Minister responsible for consumer affairs;
- (v) "negligence" includes the breach of –
- (i) an obligation, arising from the expressed or implied terms of a contract, to take reasonable care to exercise reasonable skill in the performance of the contract;
 - (ii) a common law duty to take reasonable care or exercise reasonable skill in the performance of a contract;
- (w) "products" includes goods or services;
- (x) "public utility" has the meaning given to it by section 4 of the Public Utilities Commission Act 1999;
- (y) "Public Utilities Commission" means the Commission of that name established under the Public Utilities Commission Act 1999;
- (z) "second hand goods" means goods that are not new; but are refurbished, reconditioned, used or previously owned;
- (aa) "services" includes –
- (i) undertaking and performance for gain or reward

No. 10
of 1999

of engagements for any matter other than the supply of goods;

- (ii) the rendering of services to order;
- (iii) the provision of services by making them available to potential users; and
- (iv) any service described in section 4(1)(a) to (c) of the Public Utilities Commission Act 1999;
- (v) entertainment, financial and insurance products, and professional services;
- (vi) distance services, inclusive of electronic transactions;
- (vii) repair of an appliance, furniture, equipment or other goods or objects,

but does not include rendering of any service under a contract of employment or apprenticeship, whether the contract is expressed or implied, and whether the contract is oral or in writing;

(bb) "supplier" in relation to –

- (i) goods, means a person who sells goods; and
- (ii) services, means a person who provides services;

(cc) "trade or commerce" means trade or commerce within Guyana or between Guyana and any place outside Guyana.

No. 10
of 1999

(2) In this Act, a reference to –

(a) the acquisition of goods or services includes a reference to the acquisition of property in, or rights in relation to, goods or services in pursuance of a supply of the goods or services;

(b) the supply or acquisition of goods or services includes –

(i) a reference to a contract to supply or acquire goods or services;

(ii) a reference to the supply or acquisition of goods or services together with other property or other services or both.

(3) For the purpose of this Act –

(a) it is immaterial whether any person supplying goods or services has a place of business in Guyana;

(b) any goods or services supplied wholly or partly from outside of Guyana, if they are supplied in accordance with arrangements made in Guyana, whether orally or by delivery of documents in Guyana or correspondence posted from or to addresses in Guyana, or done by electronic mail, shall be treated as goods or services supplied to or for persons in Guyana;

- (c) in relation to the supply of goods or services under a lay-away agreement or other conditional sale agreement, the person conducting any antecedent negotiations and the owner or supplier shall be treated as a person supplying or seeking to supply the goods or services;
- (d) any reference to –
 - (i) a person to or for whom goods and services are supplied shall be construed as including a reference to any guarantor of that person;
 - (ii) the terms or conditions on or subject to which goods or services shall be construed as including a reference to the terms or conditions on or subject to which any person undertakes to act as the guarantor;
- (e) goods or services supplied by a person carrying on a business shall be taken to be supplied in the course of that business if payment for the supply of the goods or services is made or required by law or otherwise, to be made.

Application to
public utilities.

3. (1) The Commission may exercise a function under this Act in relation to a public utility after consultation with the Public Utilities Commission.

Cap. 1:01

(2) In this section "consultation" has the same meaning as defined in article 232 of the Constitution.

PART II

COMPETITION AND CONSUMER AFFAIRS COMMISSION

Competition
Commission
renamed.
No 11
of 2006

4. (1) The Competition Commission established by section 5 of the Competition and Fair Trading Act 2006 is renamed the Competition and Consumer Affairs Commission.

(2) The Competition and Consumer Affairs Commission shall continue to administer the Competition and Fair Trading Act 2006 and for the purposes of this Act, the Commission shall –

- (a) administer this Act; and
- (b) enforce the provisions of this Act.

(3) For the purposes of this Act and the Competition and Fair Trading Act 2006, the Commission shall remain as constituted under the Competition and Fair Trading Act 2006 except that for the purposes of this Act, matters relating to funds, accounts and audit, annual report and estimates, tax exemption of the Commission are further provided for in the First Schedule.

First
Schedule

(4) Appointment of staff in respect of both Acts is provided for in the First Schedule.

First
Schedule

Objective of
Commission.

5. The objective of the Commission is to promote and protect consumer

interests in relation to the supply of goods and services.

Functions of
Commission.

6. (1) The functions of the Commission are –

- (a) to investigate, in accordance with Part III, any complaint by a consumer and form an opinion about whether a provision of Parts IV, V, VI, VII, VIII, IX, X, XI or XII has been breached;
- (b) to take action as prescribed to remedy breaches;
- (c) to act on the establishment and growth of an organisation described in section 107;
- (d) to provide information to consumers on their rights and to enable them to make informed choices;
- (e) to implement education programmes for the benefit of consumers and suppliers;
- (f) to initiate any investigation and collect, compile, analyse, and disseminate any information it considers desirable or necessary in pursuance of its objective;
- (g) to mediate any disagreement brought to it under sections 109 and 110;
- (h) to make reports and recommendations to the Minister, where requested by the Minister or where the Commission thinks fit;
- (i) to institute, participate in, or support proceedings before a

Court, as necessary or desirable to administer and enforce this Act, including to bring prosecutions where the Commission thinks fit.

(2) The Commission may enter into cooperative agreements with similar regional and international bodies in the discharge of its mandate.

(3) The Commission shall take any other action it thinks fit arising from the exercise of any of its functions in any particular case.

General Powers
of the
Commission.

7. The powers of the Commission include the power to enter into any transaction and do anything else which, in the opinion of the Commission, is necessary to ensure the proper or effective discharge of its functions under this Act.

PART III

INVESTIGATION OF COMPLAINTS

Meaning of
investigation.

8. In this Part, "investigation" means an investigation by the Commission of a complaint made under section 9.

Complaints to
Commission.

9. (1) Any person who claims to have been adversely affected in relation to the acquisition of goods or services may make a written complaint to the

Commission within two months of the date of the transaction or any further time as may be determined by the Commission.

(2) Where the complainant –

- (a) is under the age of eighteen years or is unable to act for any reason, the complaint may be made by a member of the complainant's family or any other person considered by the Commission to be suitable; or
- (c) has died, the complaint may be made by the administrator or executor of the estate of the complainant.

Discretion not to investigate.

10. (1) The Commission may determine whether to undertake or continue an investigation of a complaint.

(2) The Commission may refuse to undertake or continue any investigation if it considers that –

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or not made in good faith;
- (c) the complainant has delayed the making of the complaint within the specified time;
- (d) the complainant does not have a sufficient interest in the subject matter of the complaint;

- (e) the subject matter of the complaint should more appropriately be dealt with by another body or another forum; or
- (f) having regard to all the circumstances of the case, no investigation or further investigation is necessary.

(3) If the Commission decides not to undertake or continue the investigation of a complaint, it shall inform the complainant in writing of that decision and the reasons for it within two months from the receipt of the complaint.

Power to investigate not precluded by other redress.

11. The Commission shall not be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to any Court for redress.

Power to summon persons to give evidence.

12. (1) The Commission may at any time, in relation to an investigation –

- (a) summon a person to attend and give evidence before the Commission; or
- (b) notify a person to produce documents in the possession or under the control of that person.

Second Schedule

(2) The summons shall be in the form set out in Form A of the Second Schedule and the notice shall be in the form set out in Form B of the Second

Schedule.

(3) The summons and notice may be served by –

- (a) a member of the Police Force;
- (b) a bailiff or Marshal of the Court; or
- (c) a person authorised by the Commission.

Obligation and
entitlement of
persons
summoned.

13. (1) A person summoned under section 12 shall –

- (a) enjoy the same rights and privileges as persons summoned by the Court, in respect of attendance before the Commission, the giving of evidence, and the production of documents, including the disclosure of any communication; and
- (b) be paid expenses (including travelling expenses) by the Commission, at the rates prescribed for witnesses in civil proceedings before the Court.

(2) The Commission may disallow the whole or any part of the expenses referred to in subsection (1).

(3) A person shall not –

- (a) without sufficient cause, fail to obey a summons issued by the Commission under section 12;

- (b) being a witness before the Commission, leave the Commission without its permission;
- (c) being a witness before the Commission, without sufficient cause refuse to answer any question put to that person by or with the permission of the Commission; or
- (d) wilfully obstruct or interrupt the proceedings of the Commission.

(4) A person who contravenes subsection (3) commits an offence.

Documents to be received as *prima facie* evidence.

14. In all proceedings before the Commission, any document produced to the Commission in response to a notice issued under section 12 shall be received as *prima facie* evidence of the truth of the statements contained in the document.

PART IV DUTIES OF SUPPLIERS

Information to consumers.

15. (1) A supplier shall, before payment is made for goods by a consumer, provide to the consumer in English all information concerning the goods being sold including, where applicable, the origin, brand, price, expiry dates, care, terms, components, contents, hazards, proper use, assembly, installation, weight, and size (dimensions) of those goods.

(2) Where a supplier fails to comply with subsection (1), the supplier shall, notwithstanding anything to the contrary in any warranty given to the consumer, be liable for any damage or injury done to the goods or consumer's person or property that can be directly attributed to the consumer's lack of information.

(3) A supplier who contravenes subsection (1) commits an offence.

Measurement
of goods.

16. (1) A consumer is entitled to check the weight, volume or other measurement of any goods that the consumer intends to purchase where the price of those goods is determined or materially affected by the measurement.

(2) For the purposes of subsection (1), where goods are sold by reference to their weight, volume or other measurement, the supplier shall provide for use by the consumer on the premises, at the time of purchase, appropriate measuring equipment that meets standards imposed by law.

(3) In selling or purporting to sell any goods by weight, volume, or other measurement, a supplier shall not deliver to the consumer a quantity of those goods that is less than that –

- (a) purported to be supplied; and
- (b) corresponding to the price charged.

(4) A supplier who contravenes this section commits an offence.

Prices and fees. 17. (1) A supplier shall display prominently in the supplier's premises, for the benefit of customers, discrete prices or fees for various types of goods and services being offered.

(2) The displayed prices or fees shall be current and shall state the amount of taxes and related charges separately from the cost of the goods or services.

(3) A supplier shall refund fees in full or in part to the consumer for the cancellation or unsatisfactory performance of the goods or services for which such fees have been paid.

(4) A supplier who contravenes this section commits an offence.

Receipts to be given to consumers.

18. (1) When a supplier sells goods or services to a consumer, the supplier shall give to the consumer a receipt setting out –

- (a) the purchase price and value added tax separately as paid by the consumer;
- (b) the date on which the purchase is made;
- (c) a description of the goods sold or services provided; and

(d) any other information as may be prescribed.

(2) The receipt --

- (a) shall be regarded as sufficient proof of the purchase of the goods or services;
- (b) may be used for the purposes of obtaining a refund in any of the circumstances for refund specified in this Act; and
- (c) shall be legible on issue for a period of twelve months.

(3) A supplier who contravenes this subsection (1) commits an offence.

Warranties.

19. (1) A supplier shall issue a standard and explicit warranty in relation to goods sold or services provided to a consumer.

(2) A supplier who contravenes subsection (1) commits an offence.

(3) Subject to subsection (6), where a manufacturer's warranty is attached to goods sold or goods provided in the course of a service, the supplier of the goods or service --

- (a) shall be deemed to have issued that manufacturer's warranty as an explicit warranty by the supplier to the consumer; and
- (b) shall, notwithstanding any geographical limitations placed by

a manufacturer on its warranty, honour that warranty as though it is the supplier's warranty.

(4) The liability of a supplier under subsection (3) does not affect or limit the supplier's liability under any other warranty issued by the supplier to the consumer.

(5) Where a supplier is liable only for the free replacement of parts under a warranty applicable to goods, the supplier shall not require the consumer to use the services of the supplier or its nominee in effecting repairs to the goods.

(6) Goods sold by a supplier to a consumer shall, in the absence of an explicit warranty, be deemed to have a warranty of six months on parts and labour.

(7) Goods or services provided by a supplier shall in the judgment of the supplier be fit to be sold and used for the ordinary purpose for which the goods are made by the manufacturer or supplied by the provider in the case of services.

(8) The warranty referred to in subsection (6) is subject to conditions and limitations that can reasonably be implied in a standard warranty for goods

of that nature.

(9) For the removal of doubt, notwithstanding this section, nothing in this Act shall be taken as relieving the manufacturer of the primary liability for the warranty issued by the manufacturer in relation to the goods or services.

Damage
resulting from
use of goods or
services
provided.

20. (1) Subsection (2) applies in a case where a supplier –

- (a) undertakes to provide a consumer with goods or services upon payment;
- (b) provides the declared benefit attached to the use of the goods or services; and
- (c) inadvertently causes bodily injury or pecuniary loss to be sustained by the consumer, independent of all other causes or contributory negligence.

(2) The supplier shall be liable in damages to the consumer and shall, upon presentation of a claim by the consumer –

- (a) undertake to pay the consumer all reasonable costs incurred or to be incurred by the consumer in correcting the damage so caused;
- (b) initiate all such claims for compensation within a period not exceeding seven days after the complaint is received at any of the premises where the supplier conducts the supplier's

business; and

- (c) pay compensation for claims not later than four weeks after initiation of the claim.

(3) A supplier who contravenes subsection (2) commits an offence.

(4) A supplier shall not be relieved of liability if –

- (a) the consumer fails to avail himself of some other goods or services that may be recommended by the supplier of the primary goods or services as supplementary or complementary goods or services;
- (b) the consumer has provided complementary goods or services which failed to function or caused damage or other loss.

Return of
goods.

21. (1) Suppliers of goods or services shall comply fully with the principles of return and refund set out in this Act.

(2) A consumer may return goods if the purpose for which the goods were bought or intended to be used have changed or ceased to exist immediately after the goods were bought.

(3) In relation to subsections (1) and (2) the goods shall –

- (a) be returned not later than seven days from the date of

purchase;

- (b) not have been used, tampered with or treated in a manner to cause damage; and
- (c) be returned in its original package.

(4) The consumer may elect to make a purchase of other goods of same value in lieu of a refund.

(5) The supplier may charge a restocking fee not exceeding ten percent of the purchase price of the returned goods.

(6) Goods so returned shall be deemed to be new and fit for resale at the original value.

Return of defective goods.

22. (1) This section applies where a supplier sells goods to a consumer and –

- (a) the goods fail to provide to the consumer the benefit and uninterrupted enjoyment for which they were intended; and
- (b) the consumer returns the goods to the supplier.

(2) Subject to subsection (5), the supplier shall –

- (a) at no cost to the consumer –
 - (i) replace the goods within fourteen days of the goods

being returned to the supplier; or

(ii) repair the goods;

(b) return the receipted payment for the goods.

(3) Where the supplier chooses to repair the goods the supplier shall –

(a) return the goods to the consumer in a fully repaired and functional state within fourteen days of the goods being returned to the supplier;

(b) if it is not returned to the consumer within that period, provide the consumer with a temporary substitute of comparable value for the consumer's uninterrupted use and enjoyment until the consumer's goods are either replaced, or repaired and returned.

(4) Subsection (2) does not apply if the supplier establishes that the goods were damaged as a direct result of neglect or abuse by the consumer.

(5) Subsection (2) –

(a) does not apply if there is evidence of apparent neglect or abuse by the consumer in relation to the goods; and

(b) is subject to any conditions and limitations contained in any explicit warranty issued by the supplier to the consumer at the time the goods were sold to the consumer.

(6) A supplier who contravenes subsection (2) or (3) commits an offence.

Return of
materially
different goods.

23. (1) Where a consumer is encouraged to acquire goods by the supplier's declaration and description of the goods, and the consumer subsequently discovers that the goods acquired are different in a material particular from those declared or described, subject to subsection (2) –

- (a) the consumer may return the goods acquired to the supplier;
- and
- (b) the supplier shall immediately give to the consumer in exchange for the returned goods, a refund of the purchase price.

(2) Subsection (1) does not apply unless the goods are returned to the supplier in the condition in which they were purchased or with minimal damage resulting from reasonable exposure in the normal course of the consumer's use of the goods before discovery of the material difference between the goods received and the goods that the consumer requested.

(3) A supplier who contravenes subsection (1) commits an offence.

Notices on
return of goods.

24. (1) A supplier shall not post notices stating –

- (a) that goods are not returnable;
- (b) that no refunds will be given for goods returned; or
- (c) any notices to the effect of paragraphs (a) and (b).

(2) A supplier who contravenes subsection (1) commits an offence.

Supplier to provide only requested goods or services.

25. (1) A supplier shall not –

- (a) provide goods or services to a consumer that are not requested by the consumer;
- (b) require a consumer to sign an open-ended commitment to pay for goods or services that, in addition to those requested, may in the supplier's opinion be necessary or appropriate; or
- (c) cause or induce a consumer to purchase any form of add-on goods or services without the consumer's consent or awareness.

(2) A supplier that offers or provides a repair or maintenance service to a consumer shall –

- (a) undertake only the agreed repairs or maintenances between the supplier and the consumer;
- (b) disclose to the consumer any additional related repairs or maintenances that the supplier considers necessary for the

consumer to enjoy reasonably long and uninterrupted use of the repaired or maintained goods;

(c) undertake the additional work only with the prior consent of the consumer;

(d) not switch parts provided by the consumer for the goods being repaired or maintained or switch any parts from the goods under repair or maintenance to be used on other goods being repaired or maintained, or for sale or gain; and

(e) warrant the repaired or maintained goods to be in good working order.

(3) A supplier who contravenes this section commits an offence.

Repair and maintenance providers to keep records.

26. (1) A supplier who offers a repair or maintenance service to a consumer shall keep a written record containing --

(a) the consumer's name, address and telephone number;

(b) a reasonably accurate description of the goods to be repaired or maintained including any identification number or mark;

(c) the goods replacement value in its present state as agreed with the consumer;

(d) an estimate of the labour, parts, related materials, and other costs to be paid by the consumer in respect of the repairs or maintenances to be effected;

- (e) the date on which the goods –
 - (i) are received for repair or maintenance; and
 - (ii) will be ready for collection or delivery after repair or maintenance;
- (f) parts or materials –
 - (i) supplied by the consumer and used or not used in the repair or maintenances;
 - (ii) not connected to the repair or maintenance removed from the object of the repair or maintenances and retained, used, sold or otherwise disposed of.

(2) The supplier shall give the consumer a copy of the record specified in subsection (1) before starting the repairs or maintenance and an amended version of the same after the repairs are completed, capturing all the information set out in subsection (1).

(3) A supplier who contravenes subsection (1) or (2) commits an offence.

Compensation
for loss.

27. (1) If the supplier of the repair or maintenance service, misplaces, loses or damages goods brought by a consumer, the supplier shall compensate the consumer by –

- (a) replacing the goods with the equivalent acceptable to the

consumer; or

- (b) refund the value of the goods as stated in the record under section 26 and any parts or materials the consumer may have provided or the value of such parts or materials.

(2) A supplier who contravenes subsection (1) commits an offence.

Lay away
purchase sale.

28. (1) Ownership and possession of lay-away goods or services remains with the supplier until payment is completed, unless otherwise agreed by the consumer and the supplier.

(2) Where a consumer shows cause why the consumer cannot complete the purchase, the supplier shall refund seventy five percent of the sum paid by the consumer to the supplier for the lay-away goods or services.

(3) A supplier shall deliver to the consumer the ownership and possession of lay-away goods or services on the payment of the final sum without fail.

(4) A supplier who contravenes subsection (2) or (3) commits an offence.

Where
consumer does
not get benefit

29. (1) Where, under a contract, a supplier provides a service for a fee to a

of services.

consumer, the supplier –

- (a) is deemed to be providing the consumer with a benefit under the contract; and
- (b) shall stipulate the extent of the benefit that the consumer should receive, subject to the fulfillment by the customer of specified conditions that are reasonable for the customer's enjoyment of that benefit.

(2) If, for reasons not attributable to the consumer –

- (a) the benefit is received only in part by the consumer, the supplier shall refund or rebate a proportionate part of the fees to the consumer; or
- (b) the benefit is not received at all by the consumer, the supplier shall make a full refund or rebate to the consumer.

(3) A supplier who fails to comply with subsection (2) commits an offence.

(4) Instead of making a refund or rebate under subsection (2), the supplier may, with the consent of the consumer, provide the service again free of cost to the consumer.

(5) Neither subsection (2) nor (4) applies in any case where the

consumer contracts to pay the supplier the fee regardless of whether the consumer receives the benefit.

Entertainment.

30. (1) Promoters, organisers, performing artists and suppliers of performing venues shall –

- (a) provide a safe environment for a performing event; and
- (b) jointly and individually have valid and adequate insurance coverage with listed providers for events, organised, sponsored, hosted or accommodated by them to cover –
 - (i) all public liabilities; and
 - (ii) refund of fees.

(2) Save and except where prevented or abridged by *force majeure*, in the event of non-performance, partial performance or performance non-compliant with the advertised terms of the event, promoters, organisers, performing artists and suppliers of performing venues shall jointly and individually be responsible for the immediate refund of –

- (a) full fees or ticket cost for non-performance; or
- (b) full or part fees or ticket cost for partial performance or performance non-compliant with the advertised terms of the event.

(3) A person who contravenes subsections (1) or (2) commits an

offence.

PART V

UNFAIR TRADE PRACTICES

Misleading or
deceptive
conduct.

31. (1) A supplier shall not, in trade or commerce, engage in conduct that is or is likely to be misleading or deceptive.

(2) A supplier who contravenes subsection (1) commits an offence.

Misleading
public as to
nature, etc.
of goods or
services.

32. (1) A supplier shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose or quantity of goods or services.

(2) A supplier who contravenes subsection (1) commits an offence.

False
representation.

33. (1) A supplier shall not, in trade or commerce --

(a) falsely represent that --

- (i) goods are of a particular brand, kind, standard, quality, grade, quantity, composition, functionality, performance, style or model, country or have had a particular history or a particular previous use;

- (ii) services are of a particular kind, standard, quality, quantity, value, or grade or that they are supplied by a particular person or by any person of a particular trade or business, qualification, or skill;
 - (iii) goods are new or reconditioned or were manufactured, produced, processed or reconditioned at a particular time and place;
 - (iv) a particular person has agreed to acquire goods or services;
 - (v) goods or services have sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits;
 - (vi) a person has a sponsorship, approval, endorsement, or affiliation;
- (b) make a false or misleading representation –
- (i) with respect to the price of goods or services;
 - (ii) concerning the need for goods, services, replacements or repairs, the availability of facilities for the repair or maintenance of goods or the availability of spare parts for goods;
 - (iii) concerning the place of origin of goods; or
 - (iv) concerning the existence, exclusion, effect of a condition, warranty, guarantee, right or remedy

relating to goods or services.

(2) A supplier who contravenes subsection (1) commits an offence.

Offering gifts
and prizes.

34. (1) A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply of goods or services, offer a gift, prize or other free item with the intention of not providing the gift, prize or other free item as offered.

(2) A person who contravenes subsection (1) commits an offence.

Full cost to be
stated in certain
cases.

35. (1) A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services, unless where the transaction is not a credit transaction, the person also specifies –

- (a) the cash price of the goods or services;
- (b) the total sum to be paid for the goods or services;
- (c) the number of instalments by which payment is to be made;
- (d) the rate of interest that will be charged; and
- (e) the deposit, if any, that must be made.

(2) A person who contravenes subsection (1) commits an offence.

Dual pricing.

36. (1) A supplier shall not, in trade or commerce, supply goods to which more than one price is appended at a price that is greater than the lower, or lowest, of the prices in question.

(2) A supplier who contravenes subsection (1) commits an offence.

(3) In subsection (1), a reference to a price appended to goods includes a reference to a price --

- (a) that is annexed or affixed to, or is written, printed, stamped or located on, or otherwise applied to, the goods or any band, ticket, covering, label or thing used in connection with the goods;
- (b) that is used in connection with the goods or anything on which the goods are mounted for display or exposed for sale;
- (c) that is determined on the basis of anything encoded on or in relation to the goods;
- (d) that is published in relation to the goods in a catalogue available to the public if --
 - (i) a time is specified in the catalogue as the time after which the goods will not be sold at that

price and that time has not passed; or

(ii) in any other case, the catalogue may reasonably be regarded as not out-of-date; or

(e) that is in any other way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods.

(4) Where the price appended to goods is written, stamped or located wholly or partly over another price, or other prices, appended to the goods, all the prices are, for the purposes of subsection (1), prices appended to the goods.

(5) A price shall be disregarded for the purposes of this section if –

(a) the goods to which the price is appended are duty-free goods and the price is expressed in a currency other than Guyana currency; or

(b) the price was appended to the goods outside Guyana in relation to the supply of the goods outside Guyana.

(6) In this section “price” includes any representation that may reasonably be inferred to be a representation of a price.

Non-delivery
of goods or
services.

37. (1) Where a supplier accepts a deposit in cash or kind under contract to provide goods or services to a consumer and on the contracted delivery date,

the supplier fails to deliver the specified goods or services in full, the supplier shall be deemed to have acted in a fraudulent manner unless --

- (a) the supplier can show that the supplier was prevented from delivering the specified goods or services in full for reason of *force majeure*; or
- (b) in cases of *force majeure* that the supplier and consumer agreed on a new delivery date mutually acceptable to both parties.

(2) A supplier who acted in a fraudulent manner under subsection (1) commits an offence.

Advertising.

38. (1) A supplier shall not, in trade or commerce, advertise for supply at a specified price, goods or services --

- (a) that the supplier does not intend to offer for supply; or
- (b) that the supplier has no reasonable grounds for believing that the supplier can supply at that specified price, for a period that is, and in quantities that are reasonable, having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement.

(2) A supplier who, in trade or commerce, has advertised goods or services for supply at a specified price shall supply those goods or services at

the specified price, for a period that is, and in quantities that are reasonable, having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement.

(3) A supplier's advertisement shall state if stock is limited or if the supplier has limited capacity to supply service, and shall specify the amounts of the stock being held or the limits of the supplier's capacity to supply the service.

(4) A supplier who contravenes this section commits an offence.

Referral selling.

39. (1) A supplier shall not, in trade or commerce, induce a consumer to acquire goods or services under a contract by representing that the consumer shall, after the contract is made, receive a rebate, commission or other benefit in return for giving the supplier the names of prospective customers or otherwise assisting the supplier to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after the contract is made.

(2) A supplier who contravenes subsection (1) commits an offence.

Falsely
accepting
payment.

40. (1) A supplier shall not, in trade or commerce, accept payment or other consideration for goods or services where at the time of the acceptance –

- (a) the supplier intends not to supply the goods or services;
- (b) the supplier intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

(2) A supplier who contravenes subsection (1) commits an offence.

Misleading statements.

41. (1) A supplier shall not, in trade or commerce, make a false or misleading statement concerning the profitability or risk or any other material aspect of any business activity that the supplier has represented as one that can be, or can be to a considerable extent, carried on at a person's place of residence.

(2) A supplier who contravenes subsection (1) commits an offence.

Pyramid selling.

42. (1) A person shall not promote or operate a pyramid selling scheme.

(2) A person who contravenes subsection (1) commits an offence.

(3) For the purposes of this section, the term "pyramid selling scheme" means a scheme --

- (a) that provides for the supply of goods or services or both for reward; and

- (b) that, to many participants, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or services; and
- (c) that is unfair, or is likely to be unfair, to many of the participants in that –
 - (i) the financial rewards of many of the participants are dependent on the recruitment of additional participants; and
 - (ii) the number of additional participants that must be recruited to produce reasonable rewards to participants is either not attainable, or is not likely to be attained, by many of the participants.

(4) In subsection 3 “participants” means participants in the scheme.

Assertion of
right of
payment
prohibited in
certain cases.

43. (1) A supplier shall not, in trade or commerce, assert a right to payment from a consumer for unsolicited goods or services.

(2) A supplier shall not, in trade or commerce, assert a right to payment from any person of a charge for the making in a directory of an entry relating to that person, unless the supplier knows or has reasonable cause to believe that the person has authorised the making of the entry.

(3) A person is not liable to make any payment to a supplier, and is entitled to recover against a supplier any payment made by the person to the supplier, in full or part satisfaction of a charge for the making of an unauthorised entry in a directory.

(4) For the purposes of this section, a supplier shall be deemed to assert a right to a payment from a person for unsolicited goods or services or of a charge for the making of an unauthorised entry in a directory if the supplier –

- (a) makes a demand for the payment, or asserts a present or prospective right to the payment;
- (b) threatens to bring legal proceedings with a view to obtaining the payment;
- (c) places or causes to be placed the name of the person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment;
- (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
- (e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the making of the entry and not stating as prominently, or more prominently, that no claim is made to the payment, or to the payment of the price or

charge, as the case may be.

(5) A person shall not be taken for the purposes of this section to have authorised the making of an entry in a directory unless –

- (a) a document authorising the making of the entry has been signed by the person, or by another person authorised by the first mentioned person;
- (b) a copy of the document has been given to the person before the right to payment of a charge for the making of the entry is asserted; and
- (c) the document specifies –
 - (i) the name of the directory;
 - (ii) the name and address of the person publishing the directory;
 - (iii) particulars of the entry;
 - (iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated; and
 - (v) the duration of the authorisation.

(6) Subsections (2) and (3) do not apply to or in relation to a payment if the payment relates to –

- (a) a contract that was made before the commencement date;

or

- (b) a contract that is made on or after that date by reason of the acceptance after that date of an offer that was made before that date.

(7) A supplier who contravenes subsections (1) or (2) commits an offence.

(8) In a proceeding against a person in respect of contravention of –

- (a) subsection (1), the burden lies on the defendant to show that the defendant has reasonable cause to believe that there was a right to payment; and
- (b) subsection (2), the burden lies on the defendant to show that the defendant knew or had reasonable cause to believe that the person had authorised the making of the entry.

(9) In this section, “making”, in relation to an entry in a directory, means including or arranging for the inclusion of the entry.

Liability of receipt of unsolicited goods.

44. (1) A person to whom unsolicited goods are supplied by a supplier in trade or commerce is not 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 a wilful and unlawful act in relation to the goods during the period specified in

subsection (5).

(2) Where, on or after the commencement date, a supplier sends unsolicited goods to a person –

- (a) neither the supplier nor any person claiming under the supplier is entitled after the expiration of the time specified in subsection (5) to take action for the recovery of the goods from the person to whom the goods were sent; and
- (b) upon the expiration of that time, the goods become by virtue of this section the property of the person to whom the goods were sent freed and discharged from all liens and charges of any description.

(3) Subsection (2) does not apply to or in relation to unsolicited goods sent to a person if –

- (a) the person had during the period specified in subsection (5) unreasonably refused to permit the supplier to take possession of the goods;
- (b) the supplier has within that time taken possession of the goods; or
- (c) the goods were received by the person in circumstances in which that person knew, or might reasonably be expected

to have known, that the goods were not intended for that person.

(4) The supplier is liable to pay to the recipient of unsolicited goods such reasonable costs as are incurred in respect of the storage of those goods.

(5) The period referred to in subsections (1), (2) and (3) is –

(a) if the person who receives the unsolicited goods gives notice with respect to the goods to the supplier in accordance with subsection (6) –

(i) the period of one month next following the day on which the notice is given; or

(ii) the period of three months next following the day on which the person received the goods, whichever first expires;

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

(6) A notice under subsection (5) 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.

Advertised
delivery date.

45. (1) Where –

- (a) a supplier has advertised a date or period for delivery of any goods (including any goods repaired by the supplier) or services; and
- (b) a consumer has entered into a contract with, and given a deposit to the supplier to deliver those goods or services, that date or period shall form part of the contract between the supplier and the consumer.

(2) If the goods or services are not delivered to the consumer by that date or within that period, the supplier shall, at the election of that consumer, either–

- (a) refund the deposit and terminate the contract for those goods or services; or
- (b) deliver those goods or services by another date or within another period agreed with the consumer and rebate the consumer an amount equal to ten percent of the deposit, for each week after the advertised date or advertised period that the goods or services remain undelivered.

(3) A supplier who contravenes subsection (2) commits an offence.

Demanding or
accepting
payment.

46. (1) A supplier shall not demand or accept payment or other form of compensation from a consumer for goods or services, if at the time of the demand or acceptance, the supplier --

- (a) does not intend to supply the goods or services;
- (b) intends to supply goods or services that are materially different from the goods or services in respect of which the payment or other compensation is demanded or accepted; or
- (c) does not have reasonable grounds to believe that the goods or services will be supplied within any specified period, or if no period is specified, within a reasonable time.

(2) A supplier who contravenes subsection (1) commits an offence.

Tied goods
or services.

47. (1) A supplier shall not bind or attempt to bind a customer purchasing goods or services to acquire related goods or services or unrelated goods or services either from that supplier or a nominated supplier.

(2) A supplier who contravenes subsection (1) commits an offence.

(3) In the case of products and services of a financial institution or insurance company the Commission shall first seek the advice of the Bank of Guyana before acting on an offence.

A.D. 2011]

(4) A supplier may tie the sale of goods or services to other goods or services (related or unrelated) only if the supplier shall bear the required costs of the specified tied goods or services.

Bundled goods
or services.

48. (1) A supplier shall not bundle goods or services or prices for goods or services on display, for sale or on receipts.

(2) A supplier shall not bundle discrete goods or services, which are otherwise sold separately, for sale to consumers except as promotional packages valid only for specific period.

(3) Where a consumer elects to purchase any single item being offered by a supplier in a promotional package the supplier shall not increase the regular price of that item.

(4) A supplier who contravenes this section commits an offence.

Defence.

49. (1) Subject to subsection (2), in a prosecution under this Part it is a defence if the defendant proves –

- (a) that the contravention in respect of which the proceeding was instituted was due to a mistake, to reliance on information supplied by another person, to the act or default of another person, to an accident or to some other

cause beyond the control of the defendant; and

- (b) that the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

(2) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the Court, entitled to rely on that defence unless the defendant has, not later than seven days after the charge was instituted given a notice in writing to the Commission stating sufficient information that would identify the other person.

(3) In a proceeding under this section in relation to a contravention of a provision of this Part committed by the publication of an advertisement, it is a defence if the defendant proves to the satisfaction of the Court that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and the advertisement was received for publication in the ordinary course of business and the defendant did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Part.

PART VI

UNFAIR CONTRACTS

Interpretation.

50. In this Part –

- (a) “contract” means any contract between a supplier and a consumer for the supply of goods or services;
- (b) “contractual term” means any term of a contract; and
- (c) a reference to a breach of duty or obligation refers to any kind of breach, regardless of whether the breach was inadvertent or intentional, and regardless of whether liability for the breach arises directly or vicariously.

Terms that have not been individually negotiated.

51. (1) A contract term is not individually negotiated for the purposes of this Part if it was drafted in advance and the consumer was not able to influence the substance of the term.

(2) Notwithstanding that a specific contract term or aspects of a specific contract term was or were in fact individually negotiated, the terms of the rest of the contract fail to be regarded as terms that have not been individually negotiated for the purposes of this Part if an assessment of the contract overall shows that the contract is a pre-formulated standard contract.

Burden of proof.

52. The burden of proof on the balance of probabilities lies on the supplier

who claims that contract terms were individually negotiated.

Written terms to be clear and intelligible.

53. (1) A supplier shall ensure that any written contract term is expressed in clear and intelligible language.

(2) If there is doubt about the meaning of a written contract term, the interpretation that is most favourable to the consumer shall prevail.

Unfair terms.

54. (1) A contract term is unfair if, to the detriment of the consumer, it causes a significant imbalance in the rights of the supplier and the consumer.

Third Schedule

(2) Terms which are unfair if not negotiated individually are set out in the Third Schedule.

Assessment of unfairness.

55. (1) In determining whether a contract term is unfair, consideration may be given to the following –

- (a) the nature of the goods or services for which the contract was concluded;
- (b) all the other terms of the contract or of another contract on which it is dependent;
- (c) the interests of the particular class of consumers who are likely to adhere to the contract; and
- (d) all the circumstances attending the conclusion of the

contract at the time of its conclusion.

Third
Schedule

(2) Without limiting the generality of subsection (1), contract terms described in the Third Schedule as unfair may be taken into consideration in determining whether a contract term is unfair.

(3) If a contract term is in clear and intelligible language, the assessment of its fairness shall not relate to the –

- (a) definition of the main subject-matter of the contract; or
- (b) adequacy of the price or remuneration as against the goods or services supplied in exchange.

(4) Where it is asserted in any proceedings in reliance on this Part that a contract term is unfair, it is for the supplier to show that the contract term is not unfair.

Effect of
unfair term.

56. An unfair contract term is unenforceable against the consumer.

Proper law.

57. (1) Where the proper law of a consumer contract would, but for a term in the contract that the proper law shall be the law of some country other than Guyana, be the law of Guyana, this Part applies to the contract notwithstanding that term.

(2) Where a consumer contract to which subsection (1) applies contains a term that purports to substitute, or has the effect of substituting provisions of the law of some country other than Guyana for any of the provisions of this Part, this Part applies to the contract notwithstanding that term.

Application of
this Part.

58. (1) A term of a consumer contract is void if it purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying –

- (a) the application in relation to that contract of any provisions of this Part; or
- (b) the exercise of a right conferred by such a provision.

(2) A term of a consumer contract is not to be taken as purporting to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with that provision.

Requirement of
reasonableness.

59. (1) For the purposes of this Part, a contractual item satisfies the requirement of reasonableness only if the term is a fair and reasonable one to be included in the contract, having regard to the circumstances which were, or ought reasonably to have been known to or in the contemplation of the parties when the contract was made.

(2) For the purposes of this Part, a notice (not being a notice having contractual effect) satisfies the requirement of reasonableness only if it is fair

and reasonable to allow reliance on the notice, having regard to all the circumstances obtaining when a liability arises or (but for the notice) would have arisen.

(3) Where a person seeks to restrict liability to a specified sum of money by reference to a notice or contractual term, and the question arises as to whether the term or notice satisfies the requirement of reasonableness, the following shall also be taken into account –

- (a) the resources which the person could expect to be available to that person for the purpose of meeting the liability if it arises; and
- (b) the extent to which it was open to that person to cover himself by insurance.

(4) The onus of proving that a notice or contractual term satisfies the requirement of reasonableness lies on the person who claims that it does.

Effect of
termination or
affirmation on
requirement of
reasonableness.

60. (1) For the purpose of this Part, a contractual term may be determined to satisfy the requirement of reasonableness notwithstanding that the contract has been terminated for breach or by a party electing to treat the contract as repudiated.

(2) Where a contract is breached and the party entitled to treat it as

repudiated affirms the contract, the affirmation does not preclude the requirement of reasonableness applying to a term of the contract under a provision of this Part.

Excluding or restricting liability for negligence.

61. (1) Subject to subsection (2), a person shall not exclude or restrict the person's liability for negligence in respect of goods or services provided to a consumer by reference to —

- (a) a contractual term;
- (b) a notice given to persons generally; or
- (c) a notice given to particular persons.

(2) A person may exclude or restrict that person's liability for loss or damage (other than death or personal injury) resulting from negligence by reference to a term or notice referred to in subsection (1) to the extent that the term or notice satisfies the requirement of reasonableness.

(3) Notwithstanding subsection (2), a person shall not be regarded as voluntarily accepting the risk by reason only that the person is aware of, or agrees to, a notice or contractual term purporting to exclude or restrict liability for negligence.

Reliance on contract.

62. A supplier who is party to a contract shall not, by reference to a term of the contract —

- (a) exclude or restrict the supplier's liability in respect of breach of a contractual obligation; or
- (b) claim to be entitled to render --
 - (i) a contractual performance substantially different from that which was reasonably expected of the supplier; or
 - (ii) any performance in respect of the whole or any part of a contractual obligation,except to the extent that the contractual term satisfies the requirement of reasonableness.

Indemnity.

63. A consumer may not, by reference to any contractual term, be made to indemnify another person (whether or not a party to the contract) in respect of liability that may be incurred by the other person for negligence or breach of contract, except to the extent that the contractual term satisfies the requirement of reasonableness.

Guarantee
cannot exclude
liability.

64. (1) A person shall not, by reference to a guarantee, exclude or restrict that person's liability for loss or damage arising from consumer goods or services proving defective while in consumer use, where the defect is caused by the negligence of a person concerned in the manufacture or distribution of the goods or provision of services.

(2) For the purposes of subsection (1), consumer goods or services are to be regarded as being in consumer use when a person is using them, or is in possession of them for use, otherwise than exclusively for the purpose of business.

Statutory
condition or
warranty.

65. (1) A person may not, by reference to a contractual term, exclude or restrict the person's liability for breach of an obligation arising from a condition or warranty implied or imposed by any written law.

(2) In subsection (1), "contractual term" excludes a condition or warranty of the kind referred to in that subsection.

(3) For the avoidance of doubt, the reference in subsection (1) to a warranty imposed by any written law includes a manufacturer's warranty deemed under section 19(3) to be a warranty issued by the supplier.

Restriction of
liability under
this Part is
unenforceable.

66. A guarantee, notice, or contractual term purporting to exclude or restrict liability in breach of any provision of this Part is unenforceable against a consumer.

Transitional
provisions in
respect of
certain
guarantees and
contract.

67. This Part does not apply before the first anniversary of the commencement date, to --

(a) a guarantee issued to a consumer before the commencement

date; and

- (b) a contract entered into before the commencement date.

PART VII

CONTROL OF DISTANCE SELLING

Interpretation.

68. In this Part,

- (a) “distance contract” refers to a contract concerning goods or services concluded between a supplier and a consumer under a scheme operated by the supplier, who, for the purposes of the contract, makes exclusive use of one or more means of distance communication up to and including the point at which the contract is concluded;
- (b) “distance contract” includes mail order and house to house sale;
- (c) “means of distance communication” refers to means which, without the simultaneous presence of the supplier and the consumer, may be used for the conclusion of a contract between the parties, including electronic transactions.

Regulations.

69. (1) The Minister may, after consultation with the Commission, make regulations for the purpose of protecting consumers in relation to distance

contracts.

(2) Without limiting the generality of subsection (1), the Minister may, in consultation with the Commission, make regulations –

- (a) regulating the advertising and marketing (including advertising and marketing by mail-order or doorstep selling or electronic promotion) of business that is to be conducted by way of distance contracts;
- (b) with respect to the information that must be supplied to persons to whom distance contracts are offered;
- (c) with respect to the transparency, clarity and fairness of distance contracts;
- (d) requiring information to be given to persons as may be determined by or under the regulations for the purpose of enabling those persons to exercise any function conferred on them by the regulations;
- (e) for the resolution of disputes and differences between parties to distance contracts, including resolution of such disputes and difference otherwise than by a Court; and
- (f) creating summary offences for contravention of the regulations.

PART VIII**ELECTRONIC SALE**

Guidelines for
electronic sale
transactions.

70. (1) A supplier using electronic communications to sell goods or provide services to consumers shall provide accurate, clear and accessible information about themselves, sufficient to allow --

- (a) the legal name of the person, its main geographic address, and an electronic means of contact and telephone numbers;
- (b) prompt easy and effective consumer communication with the supplier; and
- (c) service of legal process.

(2) A supplier using electronic communication to sell goods or services to consumers shall provide accurate and accessible information describing the goods or services offered, sufficient to enable consumers to make an informed decision about the proposed transaction and to maintain an adequate record of the information.

(3) A supplier using electronic communication to sell goods or services to consumers shall provide information about the terms, conditions and costs associated with a transaction, and particularly, terms, condition and methods of payments and details of and conditions related to withdrawal, termination,

return, exchange, cancellation and refund policy information.

(4) A supplier who contravenes this section commits an offence.

Regulations.

71. The Minister may, after consultation with the Commission, make regulations for the purpose of protecting consumers in relation to electronic sale transactions.

PART IX

PRODUCT LIABILITY

Interpretation.

72. (1) In this Part,

- (a) “agricultural produce” means any produce, whether of the soil or otherwise, of stock-farming or of fisheries;
- (b) “producer” in relation to a product, means –
 - (i) the person who manufactured the product;
 - (ii) in the case of a substance which has been won or abstracted, the person who won or abstracted the substance;
 - (iii) in the case of a product which has not been won or abstracted but initial characteristics of which are attributable to an industrial or other process having been carried out, for example,

in relation to agricultural produce, the person who carried out that process;

- (c) “product” means any goods, including animals or agricultural produce reared or grown for supply, and includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise.
- (d) “to manufacture” in relation to animals or agricultural produce, includes to rear or grow.

(2) For the purposes of this Part, a person who supplies any goods in which other products are comprised, whether by virtue of being component parts or raw materials or otherwise, shall not be treated by reason only of the supply of that product as supplying any of the other products so comprised.

Liability for defective product.

73. (1) Where any damage is caused wholly or partly by a defective product, every person to whom subsection (2) applies is liable for the damage.

(2) This subsection applies to –

- (a) the producer of the product;
- (b) a person who holds himself out to be the producer of the product by putting that person’s name on the product or using a trade mark or other distinguishing mark in relation

to the product;

- (c) a person who has imported the product into Guyana in order, in the course of any business of that person to supply it to another.

(3) Where any damage is caused wholly or partly by a defect in a product, a person who supplied the product, whether to the person who suffered the damage, to the producer of any product in which the product in question is comprised or to any other person, is liable for the damage if--

- (a) the person who suffered the damage requests the supplier to identify one or more of the persons, whether still in existence or not, to whom subsection (2) applies in relation to the product;
- (b) that request is made within a reasonable time after the damage occurs; and
- (c) the supplier fails, within a reasonable time after receiving the request, either to comply with the request or to identify the person who supplied the product to the supplier.

(4) Where two or more persons are liable by virtue of this Part for the same damage, their liability is joint and several.

(5) This section is without prejudice to any liability arising otherwise

than by virtue of this Part.

Defect inferred.

74. (1) There is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes "safety", in relation to a product, includes safety with respect to products comprised in that product and safety in the context of risks of damage to property as well as in the context of risks of death or personal injury.

(2) In determining for the purposes of subsection (1) what persons generally are entitled to expect in relation to a product, all the circumstances shall be taken into account, including –

- (a) the manner in which and purposes for which the product has been marketed, its get-up, the use of any mark in relation to the product and any instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product;
- (b) what might reasonably be expected to be done with or in relation to the product; and
- (c) the time when the product was supplied by its producer to another.

(3) A defect shall not be inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product

in question.

Incurring of
damage.

75. (1) A person is not liable under section 73 for any damage to any property which, at the time of the damage, is not –

- (a) of a description of property ordinarily intended for private use, occupation or consumption; and
- (b) intended by the person suffering the damage mainly for that person's own private use, occupation or consumption.

(2) In determining for the purposes of this Part who has suffered damage to property and when any such damage occurred, the damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the damage.

(3) For the purposes of subsection (2), the material facts about any damage to any property are such facts about the damage as would lead a reasonable person with an interest in the property to consider the damage sufficiently serious to justify a person instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(4) For the purposes of subsection (2), a person's knowledge includes knowledge which the person might reasonably have been expected to acquire –

- (a) from facts observable or ascertainable by the person; or
- (b) from facts ascertainable by the person with the help of appropriate expert advice which it is reasonable for that person to seek;

but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable by that person only with the help of expert advice unless that person has failed to take all reasonable steps to obtain and, where appropriate, to act on that advice.

Defences.

76. In any proceedings under this Part against any person, in this section referred to as “the person proceeded against”, in respect of a defect in a product it is a defence for him to show that –

- (a) the defect is attributable to compliance with a requirement imposed by or under any law;
- (b) the person proceeded against did not at any time supply the product to another;
- (c) the following conditions are satisfied –
 - (i) the only supply of the product to another by the supplier was otherwise than in the course of a business of the supplier;
 - (ii) that section 73(2) does not apply to the supplier, or applies to the supplier by virtue only of things done otherwise than with a view to profit;

- (d) the defect did not exist in the product at the relevant time;
- (e) the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in the producer's products while they were under the control of the producer; or
- (f) the defect –
 - (i) constituted a defect in a product, in this paragraph referred to as “the subsequent product”, in which the product in question has been comprised; and
 - (ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

PART X

CONSUMER SAFETY

Interpretation.

77. (1) In this Part –

- (a) “safe” in relation to goods including repaired, maintained, reconditioned, second hand, refurbished and

replacement goods or services, means goods or services in respect of which there is no risk, apart from one reduced to a minimum, that any of the following will (whether immediately or after a definite or indefinite period) cause the death of, or any personal injury to a person –

- (i) the goods or services;
- (ii) the keeping, use or consumption of the goods or services;
- (iii) the assembly of any of the goods or services which are, or are to be, supplied unassembled;
- (iv) the emission or leakage from the goods or, as a result of the keeping, use or consumption of the goods or services, from anything else; or
- (v) the reliance on the accuracy of any measurement, calculation or other reading made by, or by means of, the goods or services.

(2) In the definition of “safe” in subsection (1) references to the keeping, use or consumption of any goods or services are references to –

- (a) the keeping, use or consumption of the goods or services by the persons by whom, and in all or any of the ways or circumstances in which, they might reasonably be expected to be kept, used or consumed; and
- (b) the keeping, use or consumption of the goods either alone or in conjunction with other goods or services in conjunction with which they might reasonably be expected to be kept, used or consumed.

Products must
be safe.

78. (1) A person shall not –

- (a) supply consumer goods or services which fail to comply with the general safety requirements;
- (b) offer or agree to supply goods or services that are not safe; or
- (c) expose or possess unsafe goods or services for supply.

(2) A person who contravenes subsection (1) commits an offence.

(3) For the purposes of this section, consumer goods fail to comply with the general safety requirements if they are not reasonably safe having regard to all the circumstances, including –

- (a) the manner in which, and purposes for which, the goods are being or would be marketed, the get-up of the goods,

the use of any mark in relation to the goods and any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods;

- (b) any standards of safety published by any person or authority, and having legal effect as published, either for goods of a description which applies to the goods in question or for matters relating to goods of that description; and
- (c) the existence of any means by which it would have been reasonable for the goods to have been made safer.

(4) For the purposes of this section, consumer goods shall not be regarded as failing to comply with the general safety requirement in respect of –

- (a) anything which is shown to be attributable to compliance with any requirement imposed by or under any law; or
- (b) any failure to do more in relation to any matter than is required by –
 - (i) any safety regulations imposing requirements with respect to that matter;
 - (ii) any standards of safety prescribed for the purposes of this section and imposing requirements with respect to that matter.

Fourth
Schedule

(5) The Minister may on the advice of the Commission make regulations relating to consumer safety, consistent with the Fourth Schedule.

Supplier's
premises must
be safe.

79. (1) The approach to premises and the premises of a supplier shall be safe, secure and orderly for a consumer.

(2) A supplier shall be responsible for the maintenance of order in the supplier's premises and the approach to the premises.

(3) A supplier shall not harass or berate a consumer.

(4) A supplier shall store, stack and display goods securely and safely.

(5) A customer who suffers an injury or any other loss as a result of a breach by a supplier of this section may sue the supplier for compensation, damages and any other remedies.

(6) A supplier who contravenes this section commits an offence.

Defence.

80. (1) In any proceedings against a person for an offence under this Part in respect of any goods, it is a defence for the person to show –

- (a) that the person reasonably believed that the goods would not be used or consumed in Guyana;

- (b) that both of the following conditions are satisfied –
- (i) that the person supplied the goods, offered or agreed to supply them or, as the case may be, exposed or possessed them for supply in the course of carrying on a retail business;
 - (ii) that, at the time the person supplied the goods or agreed or offered to supply them, or exposed or possessed them for supply, that person did not know nor had reasonable grounds for believing that the goods failed to comply with the general safety requirement; or
- (c) that the terms on which the person supplied the goods or agreed or offered to supply them or, in the case of goods which the person exposed or possessed for supply, the terms on which the person intended to supply them provided for, or contemplated, the acquisition of an interest in the goods by the persons supplied or to be supplied.

(2) For the purposes of subsection (1)(b) goods are supplied in the course of carrying on a retail business if –

- (a) whether or not they are themselves acquired for a person's private use or consumption, they are supplied in the course

of carrying on a business of making a supply of consumer goods available to persons who generally acquire them for private use or consumption; and

- (b) the description of goods the supply of which is made available in the course of that business do not, to a significant extent, include manufactured or imported goods which have not previously been supplied in Guyana.

(3) In this section the expression "consumer goods" does not include aircraft other than hang-gliders.

PART XI

RECALL OF GOODS

Compulsory
recall of goods.

81. (1) Where a supplier, in trade or commerce, supplies goods after the commencement date and it appears to the Commission that the goods are goods of a kind which will or may cause injury to any person and that the supplier has not taken satisfactory action to prevent the goods causing injury to any person, the Commission may, by notice in writing served on the supplier and published in a daily newspaper of general circulation, require the supplier to do one or more of the following –

- (a) take action within the period specified in the notice to

recall the goods;

- (b) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following –

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

(ii) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous;

- (c) inform the public, or a class of persons specified in the notice, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate –

(i) except where the notice specifies a dangerous characteristic of goods, repair the goods;

(ii) replace the goods; or

(iii) refund to a person to whom the goods were supplied, whether by the supplier or by another person, the price of the goods,

within the period specified in the notice.

- (2) The Commission may by notice in writing published in a newspaper

of general circulation give directions as to the manner in which the supplier is to carry out a recall of goods required under subsection (1).

(3) Where the supplier under subsection (1) undertakes to repair goods, the supplier shall cause the goods to be repaired so that any defect in the goods specified in the notice is remedied.

(4) Where the supplier under subsection (1) undertakes to replace goods, the supplier shall replace the goods with like goods which, if a defect in, or a dangerous characteristic of, the first-mentioned goods was specified in the notice, do not have that defect or characteristic.

(5) Where the supplier under subsection (1) undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(6) Where goods recalled, whether voluntarily or in accordance with a requirement made by the Commission under subsection (1), were supplied to another person outside Guyana the supplier shall, as soon as practicable after the supply of those goods, give a notice in writing to that other person –

- (a) stating that the goods are subject to recall; and
- (b) if the goods contain a defect or have a dangerous characteristic, setting out the nature of that defect or

characteristic.

(7) A supplier shall, within five days after giving the notice required under subsection (6), provide the Commission with a copy of that notice.

(8) A supplier who fails to comply with subsection (6) or (7) commits an offence.

Compliance
with recall
notice.

82. (1) Where a notice under section 81(1) is in force in relation to a supplier, the supplier –

(a) shall comply with the requirements and directions in the notice; and

(b) shall not, in trade or commerce –

(i) where the notice specifies a defect in, or a dangerous characteristic of, the goods, supply goods of the kind to which the notice relates which have that defect or characteristic; or

(ii) in any other case, supply goods of the kind to which the notice relates.

(2) A supplier who contravenes this section commits an offence.

Loss or
damage caused
by failure to
comply with
notice.

83. Where a supplier contravenes section 82 and another person suffers loss or damage by reason of defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods, the other person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods, or by the failure of the supplier to comply with the notice, as the case may be.

Notice to
provide
documents,
information,
etc.

84. Where the Commission has reason to believe that a supplier, in trade or commerce, supplies consumer goods of a particular kind which will or may cause injury to a person is capable of furnishing information, producing documents or giving evidence relating to goods of that kind, the Commission may, by notice in writing served on the supplier, require the supplier --

- (a) to furnish to the Commission, within such reasonable time as is specified in the notice, any such information;
- (b) to produce to the Commission in accordance with such reasonable requirements as are specified in the notice, any such documents; or
- (c) in person or by representative to appear before the Commission at such reasonable time and place as is specified in the notice to give evidence, either orally or in writing and to produce documents.

Entering
supplier's
premises.

85. (1) Where the Commission has reason to believe that consumer goods

will or may cause injury to a person, the Commission may, for the purposes of ascertaining whether goods of that kind will or may cause injury to a person, enter any building, ship, carriage, vehicle, container or place in or from which the Commission has reason to believe that a person supplies goods of that kind in trade or commerce and --

- (a) inspect goods of that kind;
- (b) take samples of goods of that kind;
- (c) seize goods of that kind;
- (d) inspect any documents relating to goods of that kind and make copies of, or take extracts from those documents;
and
- (e) inspect equipment used in the manufacturing, processing or storage of goods of that kind.

(2) The powers of the Commission shall not be exercised except --

- (a) pursuant to a warrant issued by a magistrate; or
- (b) in circumstances where the exercise of those powers is required without delay in order to protect life or public safety.

(3) Goods lawfully seized under this Act may be disposed of by the Commission.

Commission to
apply to a
Magistrate.

86. (1) The Commission may apply to a magistrate for a search and arrest warrant to permit an authorised officer of the Commission or a member of the Police Force to enter a building, ship, carriage, vehicle, container or place in order to seize and to exercise any other powers of the Commission.

(2) Where an application is made to a magistrate, the magistrate may issue a warrant permitting an authorised officer of the Commission named in the warrant or a member of the Police Force to enter the place specified in the warrant and to seize and to exercise the powers of the Commission.

Commission to
provide reasons.

87. A magistrate shall not issue a warrant unless –

- (a) the Commission provides good reasons why the issue of the warrant is sought;
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

Voluntary recall
of goods.

88. A person who voluntarily takes action to recall goods because the goods will or may cause injury to any person shall, within two days after taking that action, give a notice in writing to the Commission –

- (a) stating that the goods have been recalled; and
- (b) setting out the nature of the defect in, or dangerous characteristic of, the goods.

Copy of notice. 89. (1) Where the Commission publishes a notice of recall, the Commission may cause a copy of the notice to be given to each person who, to the knowledge of the Commission, supplies goods of the kind to which the notice relates.

(2) A failure to comply with subsection (1) in relation to a notice does not invalidate the notice.

Mandatory
recall of goods.

90. (1) A supplier of goods in Guyana, whose goods are manufactured abroad and are subject to recall by the manufacturer in another country shall –

- (a) mandatorily recall such goods on the local market not later than forty eight hours after the manufacturer issues its recall notice in another country; and
- (b) inform the Commission immediately of the manufacturer's decision of recall and the specific action the supplier intends to take to comply locally.

(2) A supplier who fails to comply with subsection (1) commits an offence.

(3) For purposes of clarification goods in this section means goods however branded or modeled or described which contain the defects referred to by the manufacturer and became the cause of the manufacture's recall decision.

Repair or replacement or refund of goods.

91. (1) On recall of the goods the supplier shall remedy the defects identified by the manufacturer on which its recall decision is based.

(2) Remedies to be provided by the supplier shall be identical with those set out by the manufacturer and may include –

- (a) repairs or replacement of parts of the goods;
- (b) replacement of the goods; and
- (c) refund of the receipted value of the goods.

Liability of insurer.

92. The liability of an insurer under a contract of insurance with a person, being a contract relating to –

- (a) the recall of goods supplied or proposed to be supplied by that person; or
 - (b) that person's liability with respect to possible defects in goods supplied or proposed to be supplied by that person,
- shall not be affected by reason only that that person gives to the Commission information relating to goods supplied or proposed to be supplied by that person.

PART XII

INDUSTRY CODES

Interpretation.

93. In this Part –

- (a) “applicable industry, trade or profession code”, in relation to a person who is a participant in an industry, trade or profession, means –
- (i) the prescribed provisions of any mandatory industry, trade or profession code relating to the industry, trade or profession that binds participants; or
 - (ii) the prescribed provisions of any voluntary industry, trade or profession code relating to the industry, trade or profession that guides participants;
- (b) “consumer”, in relation to an industry, means a consumer of goods or services provided by suppliers in that industry;
- (c) “industry” includes franchising, franchisors and franchisees who are participants in the industry of franchising, whether or not they are also participants in another industry;
- (d) “industry, trade and profession code” means a code regulating the conduct of participants in an industry, a trade or profession towards other participants in the industry, trade or profession or towards consumers;
- (e) “mandatory” and “voluntary”, in relation to an industry, a trade or profession code or specified provisions of such a

code, means respectively a code or specified provisions of a code that is or are declared by regulations under section 94 to be mandatory or voluntary, as the case may be, in relation to that industry, trade or profession;

- (f) "participant" means participant as a supplier;
- (g) "trade" means a specific area of business or industry.

Regulations on codes.

94. (1) The Minister may, after consultation with the Commission, make regulations --

- (a) prescribing an industry, a trade or profession code, or specified provisions of an industry code, a trade or profession;
- (b) declaring an industry, a trade or profession code, or specified provisions of an industry, a trade or profession code, to be mandatory or voluntary;
- (c) for a voluntary industry, trade or profession code, or specified provisions of a voluntary industry, trade or profession code, specifying --
 - (i) the method by which a person is bound by the code or those provisions; and
 - (ii) the method by which a person ceases to be so bound,

whether by reference to provisions of the code or

otherwise;

- (d) making such provision as the Commission thinks fit for the registering of persons bound or otherwise affected by an industry, a trade or profession code; and
- (c) creating offences for contraventions of an applicable industry, trade or profession code.

(2) Any person who commits an offence under any regulation shall be liable on summary conviction to a fine of not less than ten thousand dollars nor more than seven hundred and fifty thousand dollars and to imprisonment for months.

Voluntary codes are binding.

95. For the purposes of this Part, a voluntary industry, trade or profession code binds a person who has agreed, as prescribed, to be bound by the code and who has not subsequently ceased, as prescribed, to be bound by it.

PART XIII

ENFORCEMENT, REMEDIES AND APPEALS

Right of Commission to enforce this Act.

96. The Commission may apply to the Court to enforce this Act against a person for compensation, damages and any other remedies.

Commission may not take action.

97. The Commission may not take action under section 96 if within six

months after the commencement date the parties concerned notify the Commission of the details of any agreement or practices harmful to consumer interests and fair trading and agree with the Commission as to the manner and the period within which that agreement or practice will be terminated and have otherwise settled the matter.

Commission
may issue
immunity from
prosecution
with the
approval of the
Director of
Public
Prosecutions.

98. (1) The Commission may, with the approval of the Director of Public Prosecutions, give to a person who has committed an offence specified in this Act, a notice in the prescribed form offering that person immunity from prosecution for that offence on payment of a fixed penalty set by the Commission.

(2) A person to whom a notice has been given shall not be prosecuted for the offence if the fixed penalty is paid in accordance with subsection (1) and by the date specified in that notice.

(3) Where a person is given a notice, proceedings shall not be taken against that person for the offence until the expiration of fifteen days following the date of the notice or such longer period as may be specified in the notice.

(4) Payment of the fixed penalty shall be made by the date specified in the notice, and the Commission shall issue a certificate in that behalf, which shall be conclusive evidence of the facts stated in the certificate.

(5) A notice under subsection (1) shall –

- (a) specify the offence alleged;
- (b) give particulars of the offence as are necessary for giving reasonable information of the allegation; and
- (c) state –
 - (i) the period during which proceedings will not be taken in accordance with subsection (3);
 - (ii) the amount of the fixed penalty.

(6) If any proceedings are brought against a person for an offence under this Act, or any regulation, it shall be a defence if the person proves that the offence with which that person is charged has been compounded under this section.

(7) If the Commission withdraws a notice issued under subsection (1), after payment of the fixed penalty, the amount shall be refunded and all liability discharged.

Search and
seizure
warrants.

99. The Commission may seek a warrant to enter a place to search or seize goods, in accordance with section 7, on the basis of information received that there are reasonable grounds to believe that there may be in the place goods that –

- (a) may be material as evidence in proving an offence; and
- (b) has been acquired by a person for distribution or trade.

Assisting
police.

100. (1) A person who is in possession or control of goods that is the subject of a search warrant under section 99 shall permit and assist if required, the person making the search to –

- (a) have access to the place where the goods are located;
- (b) obtain or seize the goods.

(2) A person who contravenes subsection (1) commits an offence.

Record of and
access to seized
goods.

101. (1) If the goods have been removed or rendered inaccessible, following a search or a seizure under section 99, the person who made the search must, at the time of the search or as soon as possible after the search –

- (a) make a list of the goods that have been seized or rendered inaccessible, with the date and time of seizure; and
- (b) give a copy of that list to –
 - (i) the occupier of the place; or
 - (ii) the person in control of the goods.

(2) Subject to subsection (3) on request a police officer or court official or representative of the Commission may permit a person who had the custody of the goods or someone acting on the person's behalf access to remove

personal items from the goods.

(3) Access may be denied if the police officer, court representative or representative of the Commission has reasonable grounds to believe that access would –

- (a) constitute a criminal offence; or
- (b) prejudice –
 - (i) the investigation in connection with which the search was carried out;
 - (ii) another ongoing investigation; or
 - (iii) any criminal proceedings that are pending or that may be brought in relation to any of those investigations.

Offences and penalties.

102. (1) A person who commits an offence under this Act is liable on summary conviction to a fine of not less than twenty thousand dollars nor more than one million dollars and to imprisonment for one year.

(2) A complaint may be laid at any time within one year after the time when the matter of the complaint arose.

(3) This section shall prevail over section 6 of the Summary
 Cap. 10:02 Jurisdiction (Procedure) Act.

Criteria for
determining
penalty.

103. The Court in imposing a penalty shall take into consideration whether the defendant's business is large, medium or small, the severity of the offence and whether the offender is a serial offender, and issue judgment accordingly.

Supplier
conduct.

104. (1) A supplier or other person commits an offence if the supplier or other person engages in conduct which constitutes –

- (a) aiding, abetting, counselling or procuring the commission of an offence under this Act;
- (b) inducing by threats, promises or otherwise, the commission of an offence under this Act;
- (c) being knowingly concerned in or party to any such offence; or
- (d) conspiring with any other person to commit an offence under this Act.

(2) A person who commits an offence under subsection (1) may also be liable in damages for any loss caused to any other person by such conduct.

(3) An action under subsection (1) or (2) may be commenced at any time within one year from the time when the cause of action arose.

Right of
supplier to

105. (1) A person who is aggrieved by a written finding or decision of the

appeal to the
Court.

Commission may, within fifteen days after the date of that finding or decision appeal to a judge of the Court.

(2) The judge may –

- (a) confirm, modify or reverse the Commission's findings or decision, or any Part of the findings or decision; or
- (b) direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(3) In making any rulings or giving any direction under this section the judge shall –

- (a) state the reasons in writing for doing so; and
- (b) give directions in writing to the Commission concerning the reconsideration of the whole or any part of the matter that is referred for reconsideration.

(4) In reconsidering the matter, the Commission shall have regard to the judge's directions and reasons for giving a direction.

(5) Where an appeal is brought against the findings or decision of the Commission, the appeal shall not operate as a stay.

PART XIV

MISCELLANEOUS

Recovery of
movable asset
pledged.

106. (1) This section applies where, under a bill of sale, a consumer pledges a movable asset to a person in the event of default in repayment of a loan.

(2) A person shall not, in taking action to recover the movable asset in the event of default in repayment of the loan –

- (a) employ or engage a person other than a bailiff or a Marshal of the Court to seize the movable asset;
- (b) threaten, carry out, or cause to be carried out a seizure of the movable asset, where the consumer's indebtedness to the supplier has already been discharged or is currently being serviced in accordance with existing contractual provisions; or
- (c) recklessly damage the movable asset while exercising distraint.

(3) A person who contravenes subsection (2) commits an offence.

(4) If a magistrate finds a person is guilty of an offence under this section, the magistrate may, in addition to penalty imposed under this Act, order the person –

- (a) to compensate the consumer for all or any part of the

costs and expenses reasonably incurred as a result of the contravention or failure, including the costs of any legal proceedings to the Court (including proceedings before the Commission) arising from that contravention or failure; or

- (b) to pay to the consumer an amount equal to the market value of the movable asset seized and, in addition, five thousand dollars per day for every day that the consumer has been deprived of the use and enjoyment of the movable asset.

Criteria for organisation purporting to provide services for protection of consumers.

107. Any organization purporting to provide services for the promotion of consumers' interest shall be a duly registered, non-profit organisation the purpose of which is to –

- (a) promote consumer interest;
- (b) represent the collective interests of consumers before judicial or administrative bodies;
- (c) represent consumers' interest to government and enterprises;
- (d) collect, process and disseminate objective information for the benefit of consumers;
- (e) supply or distribute goods or provide services;
- (f) engage in public advocacy; and
- (g) cooperate with like bodies whether regional and international.

Consumer
personal
information.

108. (1) A supplier shall not communicate to anyone, besides the consumer personal information, transaction details and particulars of payment instruments, unless such personal information or transaction details or particulars of payment instruments are –

- (a) agreed to prior and in writing by the consumer;
- (b) required to complete the processing of the transaction;
- (c) requested under law.

(2) A supplier who contravenes subsection (1) commits an offence.

Alternative
dispute
resolution by
Commission.

109. A contract between a supplier and a consumer may include a clause providing for the parties to attempt to settle any disagreement through mediation by the Commission or other recognised mediation body before taking the matter to Court and the parties may, in accordance with this clause –

- (a) bring any such disagreement to the Commission or other mediation body for mediation by the Commission or other mediation body; or
- (b) for the Commission to appoint a mediator.

A supplier and
consumer may
seek the
Commission
mediation.

110. A supplier and consumer singularly or as a class, may elect to settle any disagreement including a contract dispute, through mediation by the Commission before or after filing a complaint with the Commission.

Regulations. 111. (1) The Minister may, after consultation with the Commission, make regulations to give effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), the Minister may, after consultation with the Commission, make regulations –

- (a) prescribing the procedures to be followed in respect of applications and notices to, and the proceedings of the Commission, and also the form of any forms or notices necessary to give effect to this Act;
- (b) prescribing the standard forms to be used by the Commission and the contents of any attendant Schedule to this Act;
- (c) setting the levels of fees that it may charge for its services and guidelines for the levels of fixed penalties that it shall charge;
- (d) regulating the distribution, purchase or sale of goods or services or any class or description of goods or services;
- (e) providing for the recall of goods or services or any class or description of goods or services that are dangerous or hazardous to safety and for the refund or rebate by the supplier of any price or fee paid for those goods or services;

- (f) requiring persons carrying on or employed in connection with any trade or business to furnish information concerning all or any class or description of goods bought or sold in such trade or business, whether by wholesale or retail;
- (g) requiring the provision and maintenance at each place at which goods are offered for sale by retail, of means by which prospective purchasers of any of those goods may ascertain the weight, volume, or other measurement of those goods;
- (h) creating an offence for the breach of any regulation and prescribing penalties that may be imposed on summary conviction for the offence;
- (i) that the prices of goods shall be marked on the goods or on any container in or from which they are sold;
- (j) that the prospective purchasers shall not be obstructed in any attempt to ascertain the weight, value or other measurement and contents of goods.

(3) Regulation may not be made under subsection (1)(d) in relation to goods if distribution, purchase, or sale of those goods are regulated under or by virtue of the provisions of any other written law.

(4) Any person who commits an offence under any regulation shall be liable on summary conviction to a fine of not less than ten thousand dollars nor more than seven hundred and fifty thousand dollars and to imprisonment for three months.

Transitional. 112. References to the Competition Commission from the commencement date in any law or proceeding shall be deemed to be a reference to the Competition and Consumer Affairs Commission.

Amendments to
the Competition
and Fair
Trading Act
2006.

No. 11
of 2006

113. The Competition and Fair Trading Act 2006 is amended as follows –

(a) in section 2(1), by the substitution for the words

‘ “Commission”, means the Competition Commission
established under section 5;’ of the words

‘ “Commission” means the Competition and Consumer
Affairs Commission established under section 5;’;

(b) in section 5(1), by the substitution for the words “Competition
Commission” of the words “Competition and Consumer Affairs
Commission”;

(c) by the repeal of sections 12 and 13;

(d) in the heading of the First Schedule, by the substitution for the
words “The Competition Commission” of the words “The
Competition and Consumers Affairs Commission” and in
paragraph 1(4) by the substitution for the word “Director” of the
words “Director of the Competition and Consumer Affairs
Commission”.

Arbitration.

114. (1) In the event of a dispute arising from the interpretation or application of this Act which cannot be settled amicably between the parties, the Commission may recommend that it be referred to arbitration by either party before an arbitration committee in accordance with the following provisions –

- (a) each party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who shall act as chairman; or
- (b) within thirty days of the request for arbitration if either party fails or refuses to appoint an arbitrator or if within fifteen days of the appointment of the two arbitrators, the third arbitrator has not been appointed either party may request the Chancellor of the Judiciary to appoint an arbitrator.

(2) The parties shall agree that any decision rendered by the arbitrators shall be accepted as the final adjudication of the dispute.

Conflicts with
the Competition
and Fair
Trading Act of
2006.

No. 11
of 2006

115. Where there is a conflict between this Act and the Competition and Fair Trading Act 2006 in respect of the promotion of consumers' interest relating to the supply of goods or services for private use and consumption, this Act shall prevail.

FIRST SCHEDULE S. 4(3) and (4)**PROVISIONS RELATING TO COMPETITION AND CONSUMER
AFFAIRS COMMISSION**

Staff of the
Commission.

No. 11
of 2006

1.(1) The Commission may appoint a Director of the Competition and Consumer Affairs Commission, a Competition Policy Officer, a Consumer Affairs Officer and such other officers and employees as may be necessary to carry out the purposes of this Act and the Competition and Fair Trading Act 2006.

(2) The persons appointed under paragraph 1(1) –

- (a) shall be employed on terms and conditions set by the Commission;
- (b) shall be paid, out of the funds of the Commission, the remuneration and allowances which shall be proposed by the Commission and approved by the Minister.

(3) The Minister may approve of the appointment by the Commission of a public officer to any office with the Commission and the public officer so appointed shall, in relation to pension, gratuity, other allowances and benefits, be treated as continuing in the Public Service.

(4) The Director of the Competition and Consumer Affairs Commission, assisted by the Competition Policy Officer and the Consumer Affairs Officer shall be responsible to the Commission for –

No. 11
of 2006

- (a) carrying out the objects and functions of this Act and the Competition and Fair Trading Act 2006;
- (b) directing the day-to-day business of the Commission of administering both Acts;
- (c) supervising the other staff of the Commission; and
- (d) carrying out any other functions assigned.

(5) The Commission may appoint full time or part time mediators to execute its mandate and shall –

- (a) maintain a list of mediators; and
- (b) bear the cost of the mediators.

Pensions,
gratuities and
other benefits.

2.(1) The Commission may enter into arrangements respecting schemes, whether by way of insurance policies or not for medical benefits, pensions, gratuities and other retiring or disability or death benefits relating to the persons appointed under paragraph 1(1).

(2) Arrangements referred to in subparagraph (1) may include provisions for the grant of benefits to the dependants and the legal personal representatives of the persons appointed under paragraph 1(1).

Conduct of the
Commission
Staff.

3. (1) Except as provided by law or as approved by the Commission, a member of the Commission or officer or employee of the Commission shall not publish or communicate any information furnished or obtained, documents produced, obtained or tendered, or evidence given to the Commission in connection with the Commission's operations under this Act.

(2) A person who contravenes subparagraph (1) commits an offence.

Commission to
approve
authorised
officer.

4. The Commission may appoint an authorised officer to conduct any of its business or to exercise any of its powers as set out in the Act.

Funds of
Commission.

5. The funds of the Commission shall comprise –

- (a) money appropriated by the National Assembly and paid to the Commission for the purposes of the Commission;
- (b) other money or property lawfully received by the Commission for the purposes of the Commission;
- (c) income derived from any money or other property of the Commission;
- (d) penalties and other charges; and
- (e) any other appropriate funds as may be approved by the Minister.

Accounts and
audits.

6. (1) The Commission shall keep accounts of its transactions to the satisfaction of the Minister and the Auditor General shall audit these accounts annually.

(2) The Commission may at any time, on notifying the Auditor General, appoint an independent auditor to examine and report on its accounts.

Annual report
and estimates.

7. (1) In this paragraph, "financial year" means --

- (a) the calendar year; or
- (b) where the Commission's accounts are, with the permission of the Minister, kept by reference to a financial year different from the calendar year, that financial year.

(2) No later than four months after the end of each financial year, the Commission shall submit to the Minister a report containing --

- (a) an account of its activities during the financial year in the detail directed by the Minister; and
- (b) a statement of the Commission's audited accounts.

(3) The Minister shall as soon as practicable, and in any event no later than six months after the end of that financial year, give to the Clerk of the National Assembly for laying before the National Assembly --

- (a) the report referred to in subparagraph (2); and

- (b) a copy of the auditor's report on the Commission's accounts for that financial year following the audit under paragraph 6.

(4) The Commission shall, no later than eight months after the end of each financial year, submit to the Minister for approval the Commission's estimates of revenue and expenditure for the next following financial year.

Exemption from taxes.

8. (1) The income of the Commission shall be exempt from income and all other taxes.

(2) The procurement of the Commission shall be exempted from all taxes, duties and related charges.

SECOND SCHEDULE s 12(2)**FORM A****FORM OF SUMMONS BY COMPETITION AND CONSUMER AFFAIRS COMMISSION***Summons to Witness to Appear before the Competition and Consumer Affairs Commission*

To: _____

(name of witness)

(address of witness)

Take notice that you are hereby required to appear before the Commission for examination pursuant to section 12 (1) of the Consumer Affairs Act 2011.

The Commission is presently conducting an investigation pursuant to section 11 of the Act to determine whether _____

(name of enterprise)

is engaged in business practices in contravention of the Act.

Please be present as follows:

Date: _____

Time: _____

Place: _____

You have a right to be represented by an Attorney-at-law or any other person.

Failure to appear without reasonable excuse is an offence under section 13 of the Consumer Affairs Act 2011 and may subject you to a penalty under section 102 of the Consumer Affairs Act 2011.

Dated the day of 201__

Competition and Consumer Affairs Commission

SECOND SCHEDULE s 12(2)

FORM B

**NOTICE TO PRODUCE DOCUMENTS
IN RELATION TO AN INVESTIGATION BY THE COMPETITION AND CONSUMER
AFFAIRS COMMISSION**

Nature of Investigation _____

To: _____

(name of person required to provide documents)

(address)

Take Notice that pursuant to section 12(1) of the Consumer Affairs Act 2011 the Commission requires you to produce for its inspection the following documents(s), which must be produced at the office of the Competition and Consumer Affairs Commission located at:

_____ within
twenty days of the date of service of this Notice.

Description of Documents required

Failure to produce the document(s) as required is an offence under section 13 of the Consumer Affairs Act 2011 and may subject you to a penalty under section 102 of the Consumer Affairs Act 2011.

Dated the day of 201__

Competition and Consumer Affairs Commission

THIRD SCHEDULE s. 54(2), s 55(2)**CONTRACT TERMS WHICH ARE UNFAIR IF NOT INDIVIDUALLY
NEGOTIATED**

1. Any contract term which has the object or effect of –

- (a) excluding or limiting the legal liability of a supplier in the event of the death of the consumer or personal injury to the latter resulting from an act or omission of that supplier; or
- (b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the supplier or another party in the event of total or partial non-performance or inadequate performance by the supplier of any of the contractual obligations of the supplier, including the option of off-setting a debt owed to the supplier against any claim which the consumer may have against the supplier; or
- (c) making an agreement binding on the consumer whereas provision of services by the supplier is subject to a condition whose realisation depends on the suppliers' own will alone; or
- (d) permitting the supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the supplier where the latter is the party cancelling the contract; or
- (e) requiring the consumer to pay a disproportionately high sum in compensation if the consumer fails to fulfill his obligations; or
- (f) authorising the supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the supplier to retain the sums paid for services not yet supplied by the supplier where it is the supplier who dissolves the contract; or
- (g) enabling the supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so; or
- (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express a desire not to extend the contract is unreasonably short ; or

- (i) irrevocably binding the consumer to terms with which the consumer had no real opportunity of becoming acquainted before the conclusion of the contract; or
- (j) enabling the supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract; or
- (k) enabling the supplier to alter unilaterally without a valid reason any characteristics of the goods or services to be provided; or
- (l) providing for the price of goods to be determined at the time of delivery or allowing a supplier to increase its price without in both cases giving the consumer the corresponding right to cancel if the final price is too high in relation to the price agreed when the contract was signed or giving the exclusive right to interpret any term of the contract; or
- (m) giving the supplier the right to determine whether the goods or services supplied by the supplier are in conformity with the contract, or giving the supplier the exclusive right to interpret any term of the contract; or
- (n) limiting the supplier's obligation to respect commitments undertaken by agents of the supplier, or making the supplier's commitments subject to compliance with a particular formality; or
- (o) obliging the consumer to fulfill all obligations imposed where the supplier is in breach; or
- (p) giving the supplier the possibility of transferring rights and obligations of the supplier under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement; or
- (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to mediation not covered by legal provisions, unduly restricting the evidence available to the consumer or imposing on the consumer a burden of proof which, according to the applicable law, would lie with another party to the contract.

2. Paragraph 1(g) does not apply to a term by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties immediately.

3. Paragraph 1(j) does not apply to a term under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid

reason, provided that the supplier is required to inform the other contracting party or parties at the earliest opportunity and that the latter are free to dissolve the contract immediately.

4. Paragraph 1(j) does not apply to a term under which a supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that the supplier is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

5. Paragraphs 1(g), (j) and (l) do not apply to –

- (a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the supplier does not control; and
- (b) contracts for the purchase or sale of foreign currency, travelers' cheques or international money orders denominated in foreign currency.

6. Paragraph 1(l) does not apply to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

FOURTH SCHEDULE s. 78(5)**CONSUMER SAFETY REGULATIONS**

1. (a) The Minister may, after consultation with the Commission, make regulations relating to consumer safety to ensure –

- (i) that goods are safe;
- (ii) that goods which are unsafe, or would be unsafe in the hands of persons of a particular description, are not made available to persons generally or, as the case may be, to persons of that description; and
- (iii) that appropriate information is provided and inappropriate information is not provided in relation to goods.

(b) Without limiting the generality of paragraph (1), safety regulations may contain provisions –

- (i) with respect to the performance, composition or contents, design, construction, finish or packaging of goods and with respect to other matters relating to such goods;
- (ii) with respect to the giving, refusal, alteration or cancellation of approvals of such goods, of description of such goods or of standards for such goods;
- (iii) with respect to the conditions that may be attached to any approval given under the regulations;
- (iv) prescribing the fees to be paid on the giving or alteration of any approval under the regulations and on the making of an application for such an approval or alteration;
- (v) with respect to appeals against refusals, alterations and cancellations of approval given under the regulations and against the conditions contained in such approvals;

- (vi) for requiring goods to be approved under the regulations, or to conform to the requirements of the regulations or to descriptions or standards specified in or approved by or under the regulations;
- (vii) with respect to the testing or inspection of goods, including provision for determining the standards to be applied in carrying out any test or inspection;
- (viii) with respect to the ways of dealing with goods of which some or all do not satisfy a test required by or under the regulations or a standard connected with a procedure so required;
- (ix) requiring a mark, warning or instruction or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and for securing that inappropriate information is not given in relation to goods either by means of misleading marks or otherwise;
- (x) prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods to which this section applies and component parts and raw materials for such goods;
- (xi) requiring information to be given to any such person as may be determined by or under the regulations for the purpose of enabling that person to exercise any function conferred on him by the regulations.

2. (a) Where safety regulations prohibit a person from supplying or offering or agreeing to supply any goods or from exposing or possessing any goods for supply, if that person contravenes the prohibition the person commits an offence.

(b) Where safety regulations require a person who makes or processes any goods in the course of carrying on a business –

- (i) to carry out a particular test or use a particular procedure in connection with the making or processing of the goods with a view to ascertaining whether the goods satisfy any requirements of such regulations; or
- (ii) to deal or not to deal in a particular way with a quantity of the goods of which the whole or part does not satisfy such a test or does not satisfy standards connected with such a procedure, that person commits an offence.

(c) If a person contravenes a provision of safety regulations which prohibits or requires the provision, by means of a mark or otherwise, of information of a particular kind in relation to goods, he is guilty of an offence.

(d) Where safety regulations require any person to give information to another for the purpose of enabling that other to exercise any function, that person is guilty of an offence if –

- (i) he fails without reasonable cause to comply with the requirement; or
- (ii) in giving the information which is required of him –
 - (a) he makes any statement which he knows is false in a material particular; or
 - (b) he recklessly makes any statement which is false in a material particular.

Passed by the National Assembly on 23rd June, 2011.



Clerk of the National Assembly.

(BILL No. 7/2011)