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CONSUMER PROTECTION ACT, 2023

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No. 49 of 2023

CONSUMER PROTECTION ACT, 2023

AN ACT TO MAKE PROVISION FOR THE GREATER PROTECTION OF CONSUMERS, THE CONTINUATION OF A CONSUMER PROTECTION COMMISSION AND FOR THE FUNCTIONS AND POWERS OF THAT COMMISSION AND RELATED MATTERS AND TO REPEAL AND REPLACE THE CONSUMER PROTECTION ACT, 2006

[Date of Assent - 21st November, 2023]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act may be cited as the Consumer Protection Act, 2023.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

2. Interpretation.

- (1) In this Act, unless the context otherwise requires —
“**consumer**” in relation to —
 - (a) goods, means —
 - (i) a natural person who acquires or enters a contract to acquire goods for his own private use or consumption; and
 - (ii) a commercial undertaking that purchases consumer goods;
 - (b) services or facilities, means any person who employs or wishes to be provided with the services or facilities otherwise than for the purposes of any business of his; or

- (c) accommodations, means any person who wishes to occupy the accommodation otherwise than for the purposes of any business of his;

“Commission” means the Consumer Commission continued under section 4;

“consumer goods” means goods which are ordinarily intended for private use or consumption;

“consumer protection policy” means the objectives of the Minister for consumer protection as published by the Minister from time to time which may include the enhanced rights and remedies available to the consumer;

“goods” means objects of every kind and description including —

- (a) commodities, raw materials, products, computer software, software licenses and equipment;
- (b) objects in solid, liquid or gaseous form; and
- (c) services incidental to the supply of goods where the value of such services does not exceed the value of the goods themselves;

“Minister” means the Minister responsible for Consumer Welfare;

“provider” in relation to —

- (i) any goods, means any person who sells goods; or
- (ii) any services or facilities, means any person who provides services or facilities;

“services” includes any rights, benefits, privileges or facilities that are or are to be provided granted or conferred in trade or commerce but does not include a reference to the rendering of any services under a contract of employment;

“The Bahamas Institute of Chartered Accountants” means the body preserved and continued under section 3 of The Bahamas Institute of Chartered Accountants Act, 2015 (*No. 13 of 2015*).

3. Application.

- (1) This Act shall apply to all persons involved in trade or business through the purchasing or selling of goods or services.
- (2) The Minister may by order, subject to affirmative resolution by both Houses of Parliament, exempt categories of trade or business from the application of this Act.

PART II – ADMINISTRATION OF ACT

4. Continuation of the Consumer Commission.

- (1) The body established by section 4 of the Consumer Protection Act (*No. 7 of 2006*) and known as the Consumer Commission is preserved and continued as the Consumer Commission.
- (2) The *First Schedule* has effect as to the constitution of the Consumer Commission and otherwise in relation thereto.

5. Functions and powers of the Commission.

- (1) The functions of the Commission are to —
 - (a) advise the Minister generally in relation to consumers;
 - (b) formulate and implement standards in relation to the consumer protection policy;
 - (c) receive and investigate complaints made by consumers in relation to the acquisition of goods or services;
 - (d) carry out, on its own initiative, such other investigations in relation to the availability of goods of any class or description as it thinks fit and make a report and recommendations as it thinks fit to the Minister;
 - (e) promote the development of organisations formed for the protection of the consumer;
 - (f) collect, compile, analyse and publish information in relation to any trade or business;
 - (g) provide information to consumers on their rights as consumers and any other form of consumer education;
 - (h) implementing educational programmes for the benefit of consumers, and providers;
 - (i) seeking, in a mediatory capacity, to resolve disagreements between consumers and providers;
 - (j) referring a complaint to any other relevant body that may be considered appropriate to address an issue;
 - (k) inform the complainant of any remedy that may be available to him;
 - (l) establish and maintain a website for the purpose of carrying out the functions under this Act; and
 - (m) carry out such other functions as the Minister may assign to the Commission from time to time.
- (2) In carrying out its functions, the Commission—

- (a) shall do all acts requisite, advantageous or convenient in connection with the proper discharge of its functions or incidental to their proper discharge; and
- (b) may carry on any activities in that behalf either alone or in association with any other person or body.

6. Directions.

- (1) The Minister may, after consultation with the Commission, give to the Commission a written direction, as to government policy that is to be applied by the Commission in the exercise of its powers and the performance of its duties, and the Commission shall give effect to that direction.
- (2) Directions given pursuant to subsection (1) shall be published in the *Gazette*.

7. Funds and resources of the Commission.

The funds and resources of the Commission shall consist of —

- (a) such moneys as may from time to time be placed at its disposition for the purposes of this Act by Parliament;
- (b) all other moneys and other property which may in any manner become payable to, or vested in the Commission in respect of any matter incidental to its functions.

8. Accounts.

- (1) The Commission shall keep proper accounts in a form which shall conform with established accounting principles.
- (2) The accounts of the Commission shall be audited annually by auditors appointed by the Commission with the approval of the Minister from among members of The Bahamas Institute of Chartered Accountants.

9. Annual reports and estimates.

- (1) The Commission shall, in each year —
 - (a) prepare an annual statement of accounts in accordance with the Public Finance Management Act, 2023 (*No.4 of 2023*) which shall be audited in accordance with section 8 and submit it to the Minister and the Financial Secretary
 - (b) prepare an annual report of its activities during that year;
 - (c) by the date required by the Financial Secretary, submit to the Minister for his approval its estimates of revenue and expenditure for the financial year next following.

- (2) The Minister shall lay a copy of the reports submitted pursuant to subsection (1)(b) together with the annual statement of accounts and auditor's report on the table of the House of Assembly.

PART III – COMPLAINTS AND INVESTIGATIONS

10. Complaints.

- (1) A complaint may be made to the Commission by a person who claims to have suffered a disadvantage in relation to the acquisition of goods or services.
- (2) Where the complainant —
- (a) is a minor, the complaint may be made by his parent or guardian;
 - (b) is unable to act for himself by reason of —
 - (i) infirmity; or
 - (ii) being outside of The Bahamas; or
- the complaint may be made by a member of his family, his nominee or his personal representative.
- (3) Where a person who suffered a disadvantage in relation to the acquisition of goods or services has died, a member of his family or his personal representative may make a complaint to the Commission.
- (4) A complaint to the Commission shall be in writing.
- (5) A complainant with a disability or who is unable to read or write may orally give his complaint to a member of the staff of the Commission designated for this purpose who shall record the complaint, read it to the complainant, ensure the complainant understands the complaint and have him sign the complaint.

11. Investigation.

Where a complaint has been made the Commission shall carry out an investigation in relation to the sale of goods or the provision of services complained about to determine whether the goods were sold, the services were provided or the provider has acted in contravention of this Act.

12. Discretion not to conduct investigation.

- (1) The Commission may determine whether to undertake or continue an investigation under this Act and may refuse to undertake or continue any investigation if —
- (a) the complaint is frivolous or vexatious or not made in good faith;

- (b) the complainant is guilty of unreasonable delay in the making of his complaint;
 - (c) the complainant does not have a sufficient interest in the subject-matter of the complaint;
 - (d) the subject-matter of the complaint should more appropriately be dealt with by another body; or
 - (e) having regard to all the circumstances of the case, no investigation or further investigation is necessary.
- (2) Where the Commission decides not to undertake or continue the investigation of a complaint, it shall, in writing, inform the complainant of that decision and give reasons for the decisions.

13. Power to investigate not prevented.

- (1) The Commission shall not be prevented from conducting an investigation in respect of any matter by reason that it is open to the complainant to apply to the court for redress under Article 28 of the Constitution.
- (2) If any question arises as to whether the Commission has jurisdiction to investigate any case or class of cases under this Act, the Commission may apply to the court for a declaration determining that question.
- (3) The fact that an action is commenced in any court in connection with a matter under investigation by the Commission shall not, unless the court otherwise directs, prevent the investigation.

14. Summoning persons to give evidence.

- (1) The Commission may summon any person to attend before the Commission in relation to an investigation being conducted by it and to give evidence or to produce any document in his possession or under his control.
- (2) A summons under this section —
 - (a) shall be in the form prescribed in the *Second Schedule*; and
 - (b) may be served by a police officer, or a bailiff.
- (3) A person may be permitted to attend before the Commission via live video conference where that person is unable to attend in person by reason of —
 - (a) not being within The Bahamas; or
 - (b) infirmity.

15. Obligations of persons summoned.

- (1) All persons summoned to attend and give evidence or to produce a document before the Commission are —

- (a) entitled, in respect of the evidence or the disclosure of any communication or the production of any document, to the same right or privilege as before a court of law;
 - (b) entitled to be paid their expenses, including travelling expenses, at the rates as are determined for witnesses who are entitled to have their expenses paid from public funds.
- (2) Any person who —
- (a) without sufficient cause, fails or refuses to attend before the Commission in obedience to a summons under this Act, or fails or refuses to produce any document which he was required by the summons to produce;
 - (b) being a witness, leaves the Commission without the permission of the Commission;
 - (c) being a witness, refuses, without sufficient cause, to answer any question put to him by or with the permission of the Commission; or
 - (d) wilfully obstructs or interrupts the proceedings of the Commission, commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

16. Paper, book, record or document as evidence.

In proceedings before the Commission, any paper, book, record or document produced to the Commission pursuant to section 14 shall be received as *prima facie* evidence of the truth of the statements contained therein.

17. Results of investigation.

- (1) The Commission shall inform the complainant and the provider of the results of its investigation and include any remedies that may be available to the complainant.
- (2) After an investigation the Commission shall make a report relating to the complaint and recommendations as it thinks fit to —
 - (a) the Minister;
 - (b) any other regulator of the provider under investigation; and
 - (c) the Financial Secretary.
- (3) Where the Commission has received multiple complaints regarding a particular provider or multiple providers in a particular industry or sector, the Commission may carry out investigations in relation to the conduct the subject of the complaints and report its findings and recommendations to —
 - (a) the Minister;

- (b) any other regulator of the provider, industry or sector to whom the investigation relates; and
- (c) the Financial Secretary.

18. Advisory notices.

- (1) The Commission, where it becomes aware of certain practices which are harmful to consumers, shall issue advisory notices to warn consumers of the practices.
- (2) A notice given under subsection (1) shall —
 - (a) identify the harmful practice;
 - (b) identify any specific industry in which the harmful practice is occurring in;
 - (c) advise consumers who have experienced the harmful practice to report the harmful practice to the Commission.

PART IV – CONTROL OF GOODS

RESTRICTION OF IMPORTS

19. Minister to restrict imports, etc.

- (1) The Minister may, by Order —
 - (a) prohibit the importation or exportation of any goods or any class of goods from or to any country;
 - (b) prohibit the importation or exportation of any goods or any class of goods from or to any country except under the authority of a licence granted by the Minister;
 - (c) regulate the distribution, purchase or sale of any goods or any class of goods;
 - (d) subject to section 20 provide for the recall of any goods or class of goods which are dangerous or hazardous;
 - (e) provide for the furnishing by persons carrying on or employed in connection with any trade or business of information concerning all or any of the elements of the cost or of the sale price of any goods or any class of goods bought or sold whether by wholesale or retail in such trade or business;
 - (f) require the provision and maintenance, at places at which goods are offered for sale by retail, of means whereby persons wishing to purchase any any goods or any class of goods may ascertain the weight or measurement thereof.

- (2) The Minister may by Order, require —
 - (a) that the prices of any goods or any class of goods shall be marked on the goods or on any container in or from which they are sold; and
 - (b) that persons shall not be obstructed in any attempt to ascertain at the place at which they wish to purchase any goods or any class of goods, the weight or measurement thereof.
- (3) The Minister shall not make any Order regulating the exportation or importation of goods that are exported or imported under the following Acts —
 - (a) the Animal and Health Production Act, 2016 (*No. 7 of 2016*);
 - (b) the Customs Management Act, 2011 (*No. 30 of 2011*);
 - (c) the Fisheries Resources (Jurisdiction and Conservation) Act (*Ch. 244*);
 - (d) the Food Safety and Quality Act, 2016 (*No. 5 of 2016*);
 - (e) the Plant Protection Act, 2016 (*No. 6 of 2016*).

RECALL OF GOODS

20. Compulsory recall of goods.

- (1) Where —
 - (a) a provider supplies goods on or after the commencement of this Act; and
 - (b) it appears to the Minister that the goods are goods of a kind which will or may cause injury to any person and that the provider has not taken satisfactory action to prevent the goods causing injury to any person,

the Minister may, by notice in writing published in the *Gazette*, require the provider to take action as provided in subsection (2).
- (2) For the purposes of subsection (1), the Minister may —
 - (a) recall the goods;
 - (b) disclose to the public—
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods;
 - (ii) the circumstances in which the use of the goods is dangerous; and
 - (iii) the procedures for disposing of the goods; and
 - (c) inform the public that the provider undertakes to do the following—

- (i) repair the goods except where the goods are dangerous or hazardous;
 - (ii) replace the goods;
 - (iii) refund to a person to whom the goods were supplied, whether by the provider or by another person, the price of the goods.
- (3) The Minister may by notice published in the *Gazette* give directions as to the manner in which the provider shall carry out a recall of goods required under subsection (1) and specify the time for the recall of the goods.
- (4) Where the provider undertakes to repair goods, the provider shall cause the goods to be repaired so that any defect in the goods is remedied.
- (5) Where the provider undertakes to replace goods, the provider shall replace the goods with like goods that are free from defects.
- (6) Where the provider 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 provider.
- (7) Where the goods provided are dangerous or hazardous the provider shall refund the money paid for the goods.
- (8) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under subsection (1), a provider who has supplied or supplies any of the recalled goods to another person outside The Bahamas shall, as soon as practicable after the supply of those goods, give notice in writing to that other person, addressed to his last known address —
 - (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.
- (9) Where a provider of goods is required under subsection (8) to give notice in writing to another person, the provider of the goods shall, within fourteen days after giving that notice, provide the Minister with a copy of that notice.
- (10) A person who contravenes subsection (9) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

21. Compliance with goods recall notice.

- (1) Where a notice under section 20(1) is in force in relation to a provider, he
 - (a) shall comply with the requirements and directions in the notice; and

- (b) shall not, where the notice specifies a defect in the goods or where the goods are dangerous or hazardous goods, supply the defective goods, dangerous goods or hazardous goods.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

22. Loss or damage caused by contravention of goods recall notice.

- (1) A person contravenes section 20 by —
 - (a) supplying goods of a kind in relation to which a notice under section 20(1) is in force; or
 - (b) failing to comply with the requirements of the notice.
- (2) A consumer is deemed to suffers loss or damage by reason of —
 - (a) purchasing the dangerous goods or hazardous goods to which a notice under section 20(1) is in force; or
 - (b) not having particular information as to the danger or hazard of the goods to which a notice under section 20(1) is in force.

23. Consultation to be held in certain cases.

- (1) Where the Minister proposes to publish a notice under section 20(1) in relation to any goods, the Minister shall prepare —
 - (a) a draft of the notice that he proposes to publish; and
 - (b) a summary of his reasons.
- (2) The Minister shall, in the notice referred to in section (1), invite any provider, who supplied or proposes to supply goods to which a notice under section 19 applies, to notify the Minister, within ten days commencing on the day specified in the notice, whether the provider wishes the Minister to hold a consultation in relation to the proposed publication of the notice.
- (3) A notice published under subsection (1) shall set out a copy of the draft notice under section 20(1) and a copy of the summary of the reasons for the proposed publication of the notice.
- (4) If no provider notifies the Minister in writing within the ten days period, or within such longer period as the Minister allows, that the provider wishes the Minister to hold consultations in relation to the proposed publication of the notice under section 20(1), the Minister shall publish the notice under section 20.
- (5) If a provider notifies the Minister in writing within the ten days period, or within such longer period as the Minister allows, that the provider wishes the Minister to hold consultations in relation to the proposed publication of the notice under section 20(1), the Minister shall by notice to each

provider who so notified the Minister, appoint a day (being not later than 14 days after the end of that period), time and place for the holding of the consultation.

- (6) At a consultation the following persons or their representative are entitled to attend —
 - (a) the Minister or any person nominated in writing by the Minister;
 - (b) each provider who notified the Minister in accordance with subsection (4);
 - (c) any other person whose presence at the consultation is considered by the Minister to be appropriate; and
- (7) The procedure to be followed at the consultation shall be as determined by the Minister.
- (8) The Minister shall cause a record of proceedings at a consultation under this section to be kept.
- (9) The Minister shall ensure that each person who is entitled to be present or who is representing a person at the consultation is given a reasonable opportunity at the consultation to present his case and, in particular, to inspect any documents which the Minister proposes to consider for the purpose of making a decision and to make submissions in relation to those documents.
- (10) The person entitled to consultation shall not be able to inspect any document that contains a secret formula or a secret process.
- (11) As soon as is practicable after the conclusion of a consultation the Minister shall consider what action he should take under section 20.

24. Exception in case of imminent danger to public.

- (1) Where it appears to the Minister that any goods create an imminent risk of death, serious illness or serious injury, the Minister may, by notice published in the *Gazette*, publish a notice in relation to the goods under section 20(1).
- (2) Where the Minister publishes a notice in the *Gazette* under subsection (1) the notice shall contain the goods and the reasons for the recall and the provisions of section 23 does not apply.

25. Voluntary recall.

Where a provider voluntarily recalls goods because the goods will or may cause injury to any person, he shall, within two days after taking that action, give notice in writing to the Minister —

- (a) stating that the goods are subject to recall; and

- (b) setting out the nature of the defect in, or dangerous characteristic of, the goods.

PART V – OBLIGATIONS OF PROVIDER

26. Obligation of provider to be licensed or registered.

- (1) All providers acting individually or collectively, and offering goods or services to consumers for purchase, shall be licensed in accordance with the Business Licence Act, 2023 (*No. 13 of 2023*) and where appropriate, registered in accordance with the Value Added Tax Act, 2014 (*No. 32 of 2014*).
- (2) A provider who fails to comply with the provisions of this section commits an offence and is liable on summary conviction to a fine of one thousand dollars.

27. Warranties.

- (1) A provider shall issue expressed warranties in relation to his goods or services, whether the goods are new or used, and whether the service offered is the repair of any goods.
- (2) Where a provider is liable only for the free replacement of parts under a warranty agreement, the provider shall not require the consumer to use the services of the provider in effecting the repairs to the equipment.
- (3) Implied warranties in the absence of expressed warranties shall apply to the sale of all used goods and to the repair of all goods.
- (4) In the absence of an expressed warranty which shall be at the discretion of the provider, an implied warranty of six months on parts and labour shall, subject to the standard conditions of warranties, attached to the transaction.

28. Warranty of manufacturer.

Any warranty given by the manufacturer (whether local or foreign) and attached to any goods or services sold or provided in The Bahamas shall be deemed to extend to the provider in The Bahamas who shall be liable to the consumer in relation to warranty.

29. Obligation to inform consumer of re-conditioned goods.

A person who offers or agrees to supply, or supplies, any goods that —

- (a) have been re-conditioned, rebuilt or remade; and
- (b) bear the trade mark of the original manufacturer or supplier,

shall apply a conspicuous notice to the those goods stating clearly that the goods have been reconditioned, rebuilt or remade.

30. Price of goods or services to be displayed, disclosed.

- (1) A provider shall not display goods for sale, or offer to supply any services without displaying a price in relation to those goods or services, unless the display is —
 - (a) designed and intended predominantly as a form of advertisement of the provider, goods or services; or
 - (b) in the case of goods, in an area within the provider's premises to which the public does not ordinarily have access.
- (2) For the purposes of this section, a price is displayed in relation to particular goods if it is —
 - (a) appended, annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf, or other things used in connection with the goods or on which the goods are mounted for display or exposed for sale;
 - (b) published in a catalogue available to the public if a time is specified in the catalogue as the time after which the goods may not be sold at that price; or
 - (c) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services.

31. Disclosures.

Every provider shall make disclosures as required by this Act or as prescribed in regulations.

PART VI – RIGHTS OF THE CONSUMER

32. Details of goods to be provided to consumer.

- (1) At any time before payment is made for any goods, whether sold as new or used, a provider shall, in addition to the requirements of any other written law provide the consumer, with information relating to—
 - (a) packaging;
 - (b) labelling;
 - (c) description of goods;
 - (d) the origin;

- (e) care;
 - (f) terms;
 - (g) components;
 - (h) hazards;
 - (i) proper use;
 - (j) weight;
 - (k) size;
 - (l) instructions for assembly and installation of the goods; and
 - (m) where chargeable, the professional fees of the provider in respect of the assembly or installation.
- (2) Where a provider fails to comply with subsection (1), he shall, notwithstanding anything to the contrary in the warranty document, be responsible for any damage done to the goods by the consumer that can be directly attributed to the consumer's lack of information.

33. Measurement of goods.

- (1) A consumer shall at all times be entitled to check the weight, volume or other measurement of the goods sought to be purchased where the weight, volume or other measurement of the goods materially affects or determines the price thereof.
- (2) Any provider of any goods that is sold by reference to its weight, volume or other measurement shall provide weighing and measuring equipment for use by the consumer at the time of purchase.
- (3) A provider commits an offence if in selling or purporting to sell any goods by weight or other measurement or by number, he knowingly delivers or causes to be delivered to the consumer, a lesser weight, measurement or number than that purported to be supplied or that corresponds with the price charged.
- (4) For the purpose of this section “**weighing and measuring equipment**” means equipment for measuring in terms of length, area, volume, capacity, weight, or number whether or not the equipment is constructed to give an indication of the measurement made or other information determined by reference to that measurement.

34. Receipt to be given to consumer.

- (1) Where a consumer purchases goods or services from a provider, the provider shall give to the consumer a receipt showing —
 - (a) the provider's name, and registered business name;
 - (b) the address of the premises at which or from which the goods or services were supplied;

- (c) the date on which the purchase is made or the service is rendered;
 - (d) a name or description of the goods sold or services rendered;
 - (e) the unit price for each of the goods or services rendered or to be rendered;
 - (f) the quantity of each of the goods or services rendered or to be rendered;
 - (g) the amount paid by the consumer, before and after the application of applicable fees or taxes;
 - (h) the professional fees charged; and
 - (i) such other information as the Minister may by regulations prescribe.
- (2) The receipt issued by the provider shall be adequate proof of the purchase of the goods or services and may be used for the purposes of refund in any of the circumstances specified in this Act.
 - (3) A provider who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

35. Right to refund.

- (1) Where a consumer purchases goods which, in accordance with sections 39 and 40 of this Act, are eligible for refund, the provider must inform the consumer that he is entitled to a refund and the circumstances in which refund shall be granted.
- (2) Where a provider voluntarily implements a refund policy of goods other than those referred to in sections 39 and 40 as eligible for refund, that provider shall —
 - (a) inform the consumer of the refund policy;
 - (b) where the refund policy has changed since the purchase of the goods, honour the policy in place at the time of purchase.

36. Right to receive refund in same manner as payment.

Where a consumer is entitled to a refund under this Act, the provider shall refund the consumer in the same manner that was used to pay for the goods.

PART VII – PRODUCT LIABILITY

37. Damage resulting from use service or goods.

- (1) Subsection (2) applies in any case where a provider —

- (a) undertakes to provide a consumer with goods or services upon payment of a fee;
 - (b) declares any benefit attached to the service or use of the goods; and
 - (c) independent of all other causes or contributory negligence, inadvertently causes bodily injury or pecuniary loss to be sustained by the consumer.
- (2) The provider shall, upon presentation of a substantiated 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; and
 - (b) initiate all compensation within a period not exceeding seven days after the substantiated claim is received at the registered, regional or local offices of the provider.
- (3) Where a provider is unable to initiate a payment under subsection (2) within the period of seven days after the substantiated claim is received, the provider may apply to the Commission for leave to extend the period within which the payment may be made.
- (4) A provider 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 provider of the primary goods or services as a supplementary goods or services; or
 - (b) the provider has provided complementary goods or services which fail to function well or cause damage or other loss.
- (5) A provider who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.
- (6) For the purposes of this section, a “**substantiated claim**” means a claim which is supported by a written opinion of the Commission after consultation of the provider, that the complaint is valid and well founded.

38. Damaged goods sold to consumer.

- (1) A provider who sells a consumer any damaged goods that fail to provide to the consumer the benefit and uninterrupted enjoyment for which the goods were intended due to no apparent negligence or abuse by the consumer within the comprehensive warranty period, shall be responsible for its replacement or repair at no cost to the consumer.
- (2) The provider shall, in the event of repair of the goods referred to in subsection (1) —

- (a) return the goods to the consumer in a fully repaired and functional state within ten days of receipt of the goods for replacement or repair; or
- (b) if the goods are not returned to the consumer within the period of ten days, provide the consumer with a temporary substitute of comparative value for the consumer's uninterrupted use and enjoyment until such time as the consumer's goods are replaced or repaired and returned.

39. Return of materially defective goods.

- (1) Where a consumer is encouraged to acquire goods by the provider's declaration and description of the goods and the consumer subsequently discovers that those goods are defective in a material particular from the goods that intended to be purchased, the consumer may return the goods to the provider.
- (2) The provider shall offer to the consumer, in exchange for the returned goods, a refund of the money paid to the provider for the goods.

40. Return of different goods.

- (1) Where a consumer is encouraged to acquire goods by the provider's declaration and description of the goods and the consumer subsequently discovers that there are material differences between the goods received and the goods that the consumer requested, the consumer may return the goods to the provider and receive a refund.
- (2) Refunds on goods returned to a provider shall only be made where the goods are returned to the provider in the condition purchased or with minimal damage resulting from reasonable exposure in the normal course of the consumer's use of the goods prior to discovery of the material difference between the goods received and the goods that the consumer requested.
- (3) A consumer who acquires goods that in every way is similar or identical to the goods requested or described and declared by the provider shall not be entitled to a refund if, having left the place from which the provider sold the goods, the consumer for any reason decides that he no longer wants it.

41. Return of electrical goods.

- (1) Subsection (2) shall apply in any case where —
 - (a) a consumer purchases any electrical goods believing the electrical goods to be fully operational; and

- (b) upon attempting to use the electrical goods, the consumer discovers that the electrical goods are faulty or non-functional.
- (2) The consumer shall, upon returning the electrical goods to the provider, be entitled to —
 - (a) an exchange of the faulty electrical goods for new functional similar electrical goods free of cost; or
 - (b) a refund of the amount paid for the electrical goods if the provider is unable to establish that the electrical goods were damaged as a direct result of the consumer's actions.

PART VIII – UNFAIR TRADE PRACTICES

42. Misleading or deceptive conduct.

- (1) No provider shall, in the course of trade or business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- (2) For the purposes of subsection (1), misleading or deceptive conduct includes —
 - (a) statements which deceive the consumer as to his rights to a refund or exchange;
 - (b) statements or behaviour which seek to or have the affect of intimidating the consumer to refrain from making a complaint against the provider;
 - (c) the conduct of —
 - (i) misleading public as to the nature etc, of goods or services in accordance with section 43;
 - (ii) falsely accepting payment in accordance with section 44;
 - (iii) false or misleading representation in accordance with section 45;
 - (iv) failure to deliver goods or services on contracted date in accordance section 46;
 - (v) bait advertising in accordance with section 47;
 - (vi) harassment and coercion. 48;
 - (vii) offering gifts and prizes in accordance with section 49;
 - (viii) full cost of goods or services to be stated in accordance with section 50;
 - (ix) Referral selling in accordance with section 51; and
 - (x) pyramid selling in accordance with section 52.

- (3) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

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

- (1) No provider shall, in the course of trade or business engage in conduct that is likely to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose or quantity of goods or services.
- (2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

44. Falsely accepting payment.

- (1) No provider shall demand or accept payment or other consideration for goods or services, if at the time of the demand or acceptance, the provider —
 - (a) does not intend to supply the goods or services;
 - (b) intends to supply goods or services which are materially different from the goods or services in respect of which the payment or other consideration 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) Any person who contravenes subsection (1) commits an offence is liable on summary conviction to a fine not exceeding five thousand dollars.

45. False or misleading representation.

- (1) No provider shall, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services —
 - (a) falsely represent that —
 - (i) the goods or services are of a particular kind, standard, quality, grade, any sponsorship, approval, endorsement, or affiliation, quantity, composition, style, or model, or have had a particular history or particular previous use; or
 - (ii) services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill;
 - (iii) a particular person has agreed to acquire goods or services;

- (iv) goods are new, reconditioned, or that they were manufactured, produced, processed, reconditioned at a particular time;
- (v) goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits; or
- (vi) the provider has any sponsorship, approval, endorsement, or affiliation;
- (b) make a false or misleading representation with respect to—
 - (i) the price of any goods or services;
 - (ii) the need for any goods or services;
 - (iii) the existence, exclusion, or effect of a condition, warranty, guarantee, right or remedy; or
 - (iv) the place of origin of goods.
- (2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

46. Failure to deliver goods or services on contracted date.

- (1) Where it can be proven that a provider —
 - (a) has contracted to provide goods or services;
 - (b) has received a deposit in cash or kind pursuant to the contract to provide goods and services; and
 - (c) on the contracted delivery date,—
 - (i) is unable to deliver the goods or services without reasonable excuse; or
 - (ii) is unable to demonstrate that the goods are in a reasonably advanced state of production,

the provider shall be deemed to have acted in a fraudulent manner and commits an offence.
- (2) A provider who is convicted of an offence under subsection (1) is liable on summary conviction to a fine not exceeding five thousand dollars.

47. Bait advertising.

- (1) No provider shall advertise at a specified price, goods or services which the provider does not —
 - (a) intend to offer the goods or services for supply; or
 - (b) have reasonable grounds to believe the goods or services can be supplied by the provider—

- (i) at the price for a period: and
 - (ii) in quantities,
- that are reasonable having regard to the nature of the market in which the provider carries on business and the nature of the advertisement.
- (2) Any provider who has advertised goods or services at a specified price shall offer such goods or services at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the provider carries on business and the nature of the advertisement.
- (3) Any provider who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

48. Harassment and coercion.

- (1) No provider shall use physical force, harassment or coercion, in connection with —
 - (a) the supply or possible supply of goods or services; or
 - (b) the payment for goods or services.
- (2) Any provider who contravenes subsection (1) commits an offence is liable on summary conviction to a fine not exceeding five thousand dollars.

49. Offering gifts and prizes.

- (1) No provider shall, offer a gift, prize or other free item with the intention of not providing the gift, prize or other free item as offered.
- (2) Any provider who contravenes subsection (1) commits an offence is liable on summary conviction to a fine not exceeding five thousand dollars.

50. Full cost of goods or services to be stated.

- (1) No provider shall 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 —
 - (a) where the transaction is not a credit transaction, he also specifies the cash price of the goods or services;
 - (b) where the transaction is a credit transaction, he also specifies —
 - (i) the total sum to be paid for the goods or services;
 - (ii) the number of instalments by which payment is to be made;
 - (iii) the rate of interest that will be charged; and
 - (iv) the deposit, if any, that must be made.

- (2) Any provider who contravenes subsection (1) commits an offence is liable on summary conviction to a fine not exceeding five thousand dollars.

51. Referral selling.

- (1) No person shall 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 person the names of prospective customers or otherwise assisting the person 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) Any person who contravenes subsection (1) commits an offence is liable on summary conviction to a fine not exceeding five thousand dollars.

52. Pyramid selling.

- (1) No person shall promote or operate a pyramid selling scheme.
- (2) For the purposes of this section “**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.
- (3) Any person who contravenes subsection (1) commits an offence is liable on summary conviction to a fine not exceeding five thousand dollars.

PART IX – CONSUMER CONTRACT

53. Excluding or restricting liability by contract.

- (1) A person shall not by reference to —
 - (a) any term of a contract;

- (b) a notice given to persons generally; or
 - (c) particular persons,
- exclude or restrict his liability for death or personal injury resulting from negligence.
- (2) In the case of other loss or damage, a person shall not so exclude or restrict his liability for negligence except in so far as the term or notice satisfied the requirement of reasonableness as provided for in section 60.
 - (3) Where a term of a contract or notice purports to exclude or restrict liability for negligence, the fact that, that person agrees with the exclusion or restriction or is aware of the exclusion or restriction is not of itself to be taken as indicating his voluntary acceptance of any risk.

54. Reliance upon contractual provisions where breach.

No party to a contract shall —

- (a) when he is in breach of contract, exclude or restrict his liability in respect of the breach; or
- (b) claim to be entitled to render —
 - (i) a contractual performance substantially different from that which was reasonably expected of him; or
 - (ii) no performance in respect of the whole or any part of his contractual obligation, except in so far as the contract term satisfies the requirement of reasonableness.

55. Loss or damage from defective goods or negligence of manufacturer.

- (1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage —
 - (a) arises from the goods proving defective while in consumer use; or
 - (b) results from the negligence of a person concerned in the manufacture or distribution of the goods,

liability for the loss or damage shall not be excluded or restricted by reference to any contract term or notice contained in or operating by reference to a guarantee of the goods.
- (2) For the purposes of this section —
 - (a) goods are to be regarded as “in consumer use” when a person is in possession of them for use, otherwise than exclusively for the purposes of a business; and
 - (b) anything in writing is a guarantee if it contains or purports to contain some promise or assurance (however worded or presented)

that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

56. Goods or services acquired by installment.

- (1) This section applies to any case where a provider contracts to provide a consumer with goods or services over an extended period of time, and that provider contracts to receive periodic payments from the consumer for the goods or services.
- (2) The provider shall —
 - (a) be required to present an accurate claim for the exact amount of, or the exact percentage of, the total value of the goods or services actually received to date by the consumer; and
 - (b) upon presentation of an accurate claim, be entitled to void the contract if payment in full is not made within a reasonable time after the presentation of the claim, or by a pre-determined payment date which forms part of the contract.
- (3) In the event that the provider is unable to present an accurate claim, the provider may act in accordance with subsection (4).
- (4) The provider may —
 - (a) present the consumer with an estimated claim; and
 - (b) if the estimated claim is reasonably accurate, request that the consumer pay the estimated amount on the conditions specified in subsection (5).
- (5) The conditions referred to in subsection (4) are that —
 - (a) where the amount estimated is greater than the accurate claim, the amount paid by the consumer shall be credited to the amount owing at the next time that an accurate claim is presented; and
 - (b) the provider shall not be able to void the contract or impose any penalty in the event of breach by the consumer, solely on the ground that the estimated amount has not been paid by the consumer, either in full or in part.
- (6) A provider who presents an estimated claim for any goods or services shall be required to present an accurate claim no later than ninety days after presentation of the estimate.
- (7) Subsection (6) shall apply notwithstanding that the consumer of the goods or services does not pay the estimated amount claimed or pays it in full or in part.

57. Apportionment of payments where service not received.

- (1) Where a service is provided to a consumer —

- (a) the provider is deemed to be providing the consumer with a benefit under the relevant contract; and
 - (b) the provisions of subsection (2) shall apply where a fee is collected from the consumer for that service.
- (2) The provider shall —
- (a) be liable to make a full refund to the consumer, if for reasons not attributable to the consumer, the benefit is not received by the consumer; or
 - (b) where the benefit is received only in part —
 - (i) refund a proportionate part of the fees collected; or
 - (ii) subject to subsection (3), be entitled to receive a similar proportionate part of the fees if not yet paid.
- (3) Subsection (2) shall not apply in any case where the consumer contracts to pay the provider the prescribed fee regardless of whether the consumer receives the benefit.
- (4) The provider who offers a service to the consumer shall —
- (a) be required to stipulate the extent of the benefit that shall be deemed to be attached to the service; and
 - (b) provide the consumer with an appropriate warranty that —
 - (i) the benefit shall be enjoyed for a reasonable time, subject to the fulfilment of the conditions attached by the provider as may be reasonable to the consumer's enjoyment of that benefit; and
 - (ii) in the absence of the enjoyment of the benefit, the provider shall again provide the service free of cost to the consumer.

58. Failure to meet advertised delivery date.

- (1) An advertised delivery date for new, used and repaired goods shall form part of the contractual agreement between the provider and the consumer.
- (2) Where a provider fails to meet the advertised delivery date, the provider shall refund to the consumer all moneys paid, plus an amount equal to ten per cent of the amount deposited for each week that the goods are not delivered commencing after a period of, not more than, fourteen days after the advertised delivery date.

59. Effect of Sale of Goods and Hire Purchase Act.

Liability for breach of the obligations arising from —

- (a) sections 13 and 16 of the Sale of Goods Act (*Ch. 337*), and
- (b) sections 16 and 18 of the Hire Purchase Act (*Ch. 342*),

shall not be excluded or restricted by reference to any contract term.

60. Reasonableness.

- (1) The requirement for reasonableness in relation to a contract term, is that the term is a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the provider and consumer when the contract was made.
- (2) The requirement of reasonableness in this Act in relation to a notice, not being a notice having contractual effect, is that the notice shall be fair and reasonable to allow reliance on it, having regard to all the circumstances when the liability arose or, but for the notice, would have arisen.
- (3) Subsection (4) applies in any case where, by reference to a contract term or notice, a person seeks to restrict liability to a specified sum of money, and the question arises, under this or any other Act, whether the term or notice satisfies the requirement of reasonableness.
- (4) Regard shall be had in particular, but without prejudice to subsection (2), in the case of a contract term, to —
 - (a) the resources which the person could expect to be available to him for the purpose of meeting the liability if it arises; and
 - (b) how far it was open to that person to cover himself by insurance.
- (5) It is for those claiming that a contract term or notice satisfies the requirement of reasonableness to show that it does.

61. Indemnity subject to reasonableness.

A consumer shall not in reference to any term of a contract be made to indemnify another person, whether a party to the contract or not, in respect of liability that may be incurred by the other person for negligence or breach of contract, except in so far as the term of the contract satisfies the test of reasonableness.

62. Satisfying reasonableness where contract terminated.

- (1) Where, for the purpose of reliance upon it, a contract term has to satisfy the requirement of reasonableness, it may be found to do so and be given effect accordingly notwithstanding that the contract has been terminated either by breach or by a party electing to treat it as repudiated.
- (2) Where on a breach the contract is affirmed by a party entitled to treat it as repudiated, the affirmation does not of itself exclude the requirement of reasonableness in relation to any term of a contract.

63. Alternative dispute resolution.

Any written contract formed between a consumer and a provider shall include a clause providing for the parties to attempt to settle their disagreements through mediation by the Commission before taking the matter to court.

PART X – MISCELLANEOUS

64. Court may order payment of damages or costs.

Upon the conviction of a person of an offence or the finding that a person is liable in civil proceedings, the court may order the person to pay to the consumer, by way of damages, a sum representing the costs incurred by that consumer as a result of the offence or litigation of the matter.

65. Breach of duty or obligation.

In relation to any breach of duty or obligation, it is immaterial for any purpose of this part whether the breach was inadvertent or intentional, or whether liability for it arises directly or vicariously.

66. Purporting to act on a Bill of Sale.

- (1) A provider commits an offence if he —
 - (a) acts on the powers contained in a Bill of Sale of chattels pledged by a consumer; and
 - (b) employs any person other than a police officer, or a bailiff to recover any or all of the chattels pledged in the Bill of Sale to the provider in the event of default in repayment of a loan.
- (2) A provider who commits an offence under subsection (1) shall, upon summary conviction be liable to a fine not exceeding five thousand dollars.
- (3) A provider commits an offence if he, in taking action to recover any or all of the chattels pledged by the consumer in the Bill of Sale to the provider in the event of default in repayment of a loan, carries out an act of seizure although the consumer's indebtedness to the provider has already been discharged or is currently being serviced in accordance with existing contractual provisions.
- (4) A provider who commits an offence under subsection (3) shall, upon summary conviction be liable to a fine not exceeding one thousand dollars.
- (5) The court may order a provider convicted of an offence under subsection (3) to pay the consumer an amount equal to ten times the market value of

the chattels seized plus an amount of fifty dollars per day for every day that the consumer has been deprived of the use and enjoyment of those chattels.

- (6) The court may order a provider convicted of an offence to compensate the consumer for all expenses reasonably incurred as a result of the breach and the legal action.
- (7) A person commits an offence who —
 - (a) not being a Bailiff, purports to be a Bailiff; or
 - (b) being a Bailiff, wrongfully seizes the chattels of a consumer.
- (8) A person who commits an offence under subsection (7) shall upon summary conviction be liable to a fine not exceeding five thousand dollars.
- (9) The Court may order a person convicted of an offence under subsection (7) to pay the consumer an amount equal to ten times the market value of the chattels seized plus an amount of fifty dollars per day for every day that the consumer has been deprived of the use and enjoyment of those chattels.
- (10) Any Bailiff or person purporting to be a Bailiff who —
 - (a) threatens to seize the chattels of a consumer under the powers contained in a Bill of Sale although the consumer's indebtedness to the provider has already been discharged; or
 - (b) recklessly damages the chattels of a consumer while exercising distraint,commits an offence and shall, upon summary conviction be liable to a fine not exceeding five thousand dollars.

67. Regulations.

- (1) The Minister may make regulations for the purposes of giving effect to the provisions of this Act.
- (2) The Minister may make regulations in respect of —
 - (a) distance selling;
 - (b) rebates;
 - (c) layaways and other payment instalment arrangements;
 - (d) transparency of contract terms and the total cost of goods or services;
 - (e) the recall of goods or components of goods by a foreign manufacturer;
 - (f) trial periods and introductory offers;

- (g) disclosures to be made by a provider concerning the packaging, labelling and environmental facts affecting goods or services;
- (h) vending machines;
- (i) unsolicited goods or services;
- (j) the standard conditions of warranties.

68. Repeal of Ch. 337C.

The Consumer Protection Act, 2006 (*No. 7 of 2006*) is repealed.

FIRST SCHEDULE

(section 4)

1. Constitution of the Commission.

- (1) The Commission shall consist of a chairman, a deputy chairman and not less than five nor more than nine other members appointed by the Governor-General on the advice of the Minister from persons appearing to be qualified in the areas of law, industry, commerce, agriculture, banking and finance, transportation, administration or organization of workers.
- (2) The Permanent Secretary of the Ministry responsible for Consumer Welfare or a person designated by the Permanent Secretary shall be an ex officio member of the Commission.

2. Tenure.

A member of the Commission other than the ex officio member shall hold office for such period, not exceeding three years as the instrument of appointment may direct, but such member shall be eligible for reappointment.

3. Chairman and deputy chairman.

The Minister shall appoint a chairman and a deputy chairman of the Commission from among members appointed under paragraph 1 and if the chairman is absent or unable to act, the deputy chairman shall act as chairman during the time the absence or inability continues.

4. Resignation.

A member of the Commission other than the ex officio member, may at any time resign his office by instrument in writing addressed to the Minister and from the date of receipt by the Minister of the instrument that member shall cease to be a member of the Commission.

5. Removal.

The Governor-General on the advice of the Minister may, by instrument in writing remove a member of the Commission upon being satisfied that the member —

- (a) is an undischarged bankrupt;
- (b) is, for whatever reason permanently incapable of performing the duties of a member;
- (c) has neglected the duties of a member or has engaged in misconduct;
or
- (d) has been convicted of an indictable offence.

6. Publication.

The appointment, removal, death or resignation of a member to the Commission shall be notified in the *Gazette*.

7. Remuneration.

There shall be paid to the chairman and other members of the Commission a remuneration, if any, as the Minister may determine.

8. Meetings.

- (1) The Commission shall meet as often as may be required for the performance of its functions, but in any event, shall meet at least once a month.
- (2) The chairman, or in his absence the deputy chairman, shall preside at all meetings of the Commission.
- (3) The chairman, or in his absence the deputy chairman, and three other members of the Commission shall form a quorum.
- (4) The decisions of the Commission are by a majority of votes and in any case in which the voting is equal, the member presiding at the meeting shall have, in addition to an original vote, a casting vote.
- (5) Minutes of each meeting in proper form shall be kept by the secretary or any officer the Commission may appoint for that purpose, and confirmed by the Commission at the next meeting and signed by the chairman or a member of the Commission designated by the chairman as the case may be.
- (6) The Commission may co-opt any one or more persons to attend any particular meeting of the Commission for the purpose of assisting or advising the Commission in any matter with which the Commission is dealing, but no coopted person has the right to vote.
- (7) Where a quorum is present, the validity of any proceeding of the Commission shall not be affected by any vacancy amongst the members thereof by any defect in the appointment of a member.

9. Authority to regulate its proceedings.

The Commission has the power to regulate its proceedings.

SECOND SCHEDULE

(section 14(2)(a))

SUMMONS TO WITNESS

To :(name of person summoned and his or her address, if known)

You are hereby summoned to appear before the Consumer Commission,
established under the Consumer Protection Act,
at (place) on the day of
ato'clock and to give evidence respecting (state the matter).

(If the person summoned is to produce any documents, add) And you are
required to bring with you (specify the papers, books, records and documents
required).