

# CONSUMER PROTECTION ACT 1999

## ACT 599

*Date of Royal Assent: 27 August 1999*

*Date of publication in the Gazette: 9 September 1999*

*Date of coming into force: 15 November 1999 [PU(B) 415/99]*

### PART I

#### *PRELIMINARY*

1. Short title and commencement.
2. Application.
3. Interpretation.
4. Ouster of choice of law.
5. Savings for other relevant legislation.
6. No contracting out.
7. Appointment of Controller, Deputy Controllers, etc.

### PART II

#### *MISLEADING AND DECEPTIVE CONDUCT, FALSE REPRESENTATION AND UNFAIR PRACTICE*

8. Interpretation.
9. Misleading conduct.
10. False or misleading representation.
11. False representation and other misleading conduct in relation to land.
12. Misleading indication as to price.
13. Bait advertising.
14. Gifts, prizes, free offers, etc.
15. Claim that goods are limited.
16. Demanding or accepting payment without intending to supply.
17. Future services contract.
18. Presumption of liability for advertisement.

### PART III

#### *SAFETY OF GOODS AND SERVICES*

19. Safety standards.
20. Compliance with safety standards.

- 21. General safety requirement for goods.**
- 21A. General safety requirement for services.**
- 22. Defence.**
- 23. Prohibition against unsafe goods and services.**
- 24. Prohibition of importation of goods or services.**

### **PART IIIA**

#### **UNFAIR CONTRACT TERMS**

- 24A. Interpretation for purposes of Part IIIA.**
- 24B. Application of Part IIIA.**
- 24C. General procedural unfairness.**
- 24D. General substantive unfairness.**
- 24E. Burden of proof.**
- 24F. Power to raise an issue of unfairness.**
- 24G. Effect of unfair terms.**
- 24H. Executed contracts.**
- 24I. Contravention of part IIIA to be an offence.**
- 24J. Regulations relating to unfair contract terms.**

### **PART IV**

#### *OFFENCES, DEFENCES AND REMEDIES IN RELATION TO PARTS II AND III*

- 25. Contravention of Parts 11 and 111 to be an offence.**
- 26. Offence caused by act or default of another person.**
- 27. Defence of mistake, accident, etc.**
- 28. Defence of innocent publication of advertisement.**
- 29. Power of court to grant ancillary relief.**

### **PART V**

#### *GUARANTEES IN RESPECT OF SUPPLY OF GOODS*

- 30. Application.**
- 31. Implied guarantee as to title.**
- 32. Implied guarantee as to acceptable quality.**
- 33. Implied guarantee as to fitness for particular purpose.**
- 34. Implied guarantee that goods comply with description.**
- 35. Implied guarantee that goods comply with sample.**
- 36. Implied guarantee as to price.**
- 37. Implied guarantee as to repairs and spare parts.**
- 38. Manufacturer's express guarantee.**

### **PART VI**

*RIGHTS AGAINST SUPPLIERS IN RESPECT OF GUARANTEES IN THE SUPPLY OF GOODS*

- 39. Consumer's right of redress against suppliers.
- 40. Exception in respect of implied guarantee as to acceptable quality.
- 41. Options against suppliers where goods do not comply with guarantees.
- 42. Satisfaction of requirement to remedy a failure.
- 43. Loss of right to reject goods.
- 44. Failure of substantial character.
- 45. Manner of rejecting goods.
- 46. Consumer's option of refund or replacement.
- 47. Assessment of damages in case of hire-purchase agreements.
- 48. Liability for representation.
- 49. Liability of assignees and financiers.

**PART VII**

*RIGHTS AGAINST MANUFACTURERS IN RESPECT OF GUARANTEES IN THE SUPPLY OF GOODS*

- 50. Consumer's right of redress against manufacturers.
- 51. Exceptions to right of redress against manufacturers.
- 52. Options against manufacturers where goods do not comply with guarantees.

**PART VIII**

*GUARANTEES IN RESPECT OF SUPPLY OF SERVICES*

- 53. Implied guarantee as to reasonable care and skill.
- 54. Implied guarantee as to fitness for particular purpose.
- 55. Implied guarantee as to time of completion.
- 56. Implied guarantee as to price.

**PART IX**

*RIGHTS AGAINST SUPPLIERS IN RESPECT OF GUARANTEES IN THE SUPPLY OF SERVICES*

- 57. Consumer's right of redress against suppliers.
- 58. Exceptions to right of redress against supplier in relation to services.
- 59. Contracts of work and materials.
- 60. Options against suppliers where services do not comply with guarantees.
- 61. Loss of right to cancel contract.
- 62. Failure of substantial character.
- 63. Rules applying to cancellation of contract.
- 64. Effect of cancellation of contract.
- 65. Power of court to grant ancillary relief.

## **PART X**

### *PRODUCT LIABILITY*

- 66. Interpretation.**
- 67. Meaning of "defect".**
- 68. Liability for defective products.**
- 69. Extent of liability for loss or damage.**
- 70. Application of other written law.**
- 71. Prohibition on exclusion from liability.**
- 72. Defences.**

## **PART XI**

### *THE NATIONAL CONSUMER ADVISORY COUNCIL*

- 73. Establishment of the National Consumer Advisory Council.**
- 74. Membership of Council.**
- 75. Temporary exercise of functions of Chairman.**
- 76. Vacation of office.**
- 77. Revocation of appointment.**
- 78. Resignation.**
- 79. Filling of vacancy.**
- 80. Secretary to Council and other officers.**
- 81. Allowance.**
- 82. Council may invite others to meetings.**
- 83. Validity of acts and proceedings.**
- 84. Regulations relating to the Council.**

## **PART XIA**

### *COMMITTEE ON ADVERTISEMENT*

- 84A. Committee on Advertisement.**
- 84B. Membership of Committee on Advertisement.**
- 84C. Provisions of schedule to apply to the Committee on Advertisement.**
- 84D. Regulations relating to the Committee on Advertisement.**

## **PART XII**

### *THE TRIBUNAL FOR CONSUMER CLAIMS*

- 85. Establishment of the Tribunal for Consumer Claims.**
- 86. Membership of Tribunal.**
- 87. Temporary exercise of functions of Chairman.**
- 88. Vacation of office.**
- 89. Revocation of appointment.**

- 90. Resignation.
- 91. Filling of vacancy.
- 92. Remuneration.
- 93. Secretary to Tribunal and other officers.
- 94. Public servant.
- 95. No action to lie against Tribunal.
- 96. Sittings of Tribunal.
- 97. Commencement of proceedings.
- 98. Jurisdiction of Tribunal.
- 99. Limitation of jurisdiction.
- 100. Extension of jurisdiction by agreement.
- 101. Abandonment to bring claim within jurisdiction.
- 102. Cause of action not to be split.
- 103. [Deleted by Act A1380:s.9].
- 104. Exclusion of jurisdiction of court.
- 105. Disposal of perishable goods.
- 106. Notice of claim and hearing.
- 107. Negotiation for settlement.
- 108. Right to appear at hearings.
- 109. Proceedings to be public.
- 109A. Procedure to be reduced into writing.
- 110. Evidence.
- 111. Tribunal may act in absence of party.
- 112. Awards of Tribunal.
- 113. Reference to a Judge of the High Court on a question of law.
- 114. Reasons for decision.
- 115. Orders and settlements to be recorded in writing.
- 116. Decisions of Tribunal to be final.
- 117. Criminal penalty for failure to comply.
- 118. Procedure where no provision is made.
- 119. Want of form.
- 120. Disposal of documents, etc.
- 121. Act or omission done in good faith.
- 122. Regulations in respect of the Tribunal.

### **PART XIII**

#### *ENFORCEMENT*

- 123. Power of investigation.
- 124. Authority cards.
- 125. Search by warrant.
- 126. Search and seizure without warrant.
- 127. List of things seized.
- 128. Power to require attendance of person acquainted with case.
- 129. Examination of person acquainted with case.
- 130. Statement to be admissible in evidence.

- 131. Forfeiture of goods, etc., seized.
- 132. Cost of holding goods, etc., seized.
- 133. No costs or damages arising from seizure to be recoverable.
- 134. Protection of informers.
- 135. Reward for information.
- 136. Disappearance or destruction of goods, etc., to be seized.
- 137. Offences with respect to information.
- 138. Obstruction of Assistant Controller.
- 139. Use of confidential information.

#### **PART XIV**

##### *GENERAL AND MISCELLANEOUS*

- 140. Receipts.
- 141. Power to order compliance.
- 142. Failure to comply with lawful order.
- 143. Offences by body corporate.
- 144. Offences by employees, agents or employees of agents.
- 145. General penalty.
- 146. Compounding of offences.
- 147. Institution of prosecution.
- 148. Jurisdiction to try offences.
- 149. Protection of officers.
- 150. Regulations.

**SCHEDULE** [Section 84C] - COMMITTEE ON ADVERTISEMENT

#### **CONSUMER PROTECTION ACT 1999**

##### **ACT 599**

##### **Preamble**

Date of Royal Assent 27 August 1999.

Date of publication in the Gazette 9 September 1999.

An Act to provide for the protection of consumers, the establishment of the National Consumer Advisory Council and the Tribunal for Consumer Claims, and for matters connected therewith.

**BE IT ENACTED** by the Parliament of Malaysia as follows:

## PART I

### *PRELIMINARY*

#### **1. Short title and commencement.**

(1) This Act may be cited as the **Consumer Protection Act 1999**.

(2) This Act shall come into operation on a date to be appointed by the Minister, by notification in the Gazette, and the Minister may appoint different dates for different provisions of this Act.

#### **2. Application.**

(1) Subject to subsection (2), this Act shall apply in respect of all goods and services that are offered or supplied to one or more consumers in trade including any trade transaction conducted through electronic means.

*[Am. Act A1298]*

(2) This Act shall not apply-

(a) to securities as defined in the Securities Industry Act 1983 *[Act 280]*;

(b) to futures contracts as defined in the Futures Industry Act 1993 *[Act 499]*;

(c) to contracts made before the date on which this Act comes into operation;

(d) in relation to land or interests in land except as may be expressly provided in this Act;

(e) to services provided by professionals who are regulated by any written law; and

*[Am. Act A1298]*

(f) to healthcare services provided or to be provided by healthcare professionals or healthcare facilities.

*[Am. Act A1298]*

(g) (Deleted).

*[Am. Act A1298 - Prior text read - "(g) to any trade transactions effected by electronic means unless otherwise prescribed by the Minister"]*

(3) [Deleted by Act A1381;s.1A.]

(4) The application of this Act shall be supplemental in nature and without prejudice to any other law regulating contractual relations.

#### **3. Interpretation.**

(1) In this Act, unless the context otherwise requires-

"acquiring" , in relation to-

(a) goods, includes obtaining goods by way of purchase, exchange or taken on lease, hire or hire-purchase;

(b) services, includes accepting a service in any manner,

and "acquire" and "acquisition" shall be construed accordingly;

"advertisement" includes every form of advertisement, whether or not accompanied by or in association with spoken or written words or other writing or sounds and whether or not contained or issued in a publication, and includes advertisement-

(a) by the display of notices;

(b) by means of catalogues, price lists, circulars, labels, cards or other documents or materials;

(c) by the exhibition of films or of pictures or photographs; or

(d) by means of radio, television, telecommunication or any other similar means;

"business" means any undertaking that is carried on whether for gain or reward or not and in the course of which goods or services are acquired or supplied whether at a price or otherwise;

"consumer" means a person who-

(a) acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purpose, use or consumption; and

(b) does not acquire or use the goods or services, or hold himself out as acquiring or using the goods or services, primarily for the purpose of-

(i) resupplying them in trade;

(ii) consuming them in the course of a manufacturing process; or

(iii) in the case of goods, repairing or treating, in trade, other goods or fixtures on land;

"Controller" , "Deputy Controller" and "Assistant Controller" mean persons appointed as such under section 7;

"Council" or "National Consumer Advisory Council" means the council established under section 73;

"credit instrument" means any agreement, oral or written, acknowledging an obligation to pay a sum or sums of money on demand, or at any future time or times;

"goods" means goods which are primarily purchased, used or consumed for personal, domestic or household purposes, and includes-

(a) goods attached to, or incorporated in, any real or personal property;



(b) animals, including fish;

(c) vessels and vehicles;

(d) utilities; and

(e) trees, plants and crops whether on, under or attached to land or not,

but does not include *choses in action*, including negotiable instruments, shares, debentures and money;

"healthcare facility" means any premises in which one or more members of the public receive healthcare services.,

"healthcare professional" includes a medical practitioner, dental practitioner, pharmacist, clinical psychologist, nurse, midwife, medical assistant, physiotherapist, occupational therapist and other allied healthcare professional and any other person involved in the giving of medical, health, dental, pharmaceutical or any other healthcare services;

"healthcare services" includes-

(a) medical, dental, nursing, midwifery, allied health, pharmacy, and ambulance services and any other service provided by a healthcare professional;

(b) accommodation for the purpose of any healthcare service;

(c) any service for the screening, diagnosis or treatment of persons suffering from, or believed to be suffering from any disease, injury or disability of mind or body;

(d) any service for preventive or promotive health purpose;.

(e) any service by any healthcare para-professional;

(f) any service for curing or alleviating any abnormal condition of the human body by the application of any apparatus, equipment, instrument or device or any other medical technology; or

(g) any health related services including alternative and traditional medical services;

"manufacturer" means a person who carries on a business of assembling, producing or processing goods, and includes-

(a) any person who holds himself out to the public as a manufacturer of the goods;

(b) any person who affixes his brand or mark, or causes or permits his brand or mark to be affixed, to the goods; and

(c) where goods are manufactured outside Malaysia and the foreign manufacturer of the goods does not have an ordinary place of business in Malaysia, a person who imports or distributes those goods;

"premises" means any place, building or vehicle, whether permanent or temporary;

"prescribed" means prescribed by or under this Act or any regulations made under this Act, and where no mode is mentioned, means prescribed from time to time by order published in the Gazette;

"price" includes consideration in any form, whether direct or indirect, and includes any consideration that in effect relates to the acquisition or supply of goods or services although ostensibly relating to any other matter or thing;

"publication" includes advertisement to the public or any member of the public by any means, and "publish" shall be construed accordingly;

"record" includes account books, bank books, vouchers, receipts, correspondence and any other document regardless of whether the record is on paper or is in electronic, photographic or other form but does not include patient medical record;

"regulations" means regulations made under this Act;

"security" includes any charge or encumbrance;

"services" includes any rights, benefits, privileges or facilities that are or are to be provided, granted or conferred under any contract but does not include rights, benefits or privileges in the form of the supply of goods or the performance of work under a contract of service;

"subsidiary" has the same meaning as given in the Companies Act 1965 [*Act 125*];

"supplier" means a person who, in trade-

(a) supplies goods to a consumer by transferring the ownership or the possession of the goods under a contract of sale, exchange, lease, hire or hire-purchase to which that person is a party; or

(b) supplies services to a consumer, and includes-

(i) where the rights of the supplier have been transferred by assignment or by operation of law, the person for the time being entitled to those rights;

(ii) a financier who has lent money on the security of goods supplied to a consumer, if the whole or any part of the price of the goods is to be paid out of the proceeds of the loan and if the loan was arranged by a person who, in trade, supplied the goods;

(iii) a person who, in trade, assigns or procures the assignment of goods to a financier to enable the financier to supply those goods, or goods of that kind, to the consumer; and

(iv) a person who, in trade, is acting as agent for another person where that other person is not supplying in trade;

"supply" , in relation to-

(a) goods, means to supply or resupply by way of sale, exchange, lease, hire or hire-purchase;

(b) services, means to provide, grant or confer;

"this Act" includes any subsidiary legislation made under this Act;

"trade" means any trade, business, industry, profession, occupation, activity of commerce or undertaking relating to the supply or acquisition of goods or services;

"Tribunal" means the Tribunal for Consumer Claims established under section 85.

(2) In this Act, a reference to-

(a) engaging in a conduct shall be read as a reference to doing or refusing to do an act, and includes-

(i) omitting to do an act; or

(ii) making it known that an act will or, as the case may be, will not, be done;

(b) the acquisition of goods includes a reference to the acquisition of property in or rights in relation to goods pursuant to a supply of the goods;

(c) the supply or acquisition of goods or services includes a reference to the agreement to supply or acquire goods or services;

(d) the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other goods or services or both;

(e) the supply or acquisition of services includes a reference to the supply or acquisition of services together with other goods or services or both;

the resupply of goods acquired from a person includes a reference to-

(i) a supply of goods to another person in an altered form or condition; and

(ii) a supply to another person of other goods in which the acquired goods have been incorporated.

(3) In this Act, where it is necessary to determine the time at which a guarantee commences to apply-

(a) goods shall be treated as supplied at the time when the consumer acquires the right to possess the goods;

(b) services shall be treated as supplied at the time when the services are provided, granted or conferred.

(4) For the purposes of this Act, an undertaking, assertion or representation by any name shall be deemed to be an express guarantee if it has the same or substantially the same effect as an express guarantee.

#### **4. Ouster of choice of law.**

This Act shall have effect notwithstanding any contract term which applies or purports to apply the law of another country where the term appears to the court to have been imposed wholly or mainly for the purpose of enabling the party imposing it to evade the operation of this Act.

#### **5. Savings for other relevant legislation.**

Nothing in this Act shall remove or restrict the effect of, or prevent reliance on-

(a) any written law which imposes on the supplier a duty stricter than that imposed under this Act;

(b) any written law by which any term not inconsistent with this Act is to be implied in a contract for the supply of any goods or services;

- (c) any written law relating to contracts of employment or contracts of apprenticeship; or
- (d) any term in any agreement in writing between a supplier and a consumer to the extent that the term-
  - (i) imposes a stricter duty on the supplier than that imposed under this Act; or
  - (ii) provides a remedy more advantageous to the consumer than the remedies provided under this Act.

## **6. No contracting out.**

- (1) The provisions of this Act shall have effect notwithstanding anything to the contrary in any agreement.
- (2) Every supplier and every manufacturer who purports to contract out of any provision of this Act commits an offence.
- (3) Nothing in subsection (1) shall prevent a consumer who has a claim under this Act from agreeing to settle or compromise that claim.

## **7. Appointment of Controller, Deputy Controllers, etc.**

- (1) The Minister may appoint, from among public officers, a Controller of Consumer Affairs and such number of Deputy Controllers of Consumer Affairs, Assistant Controllers of Consumer Affairs and other officers as may be necessary for the purposes of this Act.
- (2) The Controller shall, subject to the general direction and control of the Minister, perform the functions and duties imposed and exercise the powers conferred upon him under this Act.
- (3) The Deputy Controllers, Assistant Controllers and other officers appointed under subsection (1) shall be under the direction and control of the Controller.
- (4) A Deputy Controller may perform all the functions and duties imposed and exercise all the powers conferred upon the Controller under this Act.
- (5) All officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

## **PART II**

### ***MISLEADING AND DECEPTIVE CONDUCT, FALSE REPRESENTATION AND UNFAIR PRACTICE***

## **8. Interpretation.**

For the purposes of this Part-

- (a) "false", "misleading" or "deceptive", in relation to conduct, representation or practice, includes conduct, representation or practice which is capable of leading a consumer into error; and

(b) "price", in relation to any goods or services, in addition and without prejudice to the generality of the DEFINITION of "price" in section 3, means-

(i) the aggregate of the sums required to be paid by a consumer for or otherwise in respect of the supply of the goods or services; or

(ii) except in subsections 12(3) and (4), any method which will be or has been applied for the purpose of determining the aggregate.

## **9. Misleading conduct.**

No person shall engage in conduct that-

(a) in relation to goods, is misleading or deceptive, or is likely to mislead or deceive, the public as to the nature, manufacturing process, characteristics, suitability for a purpose, availability or quantity, of the goods; or

(b) in relation to services, is misleading or deceptive, or is likely to mislead or deceive, the public as to the nature, characteristics, suitability for a purpose, availability or quantity, of the services.

## **10. False or misleading representation.**

(1) No person shall make a false or misleading representation that-

(a) the goods are of a particular kind, standard, quality, grade, quantity, composition, style or model;

(b) the goods have had a particular history or particular previous use;

(c) the services are of a particular kind, standard, quality or quantity;

(d) the services are supplied by any particular person or by any person of a particular trade, qualification or skill;

(e) a particular person has agreed to acquire the goods or services;

(f) the goods are new or reconditioned;

(g) the goods were manufactured, produced, processed or reconditioned at a particular time;

(h) the goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits;

(i) the person has any sponsorship, approval, endorsement or affiliation;

(j) concerns the need for any goods or services;

(k) concerns the existence, exclusion or effect of any condition, guarantee, right or remedy; or

(l) concerns the place of origin of the goods.

(2) In this section, "quantity" includes length, width, height, area, volume, capacity, weight and number.

## **11. False representation and other misleading conduct in relation to land.**

(1) No person shall in connection with the sale or grant or possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land-

(a) falsely represent that any person has any sponsorship, approval, endorsement or affiliation; or

(b) make a false or misleading representation concerning any or all of the following:

(i) the nature of the interest in the land;

(ii) the price payable for the land;

(iii) the location of the land;

(iv) the characteristics of the land;

(v) the use to which the land is capable of being put or may lawfully be put;

(vi) the existence or availability of facilities associated with the land.

(2) In this section, "interest", in relation to land, means a registered or registrable interest in the land, and includes-

(a) a right of occupancy of the land or of a building or part of a building erected on the land, arising by virtue of the holding of shares or by virtue of a contract to purchase shares in a company that owns the land or building; or

(b) a right, power or privilege over or in connection with the land.

(3) This section does not apply to housing accommodation as provided under the Housing Developers (Control and Licensing) Act 1966 [*Act 118*].

## **12. Misleading indication as to price.**

(1) A person commits an offence-

(a) if he gives to a consumer an indication which is misleading as to the price at which any goods or services are available; or

(b) if an indication given by him to a consumer as to the price at which any goods or services are available becomes misleading and he fails to take reasonable steps to prevent the consumer from relying on the indication.

(2) For the purposes of subsection (1), it shall be immaterial-

(a) whether the person who gives the indication is acting on his own behalf or on behalf of another;

(b) whether or not the person who gives the indication is the person or included among the persons from whom the goods or services are available;

(c) whether the indication is or becomes misleading in relation to all the consumers to whom it is given or only in relation to some of them.

(3) For the purposes of this section, an indication given to a consumer is misleading as to a price or a method of determining a price if what is conveyed by the indication, or what the consumer may reasonably be expected to infer from the indication or any omission from it, includes any of the following:

- (a) that the price or method is not what in fact it is;
- (b) that the applicability of the price or method does not depend on facts or circumstances on which it does in fact depend;
- (c) that the price covers or the method takes into account matters in respect of which an additional charge is in fact made;
- (d) that a person who in fact has no such expectation, expects-
  - (i) the price to be increased or reduced, whether or not at a particular time or by a particular amount;
  - (ii) the price, or the price as increased or reduced, as the case may be, to be maintained, whether or not for a particular period;
  - (iii) the method to be altered, whether or not at a particular time or in a particular respect; or
  - (iv) the method or the method as altered, as the case may be, to remain unaltered, whether or not for a particular period;
- (e) that the facts or circumstances by reference to which the consumer may reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what they in fact are.

(4) For the purposes of paragraph (3)(e), a comparison is a relevant comparison in relation to a price or a method of determining a price, as the case may be, if the comparison is made between that price or method or any price which has been or may be determined by that method, and-

- (a) any price or value that is stated or implied to be or to have been or to be likely to be attributed or attributable to the goods or services in question, or to any other goods or services; or
- (b) any method or other method that is stated or implied to be or to have been or to be likely to be applied or applicable for the determination of the price or value of the goods or services in question, or of the price or value of any other goods or services.

### **13. Bait advertising.**

(1) No person shall advertise for supply at a specified price goods or services which that person-

- (a) does not intend to offer for supply; or
- (b) does not have reasonable grounds for believing can be supplied,

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 person carries on business and the nature of the advertisement.

(2) In a prosecution for a failure to offer goods or services to a consumer in accordance with subsection (1), it shall be a defence if the person charged proves that-

(a) he offered to supply or to procure another person to supply, to the consumer, within a reasonable time, goods or services of the kind advertised, in a reasonable quantity and at the advertised price, and where the offer is accepted by the consumer, that the person has so supplied or procured another person to supply, the goods or services; or

(b) he offered to supply to the consumer immediately, or to procure another person to supply to the consumer within a reasonable time, equivalent goods or services, in a reasonable quantity and at the advertised price, and where the offer is accepted by the consumer, that the person has so supplied or procured another person to supply, such equivalent goods or services.

#### **14. Gifts, prizes, free offers, etc.**

(1) No person shall offer any gift, prize or other free item-

(a) with the intention of not providing it; or

(b) with the intention of not providing it as offered.

(2) No person shall in offering any gift, prize or other free item with the purchase of any goods or services, whether or not contingent on the purchase of other goods or services-

(a) charge more than the regular price for the goods or services to be purchased; or

(b) reduce the quantity or quality of the goods or services to be purchased.

(3) A person who offers a gift, prize or other free item may impose any reasonable condition on the offer.

(4) Where a person imposes a condition on the offer, he shall-

(a) describe the condition clearly;

(b) ensure that the description of the condition is conspicuously placed near the expression "free" or "free offer", as the case may be; and

(c) ensure that the print of the description of the condition is at least half as large as the print used for the expression "free" or "free offer".

(5) For the purposes of this section-

"free" or "free offer" includes any expression of similar meaning;

"regular price" means the price at which similar goods or services are regularly sold on the market.

#### **15. Claim that goods are limited.**

(1) No person shall, in supplying or offering to supply goods for sale to consumers, describe the goods as limited unless their edition, printing, minting, crafting or production is restricted to-

(a) a predetermined maximum quantity; or

(b) the actual quantity ordered or subscribed to within a specified and reasonably short period of time.



(2) A claim that goods are limited shall state clearly-

(a) the maximum quantity of goods which are offered for sale; and

(b) the specific time period or dates for which the goods are offered for sale.

(3) The statements required under subsection (2) shall be conspicuously placed near the claim.

**16. Demanding or accepting payment without intending to supply.**

No person shall demand for or accept, any payment or other consideration for goods or services, if at the time of the demand or acceptance that person-

(a) does not intend to supply the goods or services;

(b) intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is demanded for or accepted; or

(c) does not have reasonable grounds to believe he will be able to supply the goods or services within any specified period, or where no period is specified, within a reasonable time.

**17. Future services contract.**

(1) For the purposes of this section, "future services contract" means a contract for consumer services that will be provided on a continuing basis and as prescribed by the Minister from time to time.

(2) A consumer who cancels a future services contract may be charged by the supplier the following amount:

(a) five percent of the full contract price;

(b) the cost of any goods the consumer used or is keeping; or

(c) the portion of the full contract price representing services received by the consumer.

(3) Where the consumer has paid the supplier more money than the supplier is entitled to charge under paragraph (2)(a), (b) or (c), the supplier shall refund the extra payment or make a refund available, within fourteen days of cancellation.

(4) A cancellation of a future services contract shall take effect-

(a) at the time at which the cancellation is communicated to the supplier; or

(b) where it is not reasonably practicable to communicate with the supplier, at the time at which the consumer indicates to the supplier, by means which are reasonable in the circumstances, his intention to cancel the future services contract.

(5) Subject to subsection (6), a cancellation of the future services contract may be communicated by words or conduct or both which indicate the intention of the consumer to cancel the contract, and it shall not be necessary to use any particular form of words, as long as the intention to cancel is clear.

(6) Where it is reasonably practicable to communicate with the supplier, subsection (5) shall take effect subject to any express provision in the future services contract requiring notice of cancellation to be in writing.

#### **18. Presumption of liability for advertisement.**

Where the conduct or representation in relation to any goods or services is made or published in an advertisement, the advertisement shall be deemed to have been made by-

- (a) the person who directly or indirectly claims to supply the goods or services;
- (b) the person on whose behalf the advertisement is made; or
- (c) both of them,

as the case may require, unless the contrary is proved.

### **PART III**

#### ***SAFETY OF GOODS AND SERVICES***

#### **19. Safety standards.**

(1) The Minister may by regulations prescribe the safety standards in respect of-

- (a) any goods or class of goods; and
- (b) any services or class of services,

and may prescribe different safety standards for different goods or services, or classes of goods or services.

(2) The safety standard in relation to goods may relate to any or all of the following matters:

- (a) the performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods;
- (b) the testing of the goods during or after manufacture or processing;
- (c) the form and content of markings, warnings or instructions to accompany the goods.

(3) For the purposes of subsection (1), the Minister may, on the recommendation of the Controller and with consultation with the competent agency-

- (a) adopt in whole or in part the safety standard used by the competent agency; or
- (b) obtain advice from experts in the relevant field.

(4) Where no safety standard has been prescribed under subsection (1), the person supplying or offering to supply the goods or services shall adopt and observe a reasonable standard of safety to be expected by a reasonable consumer, due regard being had to the nature of the goods or services concerned.

(5) In this section, "competent agency" means any person, body or authority that has determined or has the expertise to determine safety standards for any goods or services.

(6) This Part shall not apply to healthcare goods and food.

(7) For the purpose of this Part, "healthcare goods" means any goods used or intended to be used, provided or intended to be provided or prescribed or intended to be prescribed in the provision of healthcare services.

## **20. Compliance with safety standards.**

No person shall supply, or offer to or advertise for supply, any goods or services which do not comply with the safety standards determined under section 19.

## **21. General safety requirement for goods.**

In addition and without prejudice to section 20, no person shall supply, or offer to or advertise for supply, any goods which are not reasonably safe having regard to all the circumstances, including-

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

## **21A. General safety requirement for services.**

In addition and without prejudice to section 20, no person shall supply, or offer to or advertise for supply, any services which are not reasonably safe having regard to all the circumstances, including:-

- (a) the nature of the service, and composition and mode of provision;
- (b) its effect on human life and health, and property;
- (c) the appearance, design, labelling, instructions for installation or use, warnings, instructions for disposal of the property relating to the service and other information provided by the service provider; and
- (d) whether there are any categories of persons who may be at risk when using the service.

*[Ins. Act A1381:s.3*

## **22. Defence.**

(1) Goods or services shall not be regarded as failing to comply with the requirements of section 20 or 21 or both, as the case may be, where it is shown that-

(a) the alleged failure is attributable to compliance with a requirement imposed under any written law;  
or

(b) the alleged failure is a failure to do more in relation to any matter than may be required under sections 20 and 21.

(2) In any proceedings for an offence under this Part, it shall be a defence for the person charged to show that at the time he supplied, or offered or agreed to supply, or exposed or possessed for supply, the goods or services, he-

(a) had no knowledge; and

(b) had no reasonable ground to believe,

that the goods or services failed to comply with the requirements of section 20 or 21, or both, as the case may be.

(3) Subsection (2) shall not apply in relation to manufacturers.

### **23. Prohibition against unsafe goods and services.**

*[Am. Act A1381:s.4]*

(1) The Minister may, on the commendation of the Controller, by order published in the *Gazette*, declare any goods or any class of goods to be prohibited goods or any services or class of services to be prohibited services, where the goods or goods of that class or services or services of that class have caused or are likely to cause injury to any person or property or is otherwise unsafe.

*[Am. Act A1381:s.4]*

(2) An order made under subsection (1) may require the supplier, in such manner and within such period as may be specified in the order, and at the supplier's own expense, to do any or all of the following:

(a) recall the prohibited goods;

(b) stop the supply of, or the offer to supply, the prohibited goods or prohibited services;

(c) stop the advertisement of the prohibited goods or prohibited services;

(d) disclose to the public any information relating to-

(i) the characteristics of the prohibited goods or prohibited services which render them unsafe;

(ii) the circumstances in which use of the prohibited goods or prohibited services are unsafe;

(iii) any other matter relating to the prohibited goods or prohibited services or the use of the prohibited goods or prohibited services as may be specified;

(e) repair or replace the prohibited goods or prohibited services;

(f) refund to any person to whom the prohibited goods or prohibited services were supplied the price paid or the value of the consideration given for the prohibited goods or prohibited services or any

lesser amount as may be reasonable having regard to the use that that person has had of the prohibited goods.

(3) Where an order is made under subsection (1), the Controller shall, by notice to the supplier, require the supplier to take any or all of the actions referred to in the order.

(4) A notice under subsection (3) need not be provided directly to the supplier and may be provided by general methods, including placing notices in the public news media, as the Controller thinks fit, provided that the notice is clear and reasonable.

(5) The supplier shall comply with all the requirements of any order and notice made under this section.

(6) Further and without prejudice to the foregoing, where an order under subsection (1) is in effect-

(a) no person shall supply, or offer to or advertise for supply, any prohibited goods or prohibited services;; and

(b) no supplier shall-

(i) where the notice identifies a defect in, or a dangerous characteristic of, the prohibited goods or prohibited services, supply goods or services of a kind to which the order relates which contain the defect or have the characteristic; or

(ii) in any other case, supply goods or services of a kind to which the order relates.

*[Am. Act A1381:s.4]*

## **24. Prohibition of importation of goods or services.**

The importation of any goods or services or any class of goods or services which do not comply with the provisions of this Part is prohibited.

## **PART IIIA**

### **UNFAIR CONTRACT TERMS**

#### **24A. Interpretation for purposes of Part IIIA.**

In this Part:-

(a) "contract" has the same meaning as assigned to it in section 2 of the **Contracts Act 1950***[Act 136]*;

(b) "standard form contract" means a consumer contract that has been drawn up for general use in a particular industry, whether or not the contract differs from other contracts normally used in that industry; and

(c) "unfair term" means a term in a consumer contract which, with regard to all the circumstances, causes a significant imbalance in the rights and obligations of the parties arising under the contract to the detriment of the consumer.

*[Ins. Act A1381:s.5]*

#### **24B. Application of Part IIIA.**

Without prejudice to the provisions in the **Contracts Act 1950**, the **Specific Relief Act 1950***[Act 137]*, the **Sale of Goods Act 1957***[Act 382]* and the provisions of any other law for the time being in force, the provisions of this Part shall apply to all contracts.

*[Ins. Act A1381:s.5]*

#### **24C. General procedural unfairness.**

(1) A contract or a term of a contract is procedurally unfair if it has resulted in an unjust advantage to the supplier or unjust disadvantage to the consumer on account of the conduct of the supplier or the manner in which or circumstances under which the contract or the term of the contract has been entered into or has been arrived at by the consumer and supplier.

(2) For the purposes of this section, a court or the Tribunal may take into account the following circumstances:

(a) the knowledge and understanding of the consumer in relation to the meaning of the terms of the contract or their effect;

(b) the bargaining strength of the parties to the contract relative to each other;

(c) reasonable standards of fair dealing;

(d) whether or not, prior to or at the time of entering into the contract, the terms of the contract were subject to negotiation or were part of a standard form contract;

(e) whether or not it was reasonably practicable for the consumer to negotiate for the alteration of the contract or a term of the contract or to reject the contract or a term of the contract;

(f) whether expressions contained in the contract are in fine print or are difficult to read or understand;

(g) whether or not, even if the consumer had the competency to enter into the contract based on his or her capacity and soundness of mind, the consumer:-

(i) was not reasonably able to protect his or her own interests or of those whom he or she represented at the time the contract was entered; or

(ii) suffered serious disadvantages in relation to other parties because the consumer was unable to appreciate adequately the contract or a term of the contract or its implications by reason of age, sickness, or physical, mental, educational or linguistic disability, or emotional distress or ignorance of business affairs;

- (h) whether or not independent legal or other expert advice was obtained by the consumer who entered into the contract;
- (i) the extent, if any, to which the provisions of the contract or a term of the contract or its legal or practical effect was accurately explained by any person to the consumer who entered into the contract;
- (j) the conduct of the parties who entered into the contract in relation to similar contracts or courses of dealing between them; and
- (k) whether the consumer relied on the skill, care or advice of the supplier or a person connected with the supplier in entering into the contract.

*[Ins. Act A1381:s.5]*

#### **24D. General substantive unfairness.**

(1) A contract or a term of a contract is substantively unfair if the contract or the term of the contract:-

- (a) is in itself harsh;
- (b) is oppressive;
- (c) is unconscionable;
- (d) excludes or restricts liability for negligence; or
- (e) excludes or restricts liability for breach of express or implied terms of the contract without adequate justification.

(2) For the purposes of this section, a court or the Tribunal may take into account the following circumstances:

(a) whether or not the contract or a term of the contract imposes conditions:-

- (i) which are unreasonably difficult to comply with; or
- (ii) which are not reasonably necessary for the protection of the legitimate interests of the supplier who is a party to the contract;

(b) whether the contract is oral or wholly or partly in writing;

(c) whether the contract is in standard form;

(d) whether the contract or a term of the contract is contrary to reasonable standards of fair dealing;

(e) whether the contract or a term of the contract has resulted in a substantially unequal exchange of monetary values or in a substantive imbalance between the parties;

(f) whether the benefits to be received by the consumer who entered into the contract are manifestly disproportionate or inappropriate, to his or her circumstances;

(g) whether the consumer who entered into the contract was in a fiduciary relationship with the supplier; and

- (h) whether the contract or a term of the contract:-
- (i) requires manifestly excessive security for the performance of contractual obligations;
- (ii) imposes penalties which are disproportionate to consequences of a breach of contract; the
- (iii) denies or penalizes the early repayment of debts;
- (iv) entitles the supplier to terminate the contract unilaterally without good reason or without paying reasonable compensation; or
- (v) entitles the supplier to modify the terms of the contract unilaterally.

*[Ins. Act A1381:s.5]*

#### **24E. Burden of proof.**

If a contract or a term of a contract excludes or restricts liability, or excludes rights, duties and liabilities, it is for the supplier relying on such exclusion or restriction to prove that it is not without adequate justification.

*[Ins. Act A1381:s.5]*

#### **24F. Power to raise an issue of unfairness.**

A court or the Tribunal may, in proceedings before it, raise an issue as to whether a contract or its terms are unfair under sections 24C and 24D, even if none of the parties has raised the issue in its pleadings.

*[Ins. Act A1381:s.5]*

#### **24G. Effect of unfair terms.**

(1) In this Part, where a court or the Tribunal comes to the conclusion, having regard to sections 24C and 24D that a contract or a term of a contract is either procedurally or substantively unfair or both, the court or the Tribunal may declare the contract or the term of the contract as unenforceable or void and the court may grant judgment, and the Tribunal may make an award as provided for under section 112 of this Act.

(2) A court or the Tribunal may determine if any of the terms of the contract which are either procedurally or substantially unfair, or both, are severable, and whether and to what extent and in what manner, the remaining terms of the contract can be enforced or given effect to.

*[Ins. Act A1381:s.5]*

#### **24H. Executed contracts.**

A court may grant judgment, and the Tribunal may make an award as provided for under section 112 of this Act, notwithstanding that the contract has been wholly or partly executed and for that purpose the court or Tribunal may consider:-

- (a) whether and to what extent restitution is possible in the facts and circumstances of the case; and



(b) where such restitution is not possible, either wholly or partly, whether any compensation is payable.

*[Ins. Act A1381:s.5]*

**24I. Contravention of part IIIA to be an offence.**

(1) Any person who contravenes any of the provisions of this Part commits an offence and shall on conviction be liable:-

(a) if such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit, and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit;

(b) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years, or to both, and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding six years, or to both.

(2) In the case of a continuing offence, the offender shall, in addition to the penalties under subsection (1), be liable to a fine not exceeding two thousand ringgit for each day or part of a day during which the offence continues after conviction.

*[Ins. Act A1381:s.5]*

**24J. Regulations relating to unfair contract terms.**

The Minister may make such regulations as may be necessary or expedient in respect of this Part.

*[Ins. Act A1381:s.5]*

**PART IV**

***OFFENCES, DEFENCES AND REMEDIES IN RELATION TO PARTS II AND III***

**25. Contravention of Parts 11 and 111 to be an offence.**

(1) Any person who contravenes any of the provisions of Parts 11 and 111 commits an offence and shall on conviction be liable-

(a) if such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit, and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit;

(b) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding six years or to both.

(2) In the case of a continuing offence, the offender shall, in addition to the penalties under subsection (1), be liable to a fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after conviction.

**26. Offence caused by act or default of another person.**

Where an offence under Part II or III is due to the act or default of another person, that other person shall be deemed to have committed the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person.

## **27. Defence of mistake, accident, etc.**

In any proceedings for an offence under section 25, it shall be a defence for the person charged to prove-

(a) that the contravention was due to-

(i) a reasonable mistake on his part;

(ii) reasonable reliance on information supplied to him;

(iii) the act or default of another person; or

(iv) an accident; or

(v) a cause beyond his control; and

(b) that he took reasonable precautions and exercised all due diligence to avoid such contravention by himself or by any person under his control.

## **28. Defence of innocent publication of advertisement.**

Where an offence under section 25 is committed by the publication of an advertisement, it shall be a defence in any proceedings for the offence for the person charged to prove that-

(a) his business is that of publishing or arranging for the publication of advertisements; and

(b) he received the advertisement or the information contained in the advertisement, as the case may be, for publication in the ordinary course of business; and

(c) he did not know and had no reason to suspect that the publication of the advertisement would constitute an offence under section 25.

## **29. Power of court to grant ancillary relief.**

(1) Where, in any proceedings under this Part, or on the application of any person, the court finds that such person, whether or not he is a party to the proceedings, has suffered or is likely to suffer loss or damage by the conduct of any other person that constitutes or would constitute-

(a) a contravention of;

(b) aiding, abetting, counselling or procuring the contravention of;

(c) inducing by threats, promises or otherwise the contravention of;

(d) being in any way knowingly concerned in or party to, whether directly or indirectly, the contravention of; or

(e) conspiring with any other person in the contravention of,

any of the provisions of Part 11 or III, the court may, without prejudice to any other relief it may grant, make any or all of the orders referred to in subsection (2).

(2) For the purposes of this section, the court may make the following orders:

(a) an order declaring-

(i) the whole or any part of a contract made between the person who suffered or is likely to suffer the loss or damage and the person who engaged in the conduct referred to in subsection (1); or

(ii) the whole or any part of a collateral arrangement relating to such a contract,

to be void and, if the court thinks fit, to be void *ab initio* or at all times on and after such date, before the date on which the order is made, as may be specified in the order;

(b) an order varying the contract or arrangement in such manner as may be specified in the order and, if the court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date, before the date on which the order is made, as may be specified in the order;

(c) an order directing the person who engaged in the conduct referred to in subsection (1)-

(i) to refund the money or return the property;

(ii) to pay the amount of the loss or damage;

(iii) at the person's own expense, to repair or provide parts for goods that have been supplied by him;

(iv) at the person's own expense, to supply specified services,

to the person who suffered, or is likely to suffer, the loss or damage, as the case may be.

(3) An order under paragraph (2)(a) or (b) shall not prevent proceedings from being instituted or maintained under this Part.

(4) In an application for an order against a person under this section, a finding of fact made in proceedings for an offence under section 25, being proceedings in which that person was found to have engaged in conduct of the kind referred to in subsection (1), shall be prima facie evidence of that fact and the finding may be proved by the production of a document under the seal of the court in which the finding was made.

## **PART V**

### ***GUARANTEES IN RESPECT OF SUPPLY OF GOODS***

#### **30. Application.**

The implied guarantees under this Part shall apply whether or not the goods are supplied in connection with services.

### **31. Implied guarantee as to title.**

(1) Subject to subsection (5), the following guarantees shall be implied where goods are supplied to a consumer:

(a) that the supplier has a right to sell the goods;

(b) that the goods are free from any undisclosed security; and

(c) that the consumer has a right to quiet possession of the goods, except in so far as that right is varied by-

(i) a term of the agreement for supply where that agreement is a hire-purchase agreement within the meaning of the Hire-Purchase Act 1967 [Act 212];

(ii) a disclosed security; or

(iii) a term of the agreement for supply.

(2) Where subparagraphs (1)(c)(ii) and (iii) apply, the supplier shall first orally advise the consumer as to the way in which his right to quiet possession of the goods may be varied.

(3) The advice given by the supplier under subsection (2) shall be as may be sufficient to enable a reasonable consumer to understand the general nature and effect of the variation.

(4) Where a consumer has received oral advice under subsection (2)-

(a) the supplier shall give to the consumer a written copy of the security or agreement for supply or a written copy of the part thereof which provides for the variation as explained to the consumer under subsection (2); and

(b) the consumer shall acknowledge receipt thereof in writing.

(5) Where the goods are only hired or leased-

(a) paragraphs (1)(a) and (b) shall not apply; and

(b) paragraph (1)(c) shall confer a right to quiet possession of the goods only for the period of the hire or lease.

(6) For the purposes of this section-

"right to sell" means a right to dispose of the ownership of the goods to the consumer at the time when that ownership is to pass;

undisclosed security" means any security that is-

(a) not disclosed to the consumer in writing before he agrees to the supply; and

(b) not created by or with his express consent.

### **32. Implied guarantee as to acceptable quality.**

(1) Where goods are supplied to a consumer there shall be implied a guarantee that the goods are of acceptable quality.

(2) For the purposes of subsection (1), goods shall be deemed to be of acceptable quality-

(a) if they are-

(i) fit for all the purposes for which goods of the type in question are commonly supplied;

(ii) acceptable in appearance and finish;

(iii) free from minor defects;

(iv) safe; and

(v) durable; and

(b) a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard the goods as acceptable having regard to-

(i) the nature of the goods;

(ii) the price;

(iii) any statements made about the goods on any packaging or label on the goods;

(iv) any representation made about the goods by the supplier or the manufacturer; and

(v) all other relevant circumstances of the supply of the goods.

(3) Where any defects in the goods have been specifically drawn to the consumer's attention before he agrees to the supply, then, the goods shall not be deemed to have failed to comply with the implied guarantee as to acceptable quality by reason only of those defects.

(4) Where goods are displayed for sale or hire, the defects that are to be treated as having been specifically drawn to the consumer's attention for the purposes of subsection (3) shall be defects disclosed on a written notice displayed with the goods.

(5) Goods shall not be deemed to have failed to comply with the implied guarantee as to acceptable quality if-

(a) the goods have been used in a manner or to an extent which is inconsistent with the manner or extent of use that a reasonable consumer would expect to obtain from the goods; and

(b) the goods would have complied with the implied guarantee as to acceptable quality if they had not been used in that manner or to that extent.

(6) A reference in subsections (3) and (4) to a defect is a reference to any failure of the goods to comply with the implied guarantee as to acceptable quality.

### **33. Implied guarantee as to fitness for particular purpose.**

(1) Subject to subsection (2), the following guarantees shall be implied where goods are supplied to a consumer:

(a) that the goods are reasonably fit for any particular purpose that the consumer makes known, expressly or by implication, to the supplier as the purpose for which the goods are being acquired by the consumer; and

(b) that the goods are reasonably fit for any particular purpose for which the supplier represents that they are or will be fit.

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

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

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

(3) This section shall apply whether or not the purpose is a purpose as to which the goods are commonly supplied.

#### **34. Implied guarantee that goods comply with description.**

(1) Where goods are supplied by description to a consumer, there shall be implied a guarantee that the good correspond with description.

(2) A supply of goods is not prevented from being a supply by description by reason only that, being exposed for sale or hire, they are selected by a consumer.

(3) If the goods are supplied by reference to a sample or demonstration model as well as by description, the implied guarantees in this section and section 35 shall apply.

#### **35. Implied guarantee that goods comply with sample.**

(1) The following guarantees shall be implied where goods are supplied to a consumer by reference to a sample or demonstration model:

(a) that the goods correspond with the sample or demonstration model in quality; and

(b) that the consumer will have a reasonable opportunity to compare the goods with the sample or demonstration model.

(2) If the goods are supplied by reference to a description as well as by a sample or demonstration model, the implied guarantees in this section and section 34 shall apply.

#### **36. Implied guarantee as to price.**

(1) Where goods are supplied to a consumer, there shall be implied a guarantee that the consumer shall not be liable to pay to the supplier more than the reasonable price of the goods where the price for the goods is not-

(a) determined by the contract;

(b) left to be determined in a manner agreed by the contract; or

(c) left to be determined by the course of dealing between the parties.

(2) Where there is a failure to comply with the implied guarantee under subsection (1), the consumer's only right of redress shall be to refuse to pay more than the reasonable price.

(3) Nothing in Part VI shall be taken to confer on the consumer any other right of redress.

(4) For the purposes of this section, what is a "reasonable price" shall be a question of fact depending on the circumstances of each particular case, and where the price has been fixed under any written law, the reasonable price shall be as may be specified under that written law.

### **37. Implied guarantee as to repairs and spare parts.**

(1) Where imported or locally manufactured goods are supplied to a consumer, there shall be implied a guarantee that the manufacturer and the supplier will take reasonable action to ensure that facilities for the repair of the goods and the supply of spare parts for the goods are reasonably available for a reasonable period after the goods are so supplied.

(2) Subsection (1) shall not apply where reasonable action has been taken to notify the consumer, at or before the time the imported or locally manufactured goods are supplied, that the manufacturer or the supplier or both does not undertake that repair facilities and spare parts will be available for those goods.

(3) Where reasonable action has been taken to notify the consumer, at or before the time the goods are supplied, that the manufacturer or supplier or both does not undertake that repair facilities and spare parts will be available for those goods after the expiration of a specified period, subsection (1) shall not apply in relation to the imported or locally manufactured goods after the expiration of that period.

### **38. Manufacturer's express guarantee.**

(1) An express guarantee given by a manufacturer of goods which are supplied to a consumer shall bind the manufacturer to the extent specified in subsections (2), (3) and (4).

(2) An express guarantee in respect of goods given by a manufacturer in a document binds the manufacturer where the document is given to a consumer with the actual or apparent authority of the manufacturer in connection with the supply by a supplier of those goods to the consumer.

(3) An express guarantee which is included in a document relating to the goods and which appears to have been made by the manufacturer of the goods shall, in the absence of proof to the contrary, be presumed to have been made by the manufacturer.

(4) Proof that a consumer was given a document containing express guarantees by a manufacturer in respect of goods in connection with the supply of those goods to the consumer shall, in the absence of proof to the contrary, constitute proof that the document was given to the consumer with the authority of the manufacturer.

(5) For the purposes of this section, "express guarantee", in relation to any goods, means an undertaking, assertion or representation in relation to-

(a) the quality, performance or characteristics of the goods;

(b) the provision of services that are or may at any time be required in respect of the goods;

(c) the supply of parts that are or may at any time be required for the goods;

(d) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods in relation to which the undertaking, assertion or representation is given or made form part of; or

(e) the return of money or other consideration should the goods not meet any undertaking by the guarantor,

given or made in connection with the supply of the goods or in connection with the promotion by any means of the supply or use of the goods.

## **PART VI**

### ***RIGHTS AGAINST SUPPLIERS IN RESPECT OF GUARANTEES IN THE SUPPLY OF GOODS***

#### **39. Consumer's right of redress against suppliers.**

This Part gives a consumer a right of redress against a supplier of goods where the goods fail to comply with any of the implied guarantees under sections 31 to 37.

#### **40. Exception in respect of implied guarantee as to acceptable quality.**

Notwithstanding section 39, there shall be no right of redress against the supplier of goods under this Act in respect of the failure of the goods to comply with the implied guarantee as to acceptable quality where-

(a) the manufacturer makes a representation in respect of the goods otherwise than by a statement on any packaging or label; and

(b) the goods would have complied with the implied guarantee as to acceptable quality if that representation had not been made.

#### **41. Options against suppliers where goods do not comply with guarantees.**

(1) Where a consumer has a right of redress against the supplier under this Part in respect of the failure of any goods to comply with a guarantee under Part V, the consumer may exercise the following remedies:

(a) where the failure is one that can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time in accordance with section 42; and

(b) where the failure is one that cannot be remedied or is of a substantial character within the meaning of section 44, the consumer may-

(i) subject to section 43, reject the goods in accordance with section 45; or



(ii) obtain from the supplier damages in compensation for any reduction in the value of the goods below the price paid or payable by the consumer for the goods.

(2) In addition to the remedies under subsection (1), the consumer may obtain from the supplier damages for any loss or damage suffered by the consumer, other than loss or damage through a reduction in the value of the goods, which is proved to be a result or consequence of the failure.

(3) Where the supplier refuses or neglects to remedy the failure as required under paragraph (1)(a), or refuses or neglects to do so within a reasonable time, the consumer may-

(a) have the failure remedied elsewhere and obtain from the supplier all reasonable costs incurred in having the failure remedied; or

(b) subject to section 43, reject the goods in accordance with section 45.

#### **42. Satisfaction of requirement to remedy a failure.**

(1) A supplier may satisfy a requirement under section 41 to remedy a failure of any goods to comply with a guarantee by-

(a) where the failure does not relate to title, repairing the goods;

(b) where the failure relates to title, curing any defect in title;

(c) replacing the goods with goods of identical type; or

(d) providing a refund of any money paid or other consideration provided by the consumer in respect of the goods where the supplier cannot reasonably be expected to repair or replace the goods or cure any defect in title.

(2) Where a consumer obtains goods to replace defective goods under paragraph (1)(c), the replacement goods shall, for the purposes of this Act, be deemed to be supplied by the supplier and the guarantees and obligations under this Act relating to the supply of goods to a consumer shall apply to the replacement goods.

(3) A refund under paragraph (1)(d) means a refund in cash of the money paid or the value of any other consideration provided, or both, as the case may require.

#### **43. Loss of right to reject goods.**

(1) The right conferred under this Act to reject goods shall not apply where-

(a) the right is not exercised within a reasonable time;

(b) the goods have been disposed of by the consumer;

(c) the goods have been lost or destroyed while in the possession of a person other than the supplier;

(d) the goods were damaged after delivery to the consumer for reasons not related to their state or condition at the time of supply; or

(e) the goods have been attached to or incorporated in any real or personal property and the goods cannot be detached or isolated without damaging them.

(2) For the purposes of paragraph (1)(a), "reasonable time" means a period from the time of the supply of the goods within which it would be reasonable to expect the defect to become apparent having regard to-

(a) the type of goods;

(b) the use to which a consumer is likely to put the goods;

(c) the length of time for which it is reasonable for the goods to be used; and

(d) the amount of use to which it is reasonable for the goods to be put before the defect becomes apparent.

#### **44. Failure of substantial character.**

For the purposes of paragraph 41(1)(b), a failure to comply with a guarantee shall be of a substantial character where-

(a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure;

(b) the goods depart in one or more significant respects from the description by which they were supplied or, where they were supplied by reference to a sample or demonstration model, from the sample or demonstration model;

(c) the goods are-

(i) substantially unfit for a purpose for which goods of the type in question are commonly supplied; or

(ii) where subsection 33(1) applies, unfit for a particular purpose made known to the supplier or represented by the supplier to be a purpose for which the goods would be fit,

and the goods cannot easily and within a reasonable time be remedied to make them fit for such purpose; or

(d) the goods are not of acceptable quality within the meaning of section 32 because they are unsafe.

#### **45. Manner of rejecting goods.**

(1) The consumer shall exercise the right conferred under this Act to reject goods by notifying the supplier of the decision to reject the goods and of the ground or grounds for the rejection.

(2) Where the consumer exercises the right to reject goods, the consumer shall return the rejected goods to the supplier unless-

(a) because of-

(i) the nature of the failure to comply with the guarantee in respect of which the consumer has the right to reject the goods; or

(ii) the size or height or method of attachment, the goods cannot be returned or removed or transported without significant cost to the consumer, in which case the supplier shall collect the goods at its own expense;

(b) because of the method of attachment, the goods cannot be returned or removed without significant damage to the real or personal property to which they are attached, in which case the supplier shall compensate the consumer for any loss or damage resulting from or consequent upon such removal; or

(c) the goods have already been returned to, or retrieved by, the supplier.

(3) Where the ownership in the goods has passed to the consumer before the consumer exercises the right of rejection, the ownership in the goods re-vests in the supplier upon notification of rejection.

#### **46. Consumer's option of refund or replacement.**

(1) Where the consumer exercises the right to reject goods conferred under this Act, the consumer may choose to have-

(a) a refund of any money paid or other consideration provided by the consumer in respect of the rejected goods; or

(b) goods of the same type and of similar value to replace the rejected goods where such goods are reasonably available to the supplier as part of the stock of the supplier, and the supplier shall make provision accordingly.

(2) A refund referred to in paragraph (1)(a) means a refund in cash of the money paid or the value of any other consideration provided, or both, as the case may require.

(3) The obligation to refund cannot be satisfied by permitting the consumer to acquire other goods from the supplier.

(4) Where a consumer obtains goods to replace rejected goods under paragraph (1)(b), the replacement goods shall, for the purposes of this Act, be deemed to be supplied by the supplier, and the guarantees and obligations under this Act relating to the supply of goods to a consumer shall apply to the replacement goods.

#### **47. Assessment of damages in case of hire-purchase agreements.**

The damages that a consumer may recover for a failure of goods supplied under a hire-purchase agreement to comply with a guarantee under this Act shall be assessed, in the absence of evidence to the contrary, on the basis that the consumer will complete the purchase of the goods or would have completed the purchase if the goods had complied with the guarantee.

#### **48. Liability for representation.**

(1) Where goods assigned or procured to be assigned to the supplier by a person acting in trade (the "dealer") are supplied to a consumer, every representation made to the consumer by the dealer or by any person acting on the dealer's behalf in connection with, or in the course of negotiations leading to, the supply of the goods shall give the consumer-

(a) as against the supplier, subject to section 49, the same rights as the consumer would have had under this Act if the representation had been made by the supplier personally; and

(b) as against the dealer who made the representation and any person on whose behalf the dealer was acting in making it, the same rights against any or all of them personally as the consumer would have had under this Act if that person had supplied the goods to the consumer as a result of the negotiations.

(2) Without prejudice to any other rights or remedies to which a supplier may be entitled, a supplier shall be entitled, where the representation was made without his express or implied authority, to be indemnified by the dealer who made the representation and by any person on whose behalf the dealer was acting in making it, against any damage suffered by the supplier through the operation of subsection (1).

#### **49. Liability of assignees and financiers.**

(1) This section shall apply only in respect of hire-purchase agreements.

(2) The liability under this Act of an assignee of the rights of a supplier under a contract of supply shall not exceed the amount owing by the consumer under the contract at the date of the assignment.

(3) The liability under this Act of a financier who has lent money on the security of goods supplied to a consumer shall not exceed the amount owing by the consumer at the date of the loan.

(4) Where the assignee referred to in subsection (2) or the financier referred to in subsection (3) suffers any losses because of a liability to the consumer under this Act, the assignee or financier shall, subject to any agreement with the supplier, be entitled to be indemnified by the supplier against those losses.

(5) No assignment of the rights under a contract of supply shall affect the exercise of any right or remedy given under this Act against the supplier.

## **PART VII**

### ***RIGHTS AGAINST MANUFACTURERS IN RESPECT OF GUARANTEES IN THE SUPPLY OF GOODS***

#### **50. Consumer's right of redress against manufacturers.**

This Part gives a consumer a right of redress against a manufacturer of goods where-

- (a) the goods fail to comply with the implied guarantee as to acceptable quality under section 32;
- (b) the goods fail to comply with the implied guarantee as to correspondence with description under section 34 due to the failure of the goods to correspond with a material description applied to the goods by or on behalf of the manufacturer or with the express or implied consent of the manufacturer;
- (c) the goods fail to comply with the implied guarantee as to repairs and spare parts under section 37;
- (d) the goods fail, during the currency of the guarantee, to comply with any express guarantee given by the manufacturer that is binding on the manufacturer in accordance with section 38.

#### **51. Exceptions to right of redress against manufacturers.**

Notwithstanding section 50, there shall be no right of redress against the manufacturer under this Act in respect of goods which fail to comply with the implied guarantee under section 32 or 34 where the failure is due to-

(a) an act, default or omission of, or any representation made by, a person other than the manufacturer; or

(b) a cause independent of human control, occurring after the goods have left the control of the manufacturer.

## **52. Options against manufacturers where goods do not comply with guarantees.**

(1) Where a consumer has a right of redress against the manufacturer under this Part in respect of the failure of any goods to comply with a guarantee under Part V, the consumer may obtain damages from the manufacturer-

(a) for the reduction in the value of the goods resulting from the manufacturer's failure, namely-

(i) the reduction below the price paid or payable by the consumer for the goods; or

(ii) the reduction below the average retail price of the goods at the time of supply, whichever price is lower;

(b) for any loss or damage to the consumer resulting from the manufacturer's failure, other than loss or damage through a reduction in the value of the goods, which is proved to be a result or consequence of the failure.

(2) Where the consumer is entitled by an express guarantee given by the manufacturer to require the manufacturer to remedy the failure by-

(a) repairing the goods; or

(b) replacing the goods with goods of identical type,

no action shall be commenced under paragraph (1)(a) unless the consumer has required the manufacturer to remedy the failure and the manufacturer has refused or neglected to remedy, or has not succeeded in remedying, the failure within a reasonable time.

## **PART VIII**

### ***GUARANTEES IN RESPECT OF SUPPLY OF SERVICES***

#### **53. Implied guarantee as to reasonable care and skill.**

Where services are supplied to a consumer, there shall be implied a guarantee that the services will be carried out with reasonable care and skill and that any material supplied in connection with such services will be fit for the purpose for which it is supplied.

*[Am. Act A1381:s.6]*

#### **54. Implied guarantee as to fitness for particular purpose.**

(1) Where services are supplied to a consumer, there shall be implied a guarantee that the services, and any product resulting from the services, will be-

(a) reasonably fit for any particular purpose; and

(b) of such nature and quality that it can reasonably be expected to achieve any particular result,

that the consumer makes known to the supplier, before or at the time of the making of the contract for the supply of the services, is the particular purpose for which the services are required or the result that the consumer desires to achieve.

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

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

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

#### **55. Implied guarantee as to time of completion.**

Where services are supplied to a consumer, there shall be implied a guarantee that the services will be completed within a reasonable time where the time for the services to be carried out is not-

(a) determined by the contract;

(b) left to be determined in a manner agreed by the contract; or

(c) left to be determined by the course of dealing between the parties.

#### **56. Implied guarantee as to price.**

(1) Where services are supplied to a consumer, there shall be implied a guarantee that the consumer shall not be liable to pay to the supplier more than the reasonable price for the services where the price for the services is not-

(a) determined by the contract;

(b) left to be determined in a manner agreed by the contract; or

(c) left to be determined by the course of dealing between the parties.

(2) Where there is a failure to comply with the implied guarantee under subsection (1), the consumer's only right of redress shall be to refuse to pay more than the reasonable price.

(3) Nothing in Part IX shall be taken to confer on the consumer any other right of redress.

(4) For the purposes of this section, what is a "reasonable price" shall be a question of fact depending on the circumstances of each particular case, and where the price has been fixed under any written law, the reasonable price shall be as may be specified under that written law.

### **PART IX**

#### ***RIGHTS AGAINST SUPPLIERS IN RESPECT OF GUARANTEES IN THE SUPPLY OF SERVICES***

#### **57. Consumer's right of redress against suppliers.**

This Part gives a consumer a right of redress against a supplier of services where the services or product resulting from the services fail to comply with any of the implied guarantees under sections 53 to 55.

#### **58. Exceptions to right of redress against supplier in relation to services.**

Notwithstanding section 57, there shall be no right of redress against the supplier under this Act in respect of the failure of the services or any product resulting from the services to comply with the implied guarantee under section 54 or 55 where the failure is due to-

- (a) an act, default or omission of, or any representation made by, a person other than the supplier; or
- (b) a cause independent of human control.

#### **59. Contracts of work and materials.**

Nothing in section 57 shall limit or affect the rights of a consumer under Part VI or VII where the contract is one involving work and materials.

#### **60. Options against suppliers where services do not comply with guarantees.**

(1) Where a consumer has a right of redress against the supplier under this Part in respect of the failure of any services or any product resulting from the services to comply with a guarantee under Part VIII, the consumer may exercise the following remedies:

(a) where the failure is one that can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time;

(b) where the failure is one that cannot be remedied or is of a substantial character within the meaning of section 62, the consumer may-

(i) subject to section 61, cancel the contract for the supply of the services in accordance with section 63; or

(ii) obtain from the supplier damages in compensation for any reduction in the value of the product resulting from the services below the charge paid or payable by the consumer for the services.

(2) In addition to the remedies under subsection (1), the consumer may obtain from the supplier damages for any loss or damage suffered by the consumer, other than loss or damage through a reduction in the value of the product resulting from the services, which is proved to be a result or consequence of the failure.

(3) Where the supplier refuses or neglects to remedy the failure as required under paragraph (1)(a), or refuses or neglects to do so within a reasonable time, the consumer may-

(a) have the failure remedied elsewhere and obtain from the supplier all reasonable costs incurred in having the failure remedied; or

(b) subject to section 61, cancel the contract for the supply of the services in accordance with section 63.

#### **61. Loss of right to cancel contract.**

The right conferred under this Act to cancel a contract shall not apply where-

- (a) the services supplied under the contract is merely incidental to the supply of the goods; and
- (b) the consumer has or had the right to reject the goods under section 41, whether or not he exercises that right.

## **62. Failure of substantial character.**

For the purposes of paragraph 60(1)(b), a failure to comply with a guarantee shall be of a substantial character where-

- (a) the product resulting from the services-
  - (i) is substantially unfit for a purpose for which services of the type in question are commonly supplied; or
  - (ii) where subsection 54(1) applies-
    - (A) is unfit for a particular purpose made known to the supplier; or
    - (B) of such a nature and quality that the product cannot be expected to achieve a particular result made known to the supplier,
- and the product cannot easily and within a reasonable time be remedied to make it fit for the particular purpose or to achieve the particular result; or
- (b) the product resulting from the services is unsafe.

## **63. Rules applying to cancellation of contract.**

- (1) A cancellation of a contract for the supply of services shall not take effect-
  - (a) before the time at which the cancellation is communicated to the supplier; or
  - (b) where it is not reasonably practicable to communicate with the supplier, before the time at which the consumer indicates to the supplier, by means which are reasonable in the circumstances, his intention to cancel the contract.
- (2) Subject to subsection (3), a cancellation of the contract may be communicated by words or conduct or both which indicate the intention of the consumer to cancel the contract, and it shall not be necessary to use any particular form of words, as long as the intention to cancel is clear.
- (3) Where it is reasonably practicable to communicate with the supplier, subsection (2) shall take effect subject to any express provision in the contract requiring notice of cancellation to be in writing.

## **64. Effect of cancellation of contract.**

- (1) Where the consumer exercises the right conferred under this Act to cancel a contract for the supply of services-
  - (a) the consumer shall be entitled to obtain from the supplier a refund of any money paid or other consideration provided in respect of the services unless a court or the Tribunal, as the case may be,



orders that the supplier may retain the whole or any part of the money paid or other consideration provided by the consumer;

(b) in so far as the contract has been performed at the time of the cancellation, no party shall by reason of the cancellation be divested of any property transferred or money paid under the contract, except as provided under paragraph (a); and

(c) in so far as the contract remains unperformed at the time of the cancellation, no party shall be obliged or entitled to perform it further.

(2) Nothing in subsection (1) shall affect-

(a) the right of a party to recover damages in respect of a misrepresentation or the repudiation or breach of the contract by another party;

(b) the right of the consumer to obtain damages under subparagraph 60(1)(b)(ii) or subsection 60(2) for failure to comply with a guarantee; or

(c) the right of the consumer under this Act to reject goods supplied in connection with the services.

#### **65. Power of court to grant ancillary relief.**

(1) Where the consumer cancels a contract for the supply of services under this Act, a court, in any proceedings or on an application made for the purpose, may make any order or orders granting relief under this section as it thinks just and practicable to do so.

(2) An application for an order under this section may be made by-

(a) the consumer;

(b) the supplier; or

(c) any other person who has suffered loss.

(3) An order under this section may-

(a) vest in any party to the proceedings the whole or any part of any real or personal property that was the subject of the contract or was the whole or part of the consideration for it;

(b) direct any party to the proceedings to transfer or assign to any other such party or to give him the possession of the whole or any part of any real or personal property that was the subject of the contract or was the whole or part of the consideration for it;

(c) without prejudice to any right to recover damages, direct any party to the proceedings to pay to any other such party such sum as the court thinks just; or

(d) permit a supplier to retain the whole or any part of any money paid or other consideration provided in respect of the services under the contract.

(4) An order under subsection (1) or any provision of it, may be made on and subject to such terms and conditions as the court thinks fit, not being a term or condition that would have the effect of preventing a claim for damages by any party.

(5) In considering whether to make an order under this section, and in considering the terms and conditions it proposes to impose, the court shall have regard to the following:

(a) any benefit or advantage obtained by the consumer by reason of anything done by the supplier in or for the purpose of supplying the services;

(b) the value, in the opinion of the court, of any work or services performed by the supplier in or for the purpose of supplying the services;

(c) any expenditure incurred by the consumer or the supplier in or for the purpose of the performance of the services;

(d) the extent to which the supplier or the consumer was or would have been able to perform the contract in whole or in part; and

(e) such other matters as the court thinks fit.

(6) No order under paragraph (3)(a) shall be made if it would have the effect of depriving a person, not being a party to the contract, of the possession of, or any estate or interest in, any property acquired by him in good faith and for valuable consideration.

(7) No order shall be made under this section in respect of any property if any party to the contract has so altered his position in relation to the property, whether before or after the cancellation of the contract, that having regard to all the relevant circumstances, it would, in the opinion of the court, be inequitable to any party to make such an order.

## **PART X**

### ***PRODUCT LIABILITY***

#### **66. Interpretation.**

(1) In this Part, unless the context otherwise requires-

"agricultural produce" means any produce of the soil, of stock farming or of fisheries;

"damage" means death or personal injury, or any loss of or damage to any property, including land, as the case may require;

"dependant" has the same meaning as in the Civil Law Act 1956 [Act 67];

"producer", in relation to a product, means-

(a) the person who manufactured it;

(b) in the case of a substance which is not manufactured but is won or abstracted, the person who won or abstracted it;

(c) in the case of a product which is not manufactured, won or abstracted but the essential characteristics of which are attributable to an industrial or other process having been carried out, the person who carried out that process;

"product" means any goods and, subject to subsection (2), includes a product which is comprised in another product, whether by virtue of being a component part, raw material or otherwise.

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

## **67. Meaning of "defect".**

(1) Subject to subsections (2) and (3), there is a defect in a product for the purposes of this Part if the safety of the product is not such as a person is generally entitled to expect.

(2) In determining what a person is generally entitled to expect in relation to a product, all relevant circumstances shall be taken into account including-

(a) the manner in which, and the purposes for which, the product has been marketed;

(b) the get-up of the product;

(c) the use of any mark in relation to the product;

(d) instructions for or warnings with respect to doing or refraining from doing anything with or in relation to the product;

(e) what may reasonably be expected to be done with, or in relation to, the product; and the time when the product was supplied by its producer to another person.

(3) Nothing in this section shall require a defect to be inferred from the mere fact that the safety of a product which is subsequently supplied is greater than the safety of the product in question.

(4) For the purposes of this section, "safety", in relation to a product, shall include-

(a) safety with respect to products comprised therein;

(b) safety in the context of risk of damage to property; and

(c) safety in the context of risk of death or personal injury.

## **68. Liability for defective products.**

(1) Where any damage is caused wholly or partly by a defect in a product, the following persons shall be liable for the damage:

(a) the producer of the product;

(b) the person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; and

(c) the person who has, in the course of his business, imported the product into Malaysia in order to supply it to another person.

(2) Where damage is caused wholly or partly by a defect in a product, the person who suffered the damage may within a reasonable period after the damage occurs request the supplier to identify any or all of the persons referred to in subsection (1), whether or not he is or they are still in existence.

(3) For the purpose, of subsection (2), it is immaterial whether the supplier supplied the defective product to-

(a) the person who suffered the damage;

(b) the producer of a product in which the defective product is comprised therein; or

(c) any other person.

(4) Where the supplier fails to comply with a request under subsection (2) within a reasonable time having regard to all the circumstances, the supplier shall be held liable for the loss or damage.

(5) This section shall not apply to a person in respect of any defect in agricultural produce if the only supply of the agricultural produce by the person to another person was at a time when the agricultural produce has not undergone any industrial process.

(6) Where two or more persons are liable under this Part for the same damage, their liability shall be joint and several.

(7) This section shall be without prejudice to any liability arising otherwise than under this Part.

(8) The Minister may, by order published in the Gazette, declare that no proceeding shall be brought before the Tribunal or any court in respect of any defect in any goods after the expiry of such period calculated from the date of manufacture of such goods or class or both of such goods as may be specified in the order; and upon the making of such declaration, no proceeding shall be brought in respect of such defect before the Tribunal or any court.

## **69. Extent of liability for loss or damage.**

(1) Where any damage is caused wholly or partly by a defect in a product, the liability of the person liable for the damage under section 68 shall not include the loss of or damage to-

(a) the defective product;

(b) the whole or any part of the product which comprises the defective product; or

(c) any property which at the time it is lost or damaged is not-

(i) of a description of property ordinarily intended for private use, occupation or consumption; and

(ii) intended by the person suffering the loss or damage mainly for his own private use, occupation or consumption.

(2) For the purposes of paragraph (1)(c), loss or damage to property shall be deemed to have occurred at the earliest time at which a person with an interest in the property has knowledge of the material facts about the loss or damage.

(3) For the purposes of subsection (2)-

(a) the material facts about any loss of or damage to any property are such facts about the loss or damage as would lead a reasonable person with an interest in the property to consider the loss or damage sufficiently serious to justify his instituting proceedings for damages against a defendant who does not dispute liability and is able to satisfy a judgment against him;

(b) a person's knowledge includes knowledge which he may reasonably be expected to acquire-

(i) from facts observable or ascertainable by him; or

(ii) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek:

Provided that a person shall not be deemed to have knowledge of a fact ascertainable by him only with the help of expert advice unless he has failed to take all reasonable steps to obtain and where appropriate, to act on that advice.

#### **70. Application of other written law.**

(1) For the purposes of a claim under the Civil Law Act 1956 [Act 68], any damage for which a person is liable under section 69 shall be deemed to have been caused by the person's wrongful act, neglect or default.

(2) Where the person who suffered the damage caused wholly or partly by a defect in a product dies after suffering the damage, the request to the supplier under subsection 68(3) may, for the purposes of a claim under the Civil Law Act 1956, be made by the personal representative or dependant, as the case may be, of the deceased person.

(3) Where any damage is caused partly by a defect in a product and partly by the fault of the person who suffered the damage, the Civil Law Act 1956 shall have effect as if the defect were the fault of every person liable under this Part for the damage caused by the defect.

(4) For the purposes of any written law conferring jurisdiction on any court with respect to any matter, liability for damage under this Part shall be treated as liability in tort.

(5) For the purposes of subsection (3), "fault" has the same meaning as in the Civil Law Act 1956.

#### **71. Prohibition on exclusion from liability.**

The liability of a person under this Part to a person who has suffered damage caused wholly or partly by a defect in a product, or to a dependant of such a person, shall not be limited or excluded by any contract term, notice or other provision.

#### **72. Defences.**

(1) In any civil proceeding under this Part against any person in respect of a defect in a product, it shall be a defence for that person to show-

(a) that the defect is attributable to compliance with any requirement imposed under any written law;

(b) that he did not at any time supply the defective product to another person;

- (c) that the defect did not exist in the product at the relevant time;
  - (d) that 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 may reasonably be expected to discover the defect if it had existed in his product while it was under his control; or
  - (e) that the defect-
- (i) is a defect in a product in which the product in question is comprised therein (the "subsequent product"); and
  - (ii) is wholly attributable to-
- (A) the design of the subsequent product; or
  - (B) compliance by the producer of the product in question with instructions given by the producer of the subsequent product.
- (2) For the purposes of subsection (1), "relevant time"-
- (a) in relation to electricity, means the time at which it was generated, being a time before it was transmitted or distributed; and
  - (b) in relation to any other product, means-
- (i) where section 68 applies, the time when the producer supplied the product to another person; and
  - (ii) where section 68 does not apply, the time when the product was last supplied by a person to whom section 68 applies to another person.

## **PART XI**

### ***THE NATIONAL CONSUMER ADVISORY COUNCIL***

#### **73. Establishment of the National Consumer Advisory Council.**

- (1) The Minister may establish the National Consumer Advisory Council to advise him on the following matters:
- (a) in respect of consumer issues and the operation of this Act;
  - (b) the promotion of consumer protection and awareness in consumer affairs; and
  - (c) any other matter which may be referred to it by the Minister for the proper and effective implementation of this Act and for the protection of consumers.

#### **74. Membership of Council.**

- (1) The Council shall consist of the following members:
- (a) the Secretary General of the Ministry responsible for consumer affairs or his representative; and

(b) not more than sixteen other persons to represent the interests of consumers, manufacturers, suppliers, other non-governmental organizations and academicians.

(2) The members referred to in paragraph (1)(b)-

(a) shall be appointed by the Minister for a term not exceeding two years; and

(b) shall be eligible for reappointment upon expiry of his term of office.

(3) The Minister shall appoint from among the members of the Council a Chairman and a Deputy Chairman.

#### **75. Temporary exercise of functions of Chairman.**

(1) Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.

(2) Where both the Chairman and the Deputy Chairman are for any reason unable to perform the functions of the Chairman or during any period of vacancy in the offices of the Chairman and Deputy Chairman, the Minister may appoint any member of the Council to perform the functions of the Chairman.

(3) The Deputy Chairman or the member appointed under subsection (2), as the case may be, shall, during the period in which he is performing the functions of the Chairman under this section, be deemed to be the Chairman.

#### **76. Vacation of office.**

The office of a member of the Council referred to in paragraph 74(1)(b) shall become vacant-

(a) upon the death of the member;

(b) upon the member resigning from such office by letter addressed to the Minister; or

(c) upon the expiration of his term of office.

#### **77. Revocation of appointment.**

The Minister may revoke the appointment of a member of the Council referred to in paragraph 74(1)(b)-

(a) if his conduct, whether in connection with his duties as a member of the Council or otherwise, has been such as to bring discredit to the Council;

(b) if he has become incapable of properly carrying out his duties as a member of the Council;

(c) if there has been proved against him, or he has been convicted on, a charge in respect of-

(i) an offence involving fraud, dishonesty or moral turpitude;

(ii) an offence under a law relating to corruption;

(iii) an offence under this Act; or

(iv) any other offence punishable with imprisonment for more than two years;

(d) if he is adjudicated a bankrupt;

(e) if he has been found or declared to be of unsound mind or has otherwise become incapable of managing his affairs; or

(f) if he absents himself from three consecutive meetings of the Council without obtaining leave in writing from the Chairman of the Council.

#### **78. Resignation.**

A member of the Council appointed under paragraph 74(1)(b) may at any time resign his office by a letter addressed to the Minister.

#### **79. Filling of vacancy.**

Where a member appointed under paragraph 74(1)(b) ceases to be a member of the Council, the Minister may appoint another person to fill the vacancy for the remainder of the term for which the vacating member was appointed.

#### **80. Secretary to Council and other officers.**

There shall be appointed a Secretary to the Council and such other officers as may be necessary to assist the Council.

#### **81. Allowance.**

The members of the Council appointed under paragraph 74(1)(b) shall be paid such allowances as the Minister may determine.

#### **82. Council may invite others to meetings.**

(1) The Council may invite any person to attend a meeting or deliberation of the Council for the purpose of advising it on any matter under discussion but that person shall not be entitled to vote at the meeting or deliberation.

(2) A person invited under subsection (1) shall be paid such fee as the Council may determine.

#### **83. Validity of acts and proceedings.**

No act done or proceeding taken under this Act shall be questioned on the ground of-

(a) a vacancy in the membership of, or a defect in the constitution of, the Council; or

(b) an omission, a defect or an irregularity not affecting the merit of the case.

#### **84. Regulations relating to the Council.**

The Minister may make such regulations as he thinks necessary or expedient in respect of this Part.



## **PART XIA**

### **COMMITTEE ON ADVERTISEMENT**

#### **84A. Committee on Advertisement.**

The Minister may establish a committee to be known as the Committee on Advertisement which shall have the following functions:

- (a) to advise the Minister on any aspect related to advertisement, including advertisement in contravention of Part II of this Act;
- (b) to examine complaints related to advertisements;
- (c) to issue or publicize information concerning the nature and characteristics of goods or services which may be prejudicial to the rights or may cause damage to the consumers; and
- (d) to do any other thing as it deems fit to enable it to perform its functions effectively or which is incidental to the performance of its functions.

*[Ins. A1381:s.7]*

#### **84B. Membership of Committee on Advertisement.**

(1) The Committee on Advertisement shall consist of the following members:

- (a) the Secretary General of the Ministry responsible for consumer affairs or his representative; and
- (b) not less than seven and not more than thirteen other persons to represent the interests of consumers, and any other person, as the Minister deems fit.

(2) The members referred to in paragraph (1)(b):-

- (a) shall be appointed by the Minister for a term not exceeding three years; and
- (b) shall be eligible for reappointment upon the expiry of his term of office.

(3) The Minister shall appoint from among the members of the Committee of Advertisement a Chairman and a Deputy Chairman.

*[Ins. A1381:s.7]*

#### **84C. Provisions of schedule to apply to the Committee on Advertisement.**

- (1) The provisions of the Schedule shall apply to the members of the Committee Advertisement.
- (2) The Minister may, by order published in the *Gazette*, amend the provisions of the Schedule.

[Ins. A1381:s.7]

**84D. Regulations relating to the Committee on Advertisement.**

The Minister may make such regulations as he thinks necessary or expedient to give full effect to the provisions of this Part.

[Ins. A1381:s.7]

**PART XII**

***THE TRIBUNAL FOR CONSUMER CLAIMS***

**85. Establishment of the Tribunal for Consumer Claims.**

There shall be established a tribunal to be known as the "Tribunal for Consumer Claims".

**86. Membership of Tribunal.**

(1) The Tribunal shall consist of the following members who shall be appointed by the Minister:

(a) a Chairman and a Deputy Chairman from among members of the Judicial and Legal Service; and

(b) not less than five members-

(i) being persons who are members of the Judicial and Legal Service or who are qualified persons within the meaning of the Legal Profession Act 1976 [Act 166], Advocates Ordinance Sabah [Cap. 2] or Advocates Ordinance Sarawak [Cap. 110], as the case may require;

*[Am. Act 1199 - Prior text read - "(i) being persons who are qualified persons within the meaning of the Legal Profession Act 1976 [Act 166], Advocates Ordinance Sabah [Cap. 2] or Advocates Ordinance Sarawak [Cap. 110], as the case may require;"]*

(ii) persons not falling within subparagraph (i) but are holding or have held the posts specified in the Fourth Schedule to the Subordinate Courts Act 1948 [Act 92]; or

(iii) any combination of members from subparagraph (i) or (ii).

(2) The members referred to in paragraph (1)(b)-

(a) shall hold office for a term not exceeding three years; and

(b) shall be eligible for reappointment upon expiry of his term of office but shall not be appointed for more than three consecutive terms.

**87. Temporary exercise of functions of Chairman.**

Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.

## **88. Vacation of office.**

The office of a member of the Tribunal shall become vacant-

- (a) upon the death of the member;
- (b) upon the member resigning from such office by giving three months' written notice to the Minister;  
or
- (c) upon expiration of his term of office.

## **89. Revocation of appointment.**

The Minister may revoke the appointment of a member of the Tribunal appointed under paragraph 86(1)(b)-

- (a) if his conduct, whether in connection with his duties as a member of the Tribunal or otherwise, has been such as to bring discredit to the Tribunal;
- (b) if he has become incapable of properly carrying out his duties as a member of the Tribunal;
- (c) if there has been proved against him, or he has been convicted on, a charge in respect of-
  - (i) an offence involving fraud, dishonesty or moral turpitude;
  - (ii) an offence under a law relating to corruption;
  - (iii) an offence under this Act; or
  - (iv) any other offence punishable with imprisonment for more than two years;
- (d) if he is adjudicated a bankrupt;
- (e) if he has been found or declared to be of unsound mind or has otherwise become incapable of managing his affairs; or
- (f) if he absents himself from three consecutive sittings of the Tribunal without leave of the Chairman.

## **90. Resignation.**

A member of the Tribunal appointed under paragraph 86(1)(b) may at any time resign his office by giving three months' written notice to the Minister.

## **91. Filling of vacancy.**

Where a member ceases to be a member of the Tribunal, the Minister may appoint another person to fill the vacancy for the remainder of the term for which the vacating member was appointed.

## **92. Remuneration.**

(1) The members of the Tribunal appointed under paragraph 86(1)(a) shall be paid such fixed allowances and other allowances as the Minister may determine.

(2) The members of the Tribunal appointed under paragraph 86(1)(b) shall be paid-

(a) a daily sitting allowance during the sitting of the Tribunal; and

(b) a lodging, travelling and subsistence allowance,

as the Minister may determine.

(3) The remuneration provided under subsections (1) and (2) shall be charged on the Consolidated Fund.

### **93. Secretary to Tribunal and other officers.**

(1) There shall be appointed a Secretary to the Tribunal and such number of officers as may be necessary for carrying out the functions of the Tribunal.

(2) The Chairman shall have general control of the officers of the Tribunal.

(3) For the purposes of this Act, the Secretary to the Tribunal shall be deemed to be an officer of the Tribunal.

### **94. Public servant.**

All members and officers of the Tribunal while discharging their duties as such members and officers, shall be deemed to be public servants within the meaning of the Penal Code.

### **95. No action to lie against Tribunal.**

The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Tribunal or against any member or officer of the Tribunal in respect of any act, neglect or default done or committed by him in such capacity.

### **96. Sittings of Tribunal.**

(1) The Jurisdiction of the Tribunal shall be exercised by any of the following persons sitting alone:

(a) the Chairman of the Tribunal;

(b) the Deputy Chairman of the Tribunal; or

(c) any member of the Tribunal selected by the Chairman.

(2) The Tribunal may sit in two or more sittings on such day and at such time and place as the Chairman may determine.

(3) If the person presiding over any proceedings in respect of claim dies or becomes incapacitated, or is for any other reason liable to complete the hearing or dispose of the proceedings, the proceedings shall be heard afresh by another member of the Tribunal, unless the parties agree that the proceedings be continued by another member of the Tribunal.

(4) Where the term of appointment of any member of the Tribunal under this section expires during the pendency of any proceedings in respect of a claim, the term of his appointment shall be deemed to be extended until the final disposal of the claim.

## **97. Commencement of proceedings.**

A consumer may lodge with the Tribunal a claim in the scribed form together with the prescribed fee claiming for any ; suffered on any matter concerning his interests as a consumer under this Act.

## **98. Jurisdiction of Tribunal.**

(1) Subject to sections 99 and 100, the Tribunal shall have jurisdiction to hear consumer claims within the ambit of this Act including claims in respect of all goods and services for which no redress mechanism is provided for under any other law and where the total amount in respect of which an award of the Tribunal is sought does not exceed twenty-five thousand ringgit.

*[Subs. Act 1381:s.8 - Prior text read - "(1) Subject to sections 99 and 100, the Tribunal shall have jurisdiction where the total amount in respect of which an award of the Tribunal is sought does not exceed twenty-five thousand ringgit.*

*[Subs. Act 1199 - Prior text read - "(1) Subject to sections 99 and 100, the Tribunal shall have jurisdiction where the total amount in respect of which an award of the Tribunal is sought does not exceed ten thousand ringgit."]*

(2) Subject to subsection (1), a respondent to a claim may raise a debt or liquidated demand as-

(a) a defence; or

(b) a counter-claim.

(3) Where a respondent raises a debt or liquidated claim in the manner set out in subsection (2) the Tribunal shall-

(a) give effect to the defence; or

(b) hear and determine the counter-claim notwithstanding that the original claim is withdrawn, abandoned or struck out.

(4) Any claim lodged with the Tribunal may include loss or damage of a consequential nature.

## **99. Limitation of jurisdiction.**

(1) Except as expressly provided under this Act, the Tribunal shall have no jurisdiction in respect of any claim-

(a) for the recovery of land, or any estate or interest in land;

(b) in which the title to any land, or any estate or interest in land, or any franchise, is in question;

*[Am. Act 1199 - Prior text read - "in which the title to any land, or any estate or interest in land, or any franchise, is in question; and"]*

(c) in which there is a dispute concerning-

(i) the entitlement of any person under a will or settlement, or on any intestacy (including a partial intestacy);

(ii) goodwill;

(iii) any chose in action; or

(iv) any trade secret or other intellectual property;

(d) where any tribunal has been established by any other written law to hear and determine claims on the matter which is the subject matter of such claim.

*[Ins. Act 1199]*

(2) The jurisdiction of the Tribunal shall be limited to a claim that is based on a cause of action which accrues within three years of the claim.

(3) Nothing in this section shall be deemed to authorize the Tribunal to deal with a claim arising from personal injury or death.

(4) For the purposes of subsection (1), "land" does not include fixtures.

#### **100. Extension of jurisdiction by agreement.**

(1) Notwithstanding that the amount or value of the subject matter claimed or in issue exceeds twenty-five thousand ringgit, the Tribunal shall have jurisdiction to hear and determine the claim if the parties have entered into an agreement in writing that the Tribunal shall have jurisdiction to hear and determine the claim.

*[Am. Act 1199 - Prior text read - "(1) Notwithstanding that the amount or value of the subject matter claimed or in issue exceeds ten thousand ringgit, the Tribunal shall have jurisdiction to hear and determine the claim if the parties have entered into an agreement in writing that the Tribunal shall have jurisdiction to hear and determine the claim."]*

(2) An agreement may be made under subsection (1)-

(a) before a claim is lodged under section 97; or

(b) where a claim has been lodged under section 97, at any time before the Tribunal has recorded an agreed settlement in respect of the claim under subsection 107(3) or has determined the claim under section 114, as the case may require.

#### **101. Abandonment to bring claim within jurisdiction.**

(1) A claimant may abandon so much of a claim as exceeds twenty-five thousand ringgit in order to bring the claim within the jurisdiction of the Tribunal.

*[Am. Act 1199 - Prior text read - "(1) A claimant may abandon so much of a claim as exceeds ten thousand ringgit in order to bring the claim within the jurisdiction of the Tribunal."]*

(2) Where a part of a claim has been abandoned under subsection (1), the Tribunal's record of an agreed settlement under subsection 107(3) or the Tribunal's award under section 112, as the case may require, in relation to the claim shall operate to discharge the person-

(a) who is a party to that agreed settlement; or

(b) against whom the claim and the subsequent award are made,  
from liability in respect of the amount so abandoned.

#### **102. Cause of action not to be split.**

Claims may not be split, nor more than one claim brought, in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the Tribunal.

#### **103. [Deleted by Act A1380:s.9].**

#### **104. Exclusion of jurisdiction of court.**

(1) Where a claim is lodged with the Tribunal and the claim is within the Tribunal's jurisdiction, the issues in dispute in that claim, whether as shown in the initial claim or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless-

(a) the proceedings before the court were commenced before the claim was lodged with the Tribunal;  
or

(b) the claim before the Tribunal is withdrawn, abandoned or struck out.

(2) Where paragraph (1)(a) applies, the issues in dispute in the claim to which those proceedings relate, whether as shown in the initial claim or emerging in the course of the hearing, shall not be the subject of proceedings between the same parties before the Tribunal unless the claim before the court is withdrawn, abandoned or struck out.

#### **105. Disposal of perishable goods.**

Where the subject-matter of the claim is goods of perishable nature and storage of such goods pending final disposal of the claim involves unreasonable expense and inconvenience, the Tribunal may, on the application of a party to the proceedings, at any time order that-

(a) the goods be sold; and

(b) the proceeds of the sale be held to abide by the award of the Tribunal under section 112.

#### **106. Notice of claim and hearing.**

Upon a claim being lodged under section 97, the Secretary to the Tribunal shall give notice of the details of the day, time and place of hearing in the prescribed form to the claimant and the respondent.

#### **107. Negotiation for settlement.**

(1) The Tribunal shall, as regards every claim within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the claim.

(2) Without limiting the generality of subsection (1), in making an assessment the Tribunal shall have regard to any factors that, in the opinion of the Tribunal, are likely to impair the ability of either or both of the parties to negotiate an agreed settlement.

(3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement and the settlement shall then take effect as if it is an award of the Tribunal.

(4) Where-

(a) it appears to the Tribunal that it would not be appropriate for it to assist the parties to negotiate an agreed settlement in relation to the claim; or

(b) the parties are unable to reach an agreed settlement in relation to the claim,

the Tribunal shall proceed to determine the dispute.

#### **108. Right to appear at hearings.**

(1) At the hearing of a claim every party shall be entitled to attend and be heard.

(2) No party shall be represented by an advocate and solicitor at a hearing.

(3) Subject to subsection (2) but notwithstanding section 37 of the Legal Profession Act 1976-

(a) a corporation or an unincorporated body of persons may be represented by its full time paid employee;

(b) a minor or any other person under a disability may be represented by his next friend or guardian *ad litem*.

(4) Where a party is represented as provided under subsection (3), the Tribunal may impose such conditions as it considers necessary to ensure that the other party to the proceedings is not substantially disadvantaged.

#### **109. Proceedings to be public.**

All proceedings before the Tribunal shall be open to the public.

109A. Procedure to be reduced into writing.

(1) Subject to the other provisions of this Act, the proceedings of the Tribunal shall be conducted in accordance with such procedure as may be determined by the Tribunal and published under subsection (2).

(2) The Chairman shall cause the procedure determined under subsection (1) to be reduced into writing and published in the *Gazette* or in such other manner as the Chairman deems fit.

[Ins. Act 1199]

#### **110. Evidence.**

(1) The Tribunal may-

(a) procure and receive evidence on oath or affirmation, whether written or oral, and examine all such persons as witnesses, as the Tribunal thinks necessary to procure, receive or examine;

(b) require the production before it of books, papers, documents, records and things;



- (c) administer the oath, affirmation or statutory declaration, as the case may require;
  - (d) seek and receive such other evidence and make such other inquiries as it thinks fit;
  - (e) summon the parties to the proceedings or any other person to attend before it to give evidence or to produce any document, records or other thing in his possession or otherwise to assist the Tribunal in its deliberations;
  - (f) receive expert evidence; and
  - (g) generally direct and do all such things as may be necessary or expedient for the expeditious determination of the claim.
- (2) A summons issued under this section shall be served and enforced as if it were a summons issued by a subordinate court.

#### **111. Tribunal may act in absence of party.**

The Tribunal may hear and determine the claim before it notwithstanding the absence of any party to the proceedings if it is proved to the satisfaction of the Tribunal that a notice of the hearing has been duly served on the absent party.

#### **112. Awards of Tribunal.**

- (1) The Tribunal shall make its award without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences.
- (2) An award of the Tribunal under subsection (1) may require one or more of the following:
- (a) that a party to the proceedings pay money to any other party;
  - (b) that goods be supplied or resupplied in accordance with this Act or the contract to which the consumer is a party;
  - (c) that goods supplied or resupplied to the consumer be replaced or repaired;
  - (d) that the price or other consideration paid or supplied by the consumer or any other person be refunded to the consumer or that person;
  - (e) that a party comply with the guarantee;
  - (f) that money be awarded to compensate for any loss or damage suffered by the claimant;
  - (g) that the contract be varied or set aside, wholly or in part;
  - (h) that costs to or against any party be paid;
  - (i) that interest be paid on any sum or monetary award at a rate not exceeding eight per centum per annum, unless it has been otherwise agreed between the parties;
  - (j) that the claim is dismissed.

(3) Nothing in paragraph (1)(f) shall be deemed to empower the Tribunal to award any damages for any non-pecuniary loss or damage.

### **113. Reference to a Judge of the High Court on a question of law.**

(1) Before the Tribunal makes an award under section 112, it may, in its discretion, refer to a Judge of the High Court a question of law-

(a) which arose in the course of the proceedings;

(b) which, in the opinion of the Tribunal, is of sufficient importance to merit such reference; and

(c) the determination of which by the Tribunal raises, in the opinion of the Tribunal, sufficient doubt to merit such reference.

(2) If the Tribunal refers any question of law under subsection (1) for the decision of a Judge of the High Court, it shall make its award in conformity with such decision.

(3) A Federal Counsel authorized by the Attorney General for the purpose may appear on behalf of the Tribunal in any proceedings before a Judge of the High Court under this section.

### **114. Reasons for decision.**

The Tribunal shall in all proceedings give its reasons for its award in the proceedings.

### **115. Orders and settlements to be recorded in writing.**

The Tribunal shall make or cause to be made a written record of the terms of-

(a) every agreed settlement reached by the parties under subsection 107(3); and

(b) every award made by it under section 112.

### **116. Decisions of Tribunal to be final.**

(1) Every agreed settlement recorded by the Tribunal under subsection 107(3) and every award made by the Tribunal under section 112-

(a) shall be final and binding on all parties to the proceedings; and

(b) shall be deemed to be an order of a Magistrate's Court and be enforced accordingly by any party to the proceedings.

(2) For the purpose of paragraph (1)(b), the Secretary to the Tribunal shall send a copy of the award made by the Tribunal to the Magistrate's court having jurisdiction in the place to which the award relates or in the place where the award was made and the Court shall cause the copy to be recorded.

### **117. Criminal penalty for failure to comply.**

(1) Any person who after fourteen days fails to comply with an award made by the Tribunal commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) In the case of a continuing offence, the offender shall, in addition to the penalties under subsection (1), be liable to a fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after conviction.

**118. Procedure where no provision is made.**

Subject to this Act and to any regulations, the Tribunal shall adopt such procedure as it thinks fit and proper.

**119. Want of form.**

No proceedings of the Tribunal or award or other document of the Tribunal shall be set aside or quashed for want of form.

**120. Disposal of documents, etc.**

(1) The Tribunal may, at the conclusion of the proceedings before it, order that any document, record, material or other property produced during the proceedings be delivered to the rightful owner or be disposed of in such manner as it thinks fit.

(2) Where no person has taken delivery of the document, record, material or other property referred to in subsection (1) after a period of six months, the ownership in the document, record, material or other property shall be deemed to have passed to and become vested in the Government.

**121. Act or omission done in good faith.**

No action or suit shall be instituted or maintained in any court against-

(a) the Tribunal;

(b) a member of the Tribunal;

(c) a person authorized to act for or on behalf of the Tribunal,

for any act or omission done in good faith in the performance of its or his functions and the exercise of its or his powers under this Act.

**122. Regulations in respect of the Tribunal.**

(1) The Minister may make such regulations as may be necessary or expedient in respect of the Tribunal.

(2) Without prejudice to the generality of subsection (1), regulations may be made for-

(a) prescribing the responsibilities and control of members of the Tribunal;

(b) prescribing the procedure of the Tribunal;

(c) prescribing forms;

(d) prescribing and imposing fees and providing for the manner for collecting and disbursing such fees;

(e) prescribing anything required to be prescribed under this Part.

### **PART XIII**

#### ***ENFORCEMENT***

##### **123. Power of investigation.**

An Assistant Controller shall have the power to investigate the commission of any offence under this Act.

##### **124. Authority cards.**

An Assistant Controller when acting under this Act shall on demand declare his office and produce to the person against whom he is acting or from whom he seeks any information such authority card as the Controller may direct to be carried by such officer.

##### **125. Search by warrant.**

(1) If it appears to a Magistrate, upon written information on oath and after such enquiry as he considers necessary, that there is reasonable cause to believe that in any premises there is or has been any contravention of this Act, the Magistrate may issue a warrant authorizing any Assistant Controller named therein to enter the premises at any reasonable time by day or by night, with or without assistance and if need be by force, and there to-

(a) search for and seize any goods, thing, book, document, record or other article that is reasonably believed to furnish evidence of the contravention of this Act;

(b) take samples of any goods or thing found in the premises for the purpose of ascertaining, by testing or otherwise, whether an offence has been committed; and

(c) make copies of or take extracts from any book, document, record or other article found in the premises.

(2) Where, by reason of their nature, size or amount, it is not practicable to remove any goods, thing, book, document, record or other article seized under subsection (1), the Assistant Controller shall, by any means, seal such goods, thing, book, document, record or other article in the premises or container in which they are found.

(3) It shall be an offence for any person without lawful authority to break, tamper with or damage the seal referred to in subsection (2) or to remove any goods, thing, book, document, record or other article under seal or to attempt to do so.

(4) An Assistant Controller entering any premises under this section may take with him such other persons and equipment as may appear to him to be necessary.

(5) An Assistant Controller may in the exercise of his powers under this section, if it is necessary so to do,-

- (a) break open any outer or inner door of the premises and enter into the premises;
- (b) forcibly enter the premises and every part of the premises;
- (c) remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect; and
- (d) detain every person found in the premises until the place has been searched.

#### **126. Search and seizure without warrant.**

If an Assistant Controller in any of the circumstances referred to in section 125 has reasonable cause to believe that by reason of delay in obtaining a search warrant under that section the investigation would be adversely affected or evidence of the contravention is likely to be tampered with, removed, damaged or destroyed, such officer may enter such premises and exercise in, upon and in respect of, the premises all the powers referred to in section 125 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

#### **127. List of things seized.**

- (1) Except as provided in subsections (2) and (3), where any goods, things, books, documents, records or other articles are seized under this Part, the seizing officer shall prepare a list of the things seized and immediately deliver a copy signed by him to the occupier of the premises which has been searched under section 125 or 126, or to his agent or servant, at those premises.
- (2) Where goods are seized from a vending machine, the seizing officer shall immediately deliver a copy of the list signed by him to the person whose name and address are stated on the machine as being the proprietor or, if no name or address is so stated, the occupier of the premises on which the machine is installed or to which it is affixed.
- (3) Where the premises are unoccupied, the seizing officer shall whenever possible post a list of the things seized conspicuously on the premises.

#### **128. Power to require attendance of person acquainted with case.**

- (1) An Assistant Controller making an investigation under this Act may by order in writing require the attendance before himself of any person who appears to the Assistant Controller to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.
- (2) If any such person refuses to attend as so required, the Assistant Controller may report such refusal to a Magistrate who shall issue a summons to secure the attendance of such person as may be required by the order made under subsection (1).

#### **129. Examination of person acquainted with case.**

- (1) An Assistant Controller making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
- (2) Such person shall be legally bound to answer all questions relating to such case put to him by the Assistant Controller, but such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) An Assistant Controller examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section, whether or not a caution has been administered to him under subsection 130(2) shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb-print, as the case may be-

(a) after it has been read to him in the language in which he made it; and

(b) after he has been given an opportunity to make any correction he may wish.

### **130. Statement to be admissible in evidence.**

(1) Where any person is charged with an offence under this Act, any statement, whether the statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation under this Act or not and whether or not wholly or partly in answer to questions, by that person to or in the hearing of an Assistant Controller and whether or not interpreted to him by another Assistant Controller or other person shall, notwithstanding any other written law to the contrary, be admissible in evidence at his trial and, if the person charged tenders himself as a witness, any such statement may be used in cross examination and for the purpose of impeaching his credit.

(2) The statement referred to in subsection (1)-

(a) shall not be admissible or used under that subsection-

(i) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge proceeding from a person in authority and sufficient in the opinion of the court to give the person charged grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him; or

(ii) in the case of a statement made by the person after his arrest, unless the court is satisfied that a caution was administered to him in the following words or words to the like effect:

"It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence."., and

(b) if made by any person before there is time to caution him, shall not be rendered inadmissible in evidence merely by reason of no such caution having been administered if it has been administered as soon as possible.

(3) Notwithstanding anything to the contrary contained in any written law, a person charged for an offence to which subsection (1) applies shall not be bound to answer any question relating to the case after a caution under subsection (2) has been administered to him.

### **131. Forfeiture of goods, etc., seized.**

(1) Any goods, thing, book, document, record or other article seized in exercise of any power conferred under this Act shall be liable to forfeiture.

(2) An order for the forfeiture or for the release of any goods, thing, book, document, record or other article seized in exercise of any power conferred under this Act shall be made by the court before which the prosecution with regard thereto has been held and an order for the forfeiture of the goods, thing, book, document, record or other article shall be made if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the goods, thing, book, document, record or other article was the subject-matter of or was used in the commission of the offence, notwithstanding that no person may have been convicted of such offence.

(3) If there is no prosecution with regard to any goods, thing, book, document, record or other article seized in exercise of any power conferred under this Act, such goods, thing, book, document, record or other article shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of service of a notice to the last-known address of the person from whom the goods, thing, book, document, record or other article was seized indicating that there is no prosecution in respect of such goods, thing, book, document, record or other article, unless before that date a claim thereto is made in the manner set out in subsections (4), (5) and (6).

(4) Any person asserting that he is the owner of the goods, thing, book, document, record or other article referred to in subsection (3) and that they are not liable to forfeiture may personally or by his agent authorized in writing, give written notice to the Assistant Controller in whose custody such goods, thing, book, document, record or other article is held that he claims the same.

(5) On receipt of the notice referred to in subsection (4), the Assistant Controller shall refer the matter to a Magistrate for a decision.

(6) The Magistrate to whom a matter is referred under subsection (5) shall issue a summons requiring the person asserting that he is the owner of the goods, thing, book, document, record or other article and the person from whom they were seized, to appear before the Magistrate and on their appearance or default to appear, due service of the summons having been proved, the Magistrate shall proceed to the examination of the matter and on proof that an offence under this Act has been committed and that such goods, thing, book, document, record or other article was the subject matter of or was used in the commission of such offence, shall order the same to be forfeited and shall, in the absence of such proof, order their release.

(7) Any goods, thing, book, document, record or other article forfeited or deemed to be forfeited shall be delivered to the Assistant Controller and shall be disposed of in accordance with the directions of the Magistrate.

(8) Where any goods, thing, book, document, record or other article seized in exercise of the powers conferred under this Act are of a perishable nature or is subject to speedy and natural decay or where the custody of such goods, thing, book, document, record or other article involves unreasonable expense and inconvenience, or is believed to cause obstruction or hazard to the public, the Controller may direct that such goods, thing, book, document, record or other article be sold at any time and the proceeds of the sale held to abide by the result of any prosecution under this Act.

### **132. Cost of holding goods, etc., seized.**

Where any goods, thing, book, document, record or other article seized under this Act is held in the custody of the Government pending completion of any proceedings in respect of an offence under this Act, the cost of holding such thing in custody shall, in the event of any person being found guilty of an offence, be a debt due to the Government by such person and shall be recoverable accordingly.

### **133. No costs or damages arising from seizure to be recoverable.**

No person shall, in any proceedings before any court in respect of the seizure of any goods, thing, book, document, record or other article seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

#### **134. Protection of informers.**

(1) Except as hereinafter provided, no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name or address of any informer or the substance and nature of the information received from him or to state any matter which may lead to his discovery.

(2) If any books, documents, records or papers which are in evidence or are liable to inspection in any civil or criminal proceedings contain any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If on trial for any offence under this Act the court after full inquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit inquiry, and require full disclosure, concerning the informer.

#### **135. Reward for information.**

In the case of a conviction involving a fine, the court imposing the fine may, on the application of the prosecuting officer, direct the payment of any part of the fine not exceeding one half of such fine in such proportion as the court thinks fit to the person who gave the information leading to the conviction.

#### **136. Disappearance or destruction of goods, etc., to be seized.**

Any person who causes the disappearance or destruction of any goods, thing, book, document, record or other article to be seized under this Act with the intent to prevent the seizure thereof commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

#### **137. Offences with respect to information.**

(1) Any person who-

(a) submits false information in any application, report or other document under this Act;

(b) furnishes or causes to be furnished to any Assistant Controller any false particular, information or statement in respect of any matter which such officer requires to be given under this Act;

(c) refuses to answer or gives a false answer to any question put to him by any Assistant Controller for the purpose of obtaining any particulars, information or statement required to be given under this Act; or

(d) fails or refuses to produce any document as may be required by any Assistant Controller,



commits an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) Nothing in subsection (1) shall be construed as requiring a person to answer any question or to give any information if the answer or information would have a tendency to expose him to a criminal charge or penalty or forfeiture.

#### **138. Obstruction of Assistant Controller.**

Any person who obstructs, impedes, assaults or interferes with any Assistant Controller in the performance of his functions under this Act commits an offence.

#### **139. Use of confidential information.**

(1) Any person who makes use of any confidential information obtained by virtue of the provisions of this Act commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Nothing in subsection (1) shall operate to prevent the disclosure of information where the disclosure is made-

(a) for or in connection with the due administration of this Act;

(b) for the purpose of any legal proceedings;

(c) for the purpose of any investigation conducted under this Act;

(d) to any consultant to the Government or to any officer who is approved in writing by the Minister as a proper person to receive the information; or

(e) for or in connection with the preparation by the Government of statistics in respect of the operation of this Act.

### **PART XIV**

#### ***GENERAL AND MISCELLANEOUS***

#### **140. Receipts.**

(1) A person who supplies or offers to supply any goods or services shall provide the consumer with a receipt for any purchase of goods or services exceeding the prescribed value.

(2) Notwithstanding anything contained in subsection (1), a consumer shall be supplied with a receipt for any purchase of goods or services if the consumer so requests.

(3) A receipt issued under this section shall contain the following particulars:

(a) the trade name and address of the supplier;

- (b) the date of purchase;
  - (c) the amount of money paid for each item of purchase;
  - (d) the total amount of money paid including a separate statement of any amount paid as tax;
  - (e) where applicable, the make and model number of the goods; and
  - (f) any other particulars as may be prescribed in the regulations.
- (4) The Minister may, by order published in the Gazette, exempt any business or class of business from this section.
- (5) Any person who contravenes this section commits an offence.

#### **141. Power to order compliance.**

(1) Where the Controller has reasonable grounds to believe that a person is contravening, has contravened or is about to contravene this Act, the Controller may make an order requiring the person to-

- (a) cease the contravention;
  - (b) refrain from the contravention or contemplated contravention; or
  - (c) refrain from any further contravention,
- of this Act.

(2) A copy of the order made under subsection (1) shall be served on every person named in it together with written reasons for the order, and such order shall take effect immediately on the service thereof.

(3) For the purposes of this section, service may be made personally or by A.R. registered post, telegram, facsimile transmission or by any other electronic or other means of transmission which results in the order being transmitted in writing to the person named in it.

(4) The power to issue an order under subsection (1) may be exercised by the Controller personally or by any officer authorized in writing by the Controller.

#### **142. Failure to comply with lawful order.**

Any person who fails to comply with any written order issued by the Controller or any officer authorized in writing by the Controller commits an offence under this Act.

#### **143. Offences by body corporate.**

Where an offence under this Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or who was purporting to act in any such capacity shall, as well as the body corporate, be deemed to have committed that offence unless he proves that the offence was committed without his knowledge, consent or connivance and that he took reasonable precautions and had exercised due diligence to prevent the commission of the offence.

#### **144. Offences by employees, agents or employees of agents.**

Where an offence under this Act has been committed by-

(a) an employee;

(b) an agent; or

(c) an employee of the agent,

of any person (the "principal"), the principal shall be deemed to have committed that offence unless he proves that-

(aa) the offence was committed without his knowledge or that he took reasonable precautions to prevent its commission; and

(bb) the offence was committed-

(i) in the case of an employee, outside the course of his employment; or

(ii) in the case of an agent, when the agent was not acting on the principal's behalf; or

(iii) in the case of an employee of the agent, outside the course of his employment by the agent or otherwise on behalf of the agent.

#### **145. General penalty.**

(1) Any person who is convicted of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Any body corporate which is convicted of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding one hundred thousand ringgit, and for a second or subsequent offence to a fine not exceeding two hundred thousand ringgit.

(3) Any person who or body corporate which is convicted of an offence under this Act shall, in the case of a continuing offence, in addition to any fine provided under this Act, be liable to a fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after conviction.

#### **146. Compounding of offences.**

(1) The Controller or a Deputy Controller or any person authorized in writing by the Controller may compound any offence, except offences under sections 138 and 139, committed by any person under this Act by making a written offer to such person to compound the offence upon payment to the Controller or the Deputy Controller or any person authorized in writing by the Controller, with the consent in writing of the Public Prosecutor, such amount not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in the offer.

*[Am. Act A1381:s.10]*

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Controller or the Deputy Controller or any person authorized in writing by the Controller may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1)-

(a) no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made; and

(b) any goods, thing, book, document, record or other article seized in connection with such offence shall be released immediately.

(4) Any monies paid to the Controller or the Deputy Controller or any person authorized in writing by the Controller, as the case may be, under this section shall be paid into and form part of the Federal Consolidated Fund.

#### **147. Institution of prosecution.**

No prosecution for or in relation to any offence under this Act shall be instituted without the written consent of the Public Prosecutor.

#### **148. Jurisdiction to try offences.**

Notwithstanding any written law to the contrary, a Court of a Magistrate of the First Class shall have jurisdiction to try any offence under this Act and to impose the full punishment for any such offence.

#### **149. Protection of officers.**

No action or prosecution shall be brought, instituted or maintained in any court against-

(a) the Controller, Deputy Controllers, Assistant Controllers or any other officer duly appointed under this Act for or on account of or in respect of any act ordered or done for the purpose of carrying this Act into effect; and

(b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Controller, a Deputy Controller, an Assistant Controller or any other officer duly appointed under this Act if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.

#### **150. Regulations.**

(1) The Minister may make such regulations as may be necessary or expedient for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of subsection (1), such regulations may-

(a) prescribe, in respect of goods or services of any description or of any class or classes of goods or services, a consumer information standard concerning any or all of the following matters:

- (i) the disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion or supply of the goods or services; and
- (ii) the form or manner in which the information is to be disclosed on or in relation to or in connection with the supply or resupply or promotion of the supply of the goods or services;
- (b) prescribe any forms for the purposes of this Act;
- (c) generally prescribe and provide for fees under this Act and the manner for collecting and disbursing such fees;
- (d) prescribe the particulars required to be contained in receipts and the value of transactions for which receipts shall be required and for this purpose may prescribe different values for different transactions; and
- (e) provide for any matter which under this Act is required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

## **SCHEDULE**

*[Section 84C]*

### **COMMITTEE ON ADVERTISEMENT**

#### **1. Temporary exercise of functions of Chairman**

- (1) Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.
- (2) Where both the Chairman and the Deputy Chairman are for any reason unable to perform the functions of the Chairman or during any period of vacancy in the offices of the Chairman and Deputy Chairman, the Minister may appoint any member of the Committee on Advertisement to perform the functions of the Chairman.
- (3) The Deputy Chairman or the member appointed under subparagraph (2), as the case may be, shall, during the period in which he is performing the functions of the Chairman under be deemed to be the Chairman.
- (4) In this paragraph, "Chairman" and "Deputy Chairman" mean the Chairman and Deputy Chairman of the Committee on Advertisement respectively.

#### **2. Vacation of office**

The office of a member of the Committee on Advertisement referred to in paragraph 84B(1)(b) of this Act shall become vacant:-

- (a) upon the death of the member;

- (b) upon the member resigning from such office by letter addressed to the Minister; or
- (c) upon the expiration of his term of office.

### **3. Revocation of appointment**

The Minister may revoke the appointment of a member of the Committee on Advertisement referred to in paragraph 84B(1)(b) of this Act:-

- (a) if his conduct, whether in connection with his duties as a member of the Committee on Advertisement or otherwise, has been such as to bring discredit to the Committee on Advertisement;
- (b) if he has become incapable of properly carrying out his duties as a member of the Committee on Advertisement;
- (c) if there has been proved against him, or he has been convicted on, a charge in respect of:-
  - (i) an offence involving fraud, dishonesty or moral turpitude;
  - (ii) an offence under the law relating to corruption;
  - (iii) an offence under this Act; or
  - (iv) any other offence punishable with imprisonment for more than two years;
- (d) if he is adjudicated a bankrupt;
- (e) if he has been found or declared to be of unsound mind or has otherwise become incapable of managing his affairs; or
- (f) if he absents himself from three consecutive meetings of the Committee on Advertisement without obtaining leave in writing from the Chairman of the Committee on Advertisement.

### **4. Resignation**

A member of the Committee on Advertisement appointed under paragraph 84B(1)(b) of this Act may at any time resign his office by letter addressed to the Minister.

### **5. Filling of vacancy**

Where a member appointed under paragraph 84B(1)(b) of this Act ceases to be a member of the Committee on Advertisement, the Minister may appoint another person to fill the vacancy for the remainder of the term for which the vacating member was appointed.

### **6. Secretary to Committee on advertisement and other officers**

The Minister may appoint a Secretary to the Committee and such other officers as may be necessary to assist the Committee.

### **7. Allowances**

The members of the Committee on Advertisement appointed under paragraph 84b(1)(b) may be paid

such allowances as the Minister may determine.

## **8. Experts**

(1) The Committee on Advertisement may invite an expert or experts in a particular field or fields:-

(a) to attend a meeting or deliberation of the Committee on Advertisement for the purpose of advising it on any matter under discussion; or

(b) to consider or carry out any matter as entrusted by the Committee on Advertisement Advertisement and to do any other thing as the Committee on deems fit or necessary.

(2) An expert or experts invited under subparagraph (1) may be paid such fee as the Minister may determine.

## **9. Validity of acts and proceedings**

No act done or proceeding taken under this Act shall be questioned on the ground of:-

(a) a vacancy in the membership of, or a defect in the constitution of, Advertisement; or the Committee on

(b) an omission, a defect or an irregularity not affecting the merit of the case.

## **10. Annual report**

The Committee on Advertisement shall make an annual report on the discharge of its functions to the Minister.