

CONSOLIDATED TO 30 JUNE 2014

LAWS OF SEYCHELLES

CONSUMER PROTECTION ACT

[29th November, 2010]

Act 30 of 2010

ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY

Short title

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

Interpretation

2. (1) In this Act —

“acquire”, in relation to —

(a) goods, includes to obtain by way of gift, purchase or exchange, lease, hire or hire purchase; and

(b) services, includes to accept the rendering or performance of those services;

“advertisement” means any direct or indirect visual or oral communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium by means of which a person seeks to —

(a) bring to the attention of all or part of the public—

(i) the existence or identity of a supplier; or

(ii) the existence, nature, availability, properties or advantages of any goods or services that are available for supply;

(b) promote the supply of any goods or services, or promote any cause; and

“advertise” is construed accordingly;

“business” —

(a) means the carrying on of any commercial activity for gain or reward; and

(b) includes a trade or profession and the activities of a professional or trade association or of a public body;

“Commission” means the Fair Trading Commission established under section 3(1) of the Fair Trading Commission Act;

“consumer” means a person —

(a) who acquires or offers to acquire goods otherwise than for the purpose of resale but does not include a person who acquires goods for the purpose of using them in the production or manufacture of any other goods or articles for sale;

(b) to whom a service is rendered;

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

“contract of employment” means a contract of service or apprenticeship, whether it is express or implied, and, if it is express, whether it is oral or in writing as set out in section 21 of the Employment Act;

“distance selling regulations” means regulations made under section 28;

“expiry date” means the date stated in relation to goods such as food, drink and medicine being the date by which they are considered unsuitable for sale or consumption;

“goods” includes substances, growing crops and things comprised in land by virtue of being attached to land, and any ship, aircraft or vehicle;

“Minister” means the Minister responsible for trade;

“personal injury” includes disease and other impairments of a person's physical or mental condition;

“service” means a service of any description, whether industrial, trade, professional or otherwise and —

(a) includes the sale of goods where the goods are sold in conjunction with the rendering of a service; and

(b) is construed in accordance with subsection (3);

“Seychelles Bureau of Standards” means the Seychelles Bureau of Standards established by section 3 of the Seychelles Bureau of Standards Act;

“substance” means any natural or artificial substance, whether in solid, liquid or gaseous form or in the form of a vapour, and includes substances that are comprised in or mixed with other goods;

“supply” includes —

(a) in relation to goods —

(i) to supply (including re-supply) by way of sale, rent, exchange, lease, hire or hire-purchase or disposal of goods by any other means or an interest therein or a right thereto; or

(ii) to offer to sell, rent, exchange, lease, hire or otherwise dispose of such goods, right or interest;

(b) in relation to services, to provide, grant or confer services or to offer to provide, grant or confer such services otherwise than under a contract of employment; and

“supplier” shall be construed accordingly;

“trade or commerce” means trade or commerce within Seychelles or between Seychelles and a place or places outside Seychelles;

“Tribunal” means the Tribunal established under section 44(1) of the Fair Trading Commission Act.

(2) Where it is alleged in any proceeding under this Act that a person was a consumer in relation to particular goods or services, it shall be presumed, unless the contrary is proved, that the person was a consumer in relation to those goods or services.

(3) A reference in this Act to the supply of services does not include a reference to the rendering of any services under a contract of employment.

PART II - FAIR TRADING COMMISSION

Administration

3. The Commission is responsible for the administration of this Act and shall carry out its responsibility with the objective of promoting and advancing the welfare of consumers by —

(a) the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;

(b) reducing any disadvantages experienced by consumers, in accessing any supply of goods or services, by reason of their illiteracy, vision impairment or limited fluency in a particular language;

(c) promoting fair business practices;

(d) protecting consumers from —

(i) unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and

(ii) misleading, unfair, deceptive or fraudulent conduct.

(e) improving consumer awareness and information, and encouraging responsible and informed consumer choice and behaviour;

(f) promoting consumer confidence empowerment and the development of a culture of consumer responsibility through education and advocacy; and

(g) providing for an accessible, efficient, harmonised, and effective system of redress for consumers.

Functions

4. The Commission shall have such powers as are necessary to enable it to effectively carry out its responsibilities and may, in particular —

- (a) initiate or receive complaints concerning alleged prohibited conduct, and deal with those complaints in accordance with this Act;
- (b) investigate and evaluate complaints or alleged contraventions of this Act;
- (c) issue and enforce compliance notices;
- (d) accept undertakings and enforce them in accordance with section 75;
- (e) conduct hearings and issue such notices, give such orders or directions in accordance with this Act;
- (f) impose remedies or financial penalties;
- (g) impose fees;
- (h) co-operate with foreign and local authorities;
- (i) monitor the consumer market in particular industries or sectors to ensure that prohibited conduct or offences are prevented, detected and prosecuted;

Complaints

5. (1) The Commission may initiate a complaint concerning alleged prohibited conduct.

(2) Any person may —

- (a) submit information concerning alleged prohibited conduct, in any manner or form;
- (b) make a complaint concerning alleged prohibited conduct, to the Commission.

(3) Sections 31 and 32 of the Fair Trading Commission Act apply, with such modifications and adaptations as are necessary, to a complaint submitted under subsection (2).

Investigations by Commission

6. (1) The Commission shall investigate a complaint —

- (a) initiated under section 5(1); or
- (b) made under section 5(2).

(2) The Commission may, for the purposes of investigating a complaint —

- (a) enter and search any premises;
- (b) inspect and remove, for the purpose of making copies, any documents or extracts therefrom in the possession or control of any person; and
- (c) upon completing the search authorised by a warrant, leave a receipt listing documents or extracts therefrom that are removed for the purposes of this section.

(3) Sections 34 and 35 of the Fair Trading Commission Act apply, with such modifications and adaptations as are necessary, to a search and seizure executed under this Act.

Discontinuation of investigation

7. (1) Where the Commission, at any stage of an investigation under this Act, is of the opinion that the matter being investigated does not justify further investigation, the Commission may discontinue the investigation.

(2) Where the Commission decides to discontinue an investigation under subsection (1), it shall —

- (a) within 14 days of the decision, notify the parties concerned; and
- (b) within 3 months of such decision submit a report of the reasons for the discontinuation to the Minister.

Report

8. Within 30 days after the conclusion of an investigation, the Chief Executive Officer of the Commission shall submit a report of the investigation to the Commission.

Convening of hearings

9. (1) Upon receipt of a report submitted under section 8, the Commission shall convene a hearing.

(2) Part VI of the Fair Trading Commission Act applies with such modifications and adaptations as are necessary, to a hearing convened under this Act.

PART III - UNFAIR CONTRACT TERMS

Interpretation of this Part and Schedule

10. In this Part and the Schedule —

“consumer contract” means a contract between a supplier and a consumer where the contract is one—

- (a) governed by the written laws of Seychelles or to which section 17 applies; and
- (b) in which the subject-matter is consumer goods or services;

“contract term” means a term in a consumer contract, being a term that has not been individually negotiated within the meaning of section 11.

Terms not individually negotiated

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

(2) Notwithstanding that a specific contract term or any aspect of it is in fact individually negotiated, the terms of the rest of the contract are regarded as terms that have not been individually negotiated for the purposes of this Part, if an assessment of the contract overall shows that the contract is a pre-formulated standard contract.

Burden of proof

12. It is for a supplier which claims that a contract term was individually negotiated to show that it was so negotiated.

Written terms to be plain and intelligible

13. (1) A supplier shall ensure that a written contract term is expressed in plain, intelligible language.

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

Unfair terms

14. A contract term is unfair if it causes a significant imbalance in the rights of the supplier and the consumer and is to the detriment of the consumer.

Assessment of unfairness

15. (1) In determining whether a contract term is unfair, consideration shall be given to the following —

- (a) the nature of the goods or services for which the contract is concluded;
- (b) all the other terms of the contract or of another contract on which the first mentioned contract is dependent;
- (c) the interests of the supplier;
- (d) the interests of the particular class of consumers who are likely to adhere to the contract;
- (e) all the circumstances surrounding the conclusion of the contract at the time of its conclusion.

(2) In so far as a contract term is in plain, intelligible language, the assessment of its fairness shall not relate —

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

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

(4) Without prejudice to the generality of subsection (1), a contract term which is described in the Schedule is unfair.

Effect of unfair term

16. An unfair contract term is not enforceable against a consumer.

Governing law

17. Notwithstanding any term in a consumer contract that the governing law of the contract is the law of a country other than Seychelles, or a term to the like effect, this Part shall apply to that contract.

Application of this Part

18. (1) A term of a consumer contract, including a term that is not set out in the contract but is incorporated in the contract by a term of the contract, is void if it purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying —

(a) the application in relation to that contract of any provision of this Part; or

(b) the exercise of a right conferred by any provision of this Part.

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

PART IV - UNFAIR TRADE PRACTICES

Disclosure and Information

Information to be in plain and understandable language

19. (1) Where a person is required in terms of this Act or any other written law to produce, provide or display a notice, document or other visual representation to a consumer, that person shall produce, provide or display such notice, document or visual representation —

(a) in the form prescribed by this Act or any other written law; or

(b) in plain language, if no form has been prescribed.

(2) For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of a class of persons to whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to —

(a) the context, comprehensiveness and consistency of the notice, document or visual representation;

- (b) the organisation, form and style of the notice, document or visual representation;
- (c) the vocabulary, usage and sentence structure of the notice, document or visual representation; and
- (d) the use of any illustrations, examples, headings or other aids to reading and understanding.

(3) The Commission may publish guidelines for methods of assessing whether a notice, document or visual representation satisfies the requirements of subsection (1)(b).

Disclosure of prices of goods and services

20. (1) Subject to subsection (2), a retailer shall not display any goods for sale without displaying to the consumer a price in relation to those goods.

(2) A retailer is not required to display a price for goods that are displayed predominantly as a form of advertisement of the supplier, or of goods or services in an area within the supplier's premises to which the public does not ordinarily have access.

(3) A price is adequately displayed to a consumer if, in relation to any goods or services, a written indication of the price expressed in the currency of the Republic is —

- (a) annexed or affixed to, written, printed, stamped or located on, or otherwise applied to the goods or to any band, ticket, covering, label, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
- (b) in any other way represented, from which it may reasonably be inferred that the price is a price applicable to the goods or services; or
- (c) published in relation to the goods or services in a catalogue available to the public, if —
 - (i) a time is specified in the catalogue as the time after which the goods or services will not be sold or provided at that price, and that time has not passed; or
 - (ii) in any other case, the catalogue may reasonably be regarded as not out-of-date.

(4) In this section, price includes a unit price.

Selling above displayed price and dual pricing

21. (1) Subject to subsections (2) to (5), a person shall not, in trade or commerce, as a supplier, require a customer to pay a price for any goods or services —

- (a) higher than the displayed price in respect of those goods or services;
- (b) in respect of which more than one price is displayed, at a higher than the lower or the lowest of the prices displayed.

(2) In subsection (1), a reference to a price displayed in respect of goods or services includes, in addition to prices displayed in the manner described in section 20(3)(a), (b) and(c), a reference to a price —

(a) that is used in connection with the goods and services; or

(b) that is determined on the basis of anything encoded on or in relation to the goods.

(3) Subsection (1) does not apply in respect of the price of any goods or services if the price of those goods or services is determined by any written law.

(4) Where a price displayed in respect of particular goods is written, stamped or located wholly or partly over another price, or other prices, displayed in respect of those goods, all the prices are, for the purposes of subsection (1), prices displayed in respect of the goods but if a price that was once displayed has been fully covered and obscured by a second displayed price, that second price shall be regarded as the displayed price.

(5) It is a defence to a prosecution of a person for a contravention of subsection (1) that —

(a) the contravention in respect of which the prosecution was instituted was due to the act or default of a person other than a director, employee or agent of the defendant, to an accident or to some other cause beyond the defendant's control; and

(b) the defendant had taken all reasonable precautions and exercised due diligence to avoid the contravention.

(6) A price shall be disregarded for the purposes of this section, if —

(a) the goods in respect of which the price is displayed are duty-free goods and the price is expressed in a currency other than Seychelles currency; or

(b) the price was displayed in respect of goods outside Seychelles in relation to the supply of the goods outside Seychelles and the supplier has taken all reasonable precautions to cover and obscure that price.

(7) If in addition to displaying a price in respect of any goods or services, a supplier has advertised or displayed a placard or similar device announcing that prices are, will be or have been reduced by —

(a) a monetary value, generally or in relationship to any particular goods or services, the displayed price for the purpose of subsection (1) shall be regarded as the price immediately displayed in relation to the goods or services, minus the announced monetary reduction;

(b) a percentage value, generally or in relation to any particular goods or services, the displayed price for the purpose of subsection (1) shall be regarded as the price immediately displayed in relationship to the goods or services, minus an amount determined by multiplying that price by the percentage shown;

unless the supplier has applied two or more prices immediately to the goods or services concerned and the difference between the highest and the lowest of those applied prices is equivalent to the advertised or placarded reduction in price.

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

Product labelling and trade descriptions

22. (1) For the purposes of this section, “trade description” means —

(a) any description, statement, or other direct or indirect indication, other than a trademark, as to —

(i) the number, quantity, measure, weight or gauge of any goods;

(ii) the ingredients of which any goods consist, composition, contents of any goods, or material of which any goods are made;

(iii) the mode of manufacturing, processing or producing any goods;

(iv) the name of the producer of any goods;

(v) the place or country of origin of any goods;

(vi) the design, construction, finish or packaging of the goods;

(vii) the expiry date of the goods; or

(viii) any goods being the subject of any patent, privilege or copyright; or

(b) any figure, work or mark other than a trademark, that, according to the custom of the trade, is commonly understood to be an indication of any matter referred to in paragraph (a).

(2) For the purposes of this section, a trade description is applied to goods if it is —

(a) woven in, impressed on, worked into or annexed or affixed to the goods;

(b) applied to any covering, label or reel or thing in, on, or with which the goods are packaged, or attached to the goods;

(c) displayed together with, or in proximity to, the goods in a manner likely to lead to the belief that the goods are designated or described by that description; or

(d) contained in any sign, advertisement, catalogue, brochure, circular, wine list, invoice, business letter, business paper or other commercial communication on the basis of which a consumer may request or order the goods.

(3) In subsection (2)(b) —

(a) a reference to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper; and

(b) a reference to a label includes a reference to a band or ticket.

(4) A person shall not —

(a) knowingly apply to any goods, a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description; or

(b) alter, deface, cover, remove or obscure a trade description applied to any goods in a manner calculated to mislead consumers.

(5) A retailer of goods shall —

(a) not offer to supply, display or supply any particular goods if the retailer knows, reasonably could determine, or has reason to suspect that —

(i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or

(ii) a trade description applied to those goods has been altered as contemplated in subsection (4)(b);

(b) with respect to any goods within the retailer's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a).

(6) The Minister may prescribe —

(a) categories of goods that are required to have a trade description applied to them, as contemplated in subsection (7);

(b) the information that is required to be included in any trade description from among the categories of information contained in subsection (1);

(c) the form and manner in which that information is to be applied to the goods; and

(d) the rules to be used, in accordance with any international agreement, for the purpose of determining the country of origin of goods or of components of any goods.

(7) The producer or importer of any goods prescribed under subsection (6), shall apply a trade description to those goods, disclosing —

(a) the country of origin of the goods;

(b) any other prescribed information.

(8) A person shall not, in trade or commerce, supply any goods prescribed under subsection (6) which do not comply with the requirements imposed under subsection (7).

(9) Subsection (8) does not apply to goods that are intended to be used or consumed outside Seychelles and if there is applied to goods —

(a) a statement that the goods are for export only; or

(b) a statement indicating by the use of words authorised by the regulations to be used for the purposes of this section that the goods are intended to be used outside Seychelles,

it shall be presumed for the purposes of this subsection, unless the contrary is established, that the goods are intended to be so used.

(10) Any person who produces, imports, supplies or packages any prescribed goods shall display on, or in association with, the packaging of those goods, a notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of those goods in accordance with any written law.

Liability for damage caused by goods not complying with prescribed trade description requirements

23. Where a person supplies goods in contravention of section 22(8) by reason that no trade description is applied to the goods or the trade description applied to the goods do not comply with prescribed information, and —

(a) another person suffers loss or damage by reason of not having particular information in relation to the goods; and

(b) that other person would not have suffered the loss or damage if the trade description had been applied to the goods or the trade description applied to the goods had complied with the prescribed information;

the first mentioned person shall be liable for the loss or damage caused to that other person.

Expiry dates

24. (1) A person shall not offer to supply or display or supply any particular goods at a date later than the expiry date of the goods.

(2) Where a person supplies goods in contravention of subsection (1) and another person suffers loss or damage by reason of the goods not being suitable for consumption, the first mentioned person shall be liable for the loss or damage caused to the other person.

Sales records

25. (1) A supplier of goods and services shall provide a written record of each transaction to the consumer to whom any goods or services are supplied.

(2) A record under subsection (1) shall include —

(a) the supplier's full name or registered business name;

(b) the address of the premises at which, or from which, the goods or services were supplied;

(c) the date on which the transaction occurred;

(d) the name or description of any goods or services supplied;

- (e) the unit price of any particular goods or services supplied;
- (f) the quantity of any particular goods or services supplied;
- (g) the total price of the transaction, before any applicable taxes;
- (h) the amount of any applicable taxes;
- (i) the total price of the transaction, including any applicable taxes.

(3) The Minister may, by notice in the Gazette, exempt categories of goods and services, or circumstances of trade from the application of this section.

Full cost to be stated in certain cases

26. A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services, unless —

- (a) where the transaction is not a credit transaction, it also specifies the cash price of the goods or services;
- (b) where the transaction is a credit transaction, it also specifies —
 - (i) the total sum to be paid for the goods or services;
 - (ii) the number of installments by which payment is to be made;
 - (iii) the rate of interest that will be charged; and
 - (iv) the deposit, if any, that must be made.

Fair and responsible marketing

Bait advertising

27. (1) A person shall not, in trade or commerce, as a supplier, advertise or supply at a special price, of goods or services that the person does not intend to offer for supply, or that the person has no reasonable grounds for believing that the person can supply, 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) A person who or which has a limited stock of goods or whose capacity to supply services is limited, does not contravene subsection (1) if the person states in the advertisement mentioned in that subsection that the person's stock of the goods or the person's capacity to supply the services is limited.

Distance selling

28. (1) The Minister may, after consulting the Commission, make such regulations as the Minister considers appropriate for the purpose of protecting consumers in relation to distance contracts.

(2) Without prejudice to the generality of subsection (1), distance selling regulations may contain provisions —

(a) regulating advertising and marketing conducted by way of distance contracts including advertising and marketing by mail order or doorstep selling of business;

(b) with respect to the information that must be supplied to a person to whom distance contracts are offered;

(c) with respect to the transparency, clarity and fairness of distance contracts;

(d) requiring information to be given to any person as may be determined by or under the regulations for the purpose of enabling that person to exercise any powers conferred on it by the regulations.

(3) In this section —

“distance contract” means a contract concerning goods or services concluded between a supplier and a consumer under a scheme operated by the supplier, which, for the purposes of the contract, makes exclusive use of one or more means of distance communication up to and including the point at which the contract is concluded;

“means of distance communication” means a means which, without the simultaneous presence of the supplier and the consumer, may be used for the conclusion of a contract between the parties.

Referral selling

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

Fair and honest dealing

Misleading or deceptive conduct

30. (1) A person shall not, in trade or commerce in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, engage in conduct that is, or is likely to be, misleading or deceptive.

(2) Nothing in this Part is to be construed as limiting the generality of subsection (1).

Misleading or deceptive conduct in relation to goods and services

31. A person shall not, in trade or commerce in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, engage in conduct that is liable to mislead or deceive the public as to —

(a) the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods; or

(b) the nature, characteristics, suitability for a purpose, or quantity, of services.

False representations

32. A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services —

- (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or a particular previous use;
- (b) falsely represent that services are of a particular standard, quality, value or grade;
- (c) falsely represent that goods are new;
- (d) falsely represent that a particular person has agreed to acquire goods or services;
- (e) represent that goods or services have sponsorship, approval, affiliation, performance, characteristics, accessories, uses or benefits that they do not have;
- (f) make a false or misleading representation concerning the price of any goods or services;
- (g) make a false or misleading representation concerning the need for any goods, services, replacements or repairs, or concerning the availability of facilities for the repair of goods or the availability of spare parts for goods;
- (h) make a false or misleading representation concerning the place of origin of goods; or
- (i) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy relating to goods or services.

Unconscionable conduct in consumer transactions

33. (1) A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to another person, engage in conduct that is, in all the circumstances, inequitable.

(2) Without in any way limiting the matters to which the Commission may have regard for the purpose of determining whether a person (the supplier) has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person (the consumer), the Commission may have regard to —

- (a) the relative strengths of the bargaining positions of the supplier and the consumer;
- (b) whether, as a result of conduct engaged in by the supplier, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;

(c) whether the consumer was able to substantially protect his or her interests in view of a physical or mental disability, illiteracy, ignorance or inability to understand the language of an agreement;

(d) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;

(e) whether any undue influence or pressure was exerted on, or any physical force, coercion, duress, harassment or unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the supplier or other person acting on behalf of the supplier, in relation to the supply or possible supply of the goods or services;

(f) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from another supplier.

(3) A person shall not be taken for the purposes of this section to engage in inequitable conduct in connection with the supply or possible supply of goods or services to another person by reason only that the other person institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.

(4) For the purpose of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to any other person, the Commission —

(a) shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

(b) may have regard to conduct engaged in or circumstances existing before the commencement of this Act.

(5) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

(6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using or transforming them in trade or commerce.

Unconscionable conduct in business transactions

34. (1) A person shall not, in trade or commerce, in connection with —

(a) the supply or possible supply of goods or services to another person; or

(b) the acquisition or possible acquisition of goods or services from another person,

engage in conduct that is, in all the circumstances, inequitable.

(2) Without in any way limiting the matters to which the Commission may have regard for the purpose of determining whether a person (the supplier) has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person (the business consumer), the Commission may have regard to —

- (a) the relative strengths of the bargaining positions of the supplier and the business consumer;
- (b) whether, as a result of conduct engaged in by the supplier, the business consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
- (c) whether the business consumer was able to substantially protect his or her interests in view of a physical or mental disability illiteracy, ignorance or inability to understand the language of an agreement;
- (d) whether the business consumer was able to understand any documents relating to the supply or possible supply of the goods or services;
- (e) whether any undue influence or pressure was exerted on, or any physical force, coercion, duress, harassment or unfair tactics were used against, the business consumer or a person acting on behalf of the business consumer by the supplier or other person acting on behalf of the supplier, in relation to the supply or possible supply of the goods or services;
- (f) the amount for which, and the circumstances under which, the business consumer could have acquired identical or equivalent goods or services from a person other than the supplier;
- (g) the extent to which the supplier's conduct towards the business consumer was consistent with the supplier's conduct in similar transactions between the supplier and other like business consumers;
- (h) the requirements of any applicable industry code;
- (i) the requirements of any other industry code, if the business consumer acted on the reasonable belief that the supplier would comply with that code;
- (j) the extent to which the supplier unreasonably failed to disclose to the business consumer —
 - (i) any intended conduct of the supplier that might affect the interests of the business consumer;
 - (ii) any risks to the business consumer arising from the supplier's intended conduct, being risks that the supplier should have foreseen would not be apparent to the business consumer;
- (k) the extent to which the supplier was willing to negotiate the terms and conditions of any contract for supply of the goods or services with the business consumer; and
- (l) the extent to which the supplier and the business consumer acted in good faith.

Offering gifts and prizes

35. A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply of goods or

services, offer a gift, prize or other free item with the intention of not providing the gift, prize or other free item as offered.

Dishonestly accepting payment

36. A person shall not, in trade or commerce, as a supplier, accept payment or other consideration for goods or services where at the time of the acceptance —

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

Pyramid selling

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

(2) For the purposes of this section, “pyramid selling scheme” means a scheme —

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

(3) In subsection (2), “participants” means participants in the pyramid selling scheme.

Right to choose

Unsolicited goods or services

38. (1) For the purposes of this Act, subject to subsection (2), goods and services are unsolicited in any of the following circumstances —

- (a) if, during any direct marketing of goods or services, a supplier or a person acting on behalf of a supplier has left any goods with, or performed any service for, a consumer without requiring or arranging payment for them, those goods or services, are unsolicited;
- (b) if a consumer is a party to an agreement contemplating the periodic delivery of goods during the life of the agreement, and —
 - (i) during the course of that agreement, the supplier introduces goods or services that are materially different from the goods or services previously supplied to an extent not reasonably contemplated in the agreement, the new

goods or services are unsolicited, unless the consumer expressly consented to the material change; or

(ii) after the termination of that agreement, the supplier delivers any further goods to the consumer, other than in terms of a different agreement or transaction, those further goods are unsolicited goods;

(c) if a supplier delivers goods or performs services at a location, date or time other than as agreed, and the consumer has rejected that delivery or performance, those goods or services are unsolicited; or

(d) if any goods have been delivered to, or any services performed for, a consumer by or on behalf of a supplier without the consumer having expressly or implicitly requested that delivery or performance, the goods or services, as the case may be, are unsolicited.

(2) Notwithstanding subsection (1), if —

(a) within 10 days after delivery of any goods to a consumer, the supplier informs the consumer that the goods were delivered in error, those goods become unsolicited only if the supplier fails to recover them within 20 business days after so informing the consumer; or

(b) any goods are delivered to a consumer and —

(i) those goods are clearly addressed to another person, and have obviously been misdelivered; or

(ii) having regard to the circumstances of the delivery, it would be apparent to the ordinarily alert consumer that the goods were intended to be delivered to another person,

the goods become unsolicited goods only if the consumer gives notice to the apparent supplier or deliverer that the goods were misdelivered, in accordance with subsection (13), and the goods are not recovered within the following 20 business days.

(3) A person in possession of goods contemplated in this section —

(a) shall not frustrate or impede any reasonable action of the supplier or deliverer to recover the goods within the time allowed in subsection (2);

(b) is not liable to make any payment for the goods or services;

(c) is not responsible for any cost pertaining to the storage or recovery of the goods or further delivery of them to another person;

(d) is not liable for any loss of or damage to the goods during the time they are in the person's control or possession, other than loss or damage resulting from the doing by that person of a willful and unlawful act in relation to the goods.

(4) A person who fails to comply with subsection (3)(a) is liable to the supplier or deliverer, as the case may be, for any additional costs of recovery of or damage to, the goods arising as a result of anything done to frustrate or impede the lawful recovery of the goods.

(5) A person in possession of unsolicited goods may —

(a) retain the goods; or

(b) return the goods to the apparent supplier or deliverer at the risk and expense of the supplier or deliverer, as the case may be.

(6) Where a person retains any unsolicited goods under subsection (5)(a) —

(a) the property in those goods passes unconditionally to the person, subject only to any right or valid claim that an uninvolved third party may have with respect to those goods;

(b) the person who supplied or delivered those goods is liable to any other person in respect of any right or valid claim relating to such goods.

(7) A person has no obligation to pay a supplier for unsolicited goods or services, or a deliverer for the cost of delivery of any unsolicited goods.

(8) If a consumer has made any payment to a supplier or a deliverer in respect of any charge relating to unsolicited goods or services, or the delivery of any such goods, the consumer is entitled to recover that amount with interest from the date on which it was paid to the supplier.

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

(10) A person shall not, in trade or commerce, as a supplier, demand or assert any right to, or attempt to collect, any payment from another person in respect of —

(a) any charge relating to unsolicited goods left in the possession of that person or the delivery of any such goods; or

(b) unsolicited services supplied to or for the benefit of that other person,

except as provided by subsection (4).

(11) For the purposes of this section, a person shall be deemed to assert a right to a payment from another person for unsolicited goods or services if the first-mentioned person —

(a) makes a demand for the payment, or asserts a present or prospective right to the payment;

(b) threatens to bring any legal proceeding with a view to obtaining the payment;

(c) places or causes to be placed the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment;

(d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or

(e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services and not stating as prominently, or more prominently, that no claim is made to payment.

(12) In the case of a contravention constituted by asserting a right to payment from a person for unsolicited goods or services, the burden lies on the defendant to prove that the defendant had reasonable cause to believe that there was a right to payment.

(13) A notice under subsection (2)(b) shall be in writing and shall —

(a) state the name and address of the person who or which received the goods;

(b) state the address at which possession may be taken of the goods if it is an address other than stated under paragraph (a); and

(c) contain a statement to the effect that the goods are unsolicited goods.

PART V - FAIR VALUE, GOOD QUALITY AND SAFETY

Interpretation of this Part

39. (1) In this Part —

“agricultural produce” means any produce, whether of the soil or otherwise, of stock-farming or of fisheries;

“defect” in relation to any goods or a service, means —

(a) any material imperfection in the manufacture of the goods or components thereof, or in the performance of the service, that renders the goods or the results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or

(b) any characteristic of the goods or components thereof that renders the goods or components less useful, practicable or safe than persons would generally be reasonably entitled to expect in the circumstances; and

“defective” is construed accordingly;

“failure” means the inability of the goods to perform in the intended manner or to the intended effect;

“goods” means any goods, including animals or agricultural produce reared or grown for supply, and, subject to subsection (2), includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise.

“hazard” means a characteristic —

(a) that has been identified as, or declared to be, a hazard under any other law;

(b) that presents a significant risk of personal injury to any person, or damage to property, when the goods are utilised;

“manufacture”, in relation to animals or agricultural produce, includes to rear or grow;

“producer”, in relation to particular goods means —

- (a) the person who or which manufactures the goods;
- (b) in the case of a substance which has not been manufactured but has been won or abstracted, the person who or which won or abstracted the substance;
- (c) in the case of a product which has not been manufactured, won or abstracted but initial characteristics of which are attributable to an industrial or other process having been carried out, for example, in relation to agricultural produce, the person who or which carried out that process;

“unsafe” means that, due to a characteristic, failure, defect or hazard, particular goods present an extreme risk of personal injury or property damage to the consumer or to other persons;

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

Standards for performance of services

40. (1) Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall —

- (a) perform and complete that service in a timely manner and give to the consumer timely notice of any unavoidable delay in the performance of the service;
- (b) perform the service in a manner and of a quality that persons are generally entitled to expect;
- (c) where goods are required for performance of the service, use, deliver or install goods that are free of defects and are of a quality that persons are generally entitled to expect; and
- (d) return any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of supplying the service,

having regard to the circumstances of the supply and any specific criteria or condition agreed between the supplier and the consumer before or during the performance of the service.

(2) Where a supplier fails to perform a service to the standards specified in subsection (1), the supplier shall at the direction of the consumer —

- (a) remedy any defect in the quality of the services performed or the goods supplied;
or
- (b) refund to the consumer a reasonable portion of the price paid for the service performed and goods supplied, having regard to the extent of the failure.

(3) Subsection (2) does not apply where the failure of the supplier to perform a service to the standards specified in subsection (1) is due to —

- (a) the act or default of another person; or
- (b) an accident or a cause beyond the control of the supplier.

Liability for damage due to failure to perform services to required standard

41. (1) Where a consumer or other person suffers any damage wholly or partly as a result of the failure of a supplier to perform a service to the standards specified in subsection (1) of section 40 the supplier is liable to the consumer or other person for the damage.

(2) Liability under subsection (1) of this section does not arise in the circumstances referred to in section 40(3).

(3) Damage for which a person may be held liable under this section includes —

- (a) the death of, or personal injury to, any person; or
- (b) an illness of any person; or
- (c) any loss of or physical damage to any property, including land; and
- (d) any economic loss that results from damage specified in paragraphs (a), (b) or (c).

Warranty for unsuitable, defective and unsafe products

42. (1) Subject to this Part, where a consumer acquires any goods, otherwise than by way of sale by auction, —

- (a) for the purpose for which such goods are generally intended, and the goods are not reasonably fit for that purpose;
- (b) for a particular purpose, whether or not that is a purpose for which such goods are commonly supplied, that was expressly or by implication made known to the supplier of the goods, either directly or through another person from whom the consumer acquired the goods or by whom any prior negotiations in connection with the acquisition of the goods were conducted, and the goods are not reasonably fit for that purpose;
- (c) which are not of good quality, in good working order or are defective; or
- (d) which are not useable or durable for a reasonable period of time, having regard to the use,

the consumer may, within 6 months after delivery of the goods, return the goods to the supplier, without penalty and at the supplier's risk and expense, and the supplier shall refund to the consumer any costs associated with the use, installation or delivery of the goods, and at the direction of the consumer, —

- (i) unless the goods are not reasonably fit for the purpose referred to in paragraph (a) or (b), repair the goods within 60 days of the return of the goods to the supplier;

(ii) replace the goods within 7 days of the return of the goods to the supplier or such longer period as agreed by the parties; or

(iii) refund to the consumer the price paid for the goods, within 24 hours of the return of the goods to the supplier.

(2) In determining whether the matters referred to in subsection (1)(a), (b), (c) and (d) are applicable in respect of any particular goods, all the circumstances of the supply of those goods shall be taken into account, including —

(a) the manner in which and purposes for which the goods were marketed, packaged and displayed, their composition or structure, the use of any trade description or mark in relation to the goods and any instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the goods;

(b) what might reasonably be expected to be done with or in relation to the goods; and

(c) the time when the goods were produced and supplied.

(3) For the purposes of the application of subsection (2) —

(a) it is irrelevant whether a product failure or defect was latent or apparent, or whether it could have been detected by a consumer before taking delivery of the goods; and

(b) a product failure or defect may not be inferred in respect of particular goods solely on the grounds that better goods have subsequently become available from the same or any other producer or supplier.

(4) Subsection (1)(a), (b) and (c) do not apply to a transaction if the consumer —

(a) has been expressly informed that particular goods were offered in a specific condition; and

(b) has expressly agreed to accept the product in that condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

(5) Subsection (1) does not apply where the goods have been altered contrary to the instructions, or after leaving the control of the supplier.

(6) If a supplier repairs any goods or any component of any such goods pursuant to subsection (1) (i), and within 3 months of that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier shall —

(a) replace the goods; or

(b) refund to the consumer the price paid by the consumer for the goods.

(7) The warranty imposed by this section and the right to return any goods or to a refund of the price of the goods are in addition to —

(a) any other warranty or condition imposed by any other written law; and

(b) any warranty or condition stipulated by the supplier.

Warranty on repaired goods

43. (1) A person who carries on any repair or maintenance work warrants any new or reconditioned part installed during the course of any such work and the labour required to install it, for a period of 6 months after the date of installation or such longer period as the supplier may specify in writing.

(2) A warranty in terms of this section —

(a) is concurrent with any other implied or express warranty;

(b) is void if the consumer has subjected the part, or the goods or property in which it was installed, to misuse or abuse; and

(c) does not apply to ordinary wear and tear, having regard to the circumstances in which the goods are intended to ordinarily be used.

Warning concerning fact and nature of risks

44. (1) The supplier of any activity or facility that is subject to any risk —

(a) of an unusual character or nature;

(b) which a consumer could not reasonably be expected to be aware of or notice, or which an ordinarily alert consumer could not reasonably be expected to notice or contemplate, in the circumstances; or

(c) that could result in serious injury or death,

shall specifically draw the fact, nature and potential effect of that risk to the attention of consumers by means of a notice to the consumer or a provision in a consumer agreement and in a manner that satisfies the requirements of subsections (2), (3) and (4), and the consumer shall have assented to that provision or notice by signing or initialling the provision or otherwise acting in a manner consistent with acknowledgement of the notice or acceptance of the provision and awareness of the risk.

(2) A provision or notice referred to in subsection (1) shall be written in plain language in accordance with section 19.

(3) The fact, nature or effect of the provision or notice referred to in subsection (1), shall be drawn to the attention of the consumer —

(a) in a conspicuous manner and form that is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances; and

(b) before the earlier of the time at which the consumer —

(i) enters into the agreement, begins to engage in the activity, or enters or gains access to the facility; or

(ii) is required or expected to offer consideration for the agreement.

(4) The consumer shall be given an adequate opportunity in the circumstances to receive and comprehend the provision or notice referred to in subsection (1).

(5) A person who packages any hazardous or unsafe goods for supply to consumers shall display on or within that packaging a notice that complies with the requirements of section 19, and any other applicable standards, providing the consumer with adequate instructions for the safe handling and use of those goods.

(6) Subsection (5) does not apply to hazardous and unsafe goods to the extent that a substantially similar label or notice has been applied in terms of any other written law.

(7) A person who installs any hazardous or unsafe goods referred to in subsection (5) for a consumer, or supplies any such goods to a consumer in conjunction with the performance of any services, shall give the consumer the original copy of —

(a) any document required in terms of that subsection; or

(b) any similar document applied to those goods in terms of any written law.

Liability for damage caused by unsafe, unsuitable and defective goods

45. (1) Subject to this Part, where any damage is caused wholly or partly by —

(a) any unsafe goods;

(b) a product's failure or defect, or a hazard in any goods; or

(c) inadequate instructions or warning provided to the consumer pertaining to any hazard arising from or associated with the use of any goods,

every person to whom or which subsection (3) applies is liable for the damage, irrespective of whether the damage resulted from any negligence on the part of any of those persons.

(2) The goods referred to in subsection (1) include any such goods which are applied, supplied, installed or to which access is provided in conjunction with the performance of services.

(3) This subsection applies to —

(a) the producer of the goods;

(b) any person who or which, by putting the person's name on the product or using a trade mark or other distinguishing mark in relation to the goods, holds the person out to be the producer of the goods;

(c) any person who or which in the course of the person's business imports the goods into Seychelles, to supply them to another person.

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

(5) Liability of a particular person under this section does not arise if —

(a) the unsafe product's characteristic, failure, defect or hazard that causes the damage is attributable to compliance with —

(i) a requirement imposed by or under any laws of Seychelles; or

(ii) a mandatory standard for the product;

(b) the unsafe product's characteristic, failure, defect or hazard did not exist in the goods at the time they were supplied to another person alleged to be liable or to the person who suffered the damage;

(c) the person did not at any time supply the product to another person;

(d) the following conditions are satisfied:

(i) that the only supply of the product to another by the person was otherwise than in the course of business of that person; and

(ii) that subsection (3) does not apply to the person, or applies to that person by virtue only of things done otherwise than with a view to profit;

(e) the state of scientific and technical knowledge, at the time that the person supplied the goods to another person alleged to be liable, or to the person who suffered the damage, was not such that a producer of goods of the same description as the goods in question, might be expected to have discovered the unsafe product's characteristic, failure, defect or hazard, if it had existed in the producer's goods while they were under the producer's control; or

(f) the unsafe product's characteristic, failure, defect or hazard —

(i) constituted an unsafe product's characteristic, failure, defect or hazard in a product, in this paragraph referred to as "the subsequent product", in which the goods in question had been comprised; and

(ii) was wholly attributable to the design of the subsequent product, the markings on or accompanying the subsequent product or to compliance by the producer of the goods in question with instructions or warnings given by the producer of the subsequent product.

(6) Damage for which a person may be held liable under this section includes —

(a) the death of or personal injury to any person; or

(b) an illness of any person; or

(c) any loss of or physical damage to any property, including land; and

(d) any economic loss that results from damage specified in paragraphs (a), (b) or (c).

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

(8) For the purposes of subsection (7), the material facts about any damage to any property are such facts about the damage as would lead a reasonable person with an interest in the property to consider the damage sufficiently serious to justify the person's instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(9) For the purposes of subsection (8), a person's knowledge includes knowledge which the person might reasonably have been expected to acquire —

(a) from facts observable or ascertainable by the person; or

(b) from facts ascertainable by the person with the help of appropriate expert advice which it is reasonable for the person to seek,

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

Unidentified manufacturer

46. (1) Where a person is liable by virtue of section 45, a person who or which supplies the goods which gave rise to the liability, whether to the person who or which suffered the damage, to the producer of a product in which the goods in question are comprised, or to any other person, is liable for the damage if —

(a) the person who or which suffered the damage serves a written request to the supplier to identify —

(i) one or more of the persons, whether still in existence or not, to whom or which sections 45(3) applies, in relation to the goods; or

(ii) the person who supplied the goods to the supplier on whom the request is served;

(b) that request is made within a reasonable time after the damage occurs; and

(c) the supplier fails, within 30 days after being served with the request, either to comply with the request or to identify the person who or which supplied the goods to the supplier.

(2) For the purposes of this section, a supplier of services who, in conjunction with the performance of those services, applies, supplies, installs or provides access to any goods, is regarded as a supplier of those goods to the consumer.

Prohibition of exclusion of liability

47. The liability of a person by virtue of this Part to a person who has suffered damage caused wholly or partly by an unsuitable or defective product, or to a dependant or relative of such a person, shall not be limited or excluded by any contract term, notice or any other written law.

Jurisdiction and time limit for bringing action

48. (1) Subject to subsection (2), the Supreme Court has jurisdiction to hear and determine a claim for damages instituted under sections 41 and 45.

(2) The Commission may hear and determine a claim instituted under sections 41 and 45 for loss of or physical damage to property but the Commission shall not hear or determine any claims for death or personal injury.

(3) A claim for damages under section 41 and 45 shall not be instituted —

(a) before the Commission or the Supreme Court more than 5 years after the occurrence of the damage;

(b) before the Supreme Court if a claim for substantially the same nature of damages has been dealt with by the Commission;

(c) before the Commission if a claim for substantially the same nature of damages has been determined by the Supreme Court.

PART VI - CONSUMER SAFETY

Interpretation of this Part

49. (1) In this Part —

“safe” in relation to any goods, means that there is no risk, or no risk apart from one reduced to a minimum, that any of the following will, whether immediately or after a definite or indefinite period cause the death of, or any personal injury to, any person —

(a) the goods;

(b) the keeping, use or consumption of the goods;

(c) the assembly of any of the goods which are, or are to be, supplied unassembled;

(d) the emission or leakage from the goods or from anything else as a result of the keeping, use or consumption of the goods;

(e) the reliance on the accuracy of any measurement, calculation or other reading made by, or by means of, the goods.

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

(a) the keeping, use or consumption of the goods by the persons by whom and in all or any of the ways or circumstances in which they might reasonably be expected to be kept, used or consumed; and

(b) the keeping, use or consumption of the goods alone or with other goods with which they might reasonably be expected to be kept, used or consumed.

General safety requirement

50. (1) A person shall not, in trade or commerce —

- (a) supply any consumer goods which fail to comply with the general safety requirement;
- (b) offer or agree to supply any goods referred to in paragraph (a); or
- (c) expose or possess any goods referred to in paragraph (a).

(2) For the purposes of this section, consumer goods fail to comply with the general safety requirement if they 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 would be marketed, their composition or structure, the use of any mark in relation to the goods and any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods;
- (b)
 - (i) any mandatory standard specification declared by the Seychelles Bureau of Standards; or
 - (ii) any standards of safety published by any person or authority and having legal effect,either for goods of a description which applies to the goods in question or for matters relating to goods of that description; or
- (c) the existence of any means by which it would have been reasonable for the goods to have been made safer.

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

- (a) anything which is shown to be attributable to compliance with any requirement imposed by or under any written law applicable in Seychelles; or
- (b) any failure to do more in relation to any matter than is required by —
 - (i) any mandatory standard specification referred to in subsection (2)(b)(i) or any standards of safety referred to in subsection (2)(b)(ii) and imposing requirements with respect to that matter; or
 - (ii) any provision of any enactment imposing such requirements with respect to that matter.

(4) In any proceedings against a person for contravention of subsection (1) it is a defence for that person to show —

- (a) that the person reasonably believed that the goods would not be used or consumed in Seychelles; or
- (b) that both of the following conditions are satisfied —

(i) that the person supplied the goods, offered or agreed to supply them or, exposed or possessed them for supply in the course of carrying on a retail business;

(ii) that, at the time the person supplied the goods or agreed or offered to supply them, or exposed or possessed them for supply, the person neither knew nor had reasonable grounds for believing that the goods failed to comply with the general safety requirement.

(5) For the purposes of subsection (4)(b), goods are supplied in the course of carrying on a retail business if —

(a) whether or not they are acquired for a person's private use or consumption, they are supplied in the course of carrying on a business of supplying consumer goods to persons who generally acquire them for private use or consumption; and

(b) the descriptions of goods which are supplied in the course of that business do not, to a significant extent, include manufactured or imported goods which have not previously been supplied in Seychelles.

Liability for damages caused by goods not complying with general safety requirement

51. Where a person supplies goods in contravention of section 50(1) and —

(a) another person suffers loss or damage by reason of a defect in, or a dangerous characteristic of the goods, or by reason of not having particular information in relation to the goods; and

(b) that other person would not have suffered the loss or damage if the goods had complied with the general safety requirement,

the first mentioned person shall be liable for the loss or damage caused to that other person.

Prohibition and warning notices

52. (1) The Commission may —

(a) serve on any person a notice prohibiting that person, except with the Commission's consent, from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, any goods which the Commission considers are unsafe and which are described in the notice;

(b) serve on any person a notice requiring that person at the person's own expense to publish, in a form and manner and on occasions specified in the notice, a warning about goods which the Commission considers are unsafe, being goods which that person supplies or has supplied and which are described in the notice.

(2) Regulations made under section 80 may make provision with respect to prohibition notices and warning notices, and may prescribe the manner in which information be given to any person.

(3) A consent given by the Commission for the purposes of a prohibition notice under subsection (1)(a) may impose such conditions on the doing of anything for which the consent is required as the Commission considers appropriate.

(4) A person who contravenes a prohibition notice or a warning notice commits an offence and is liable on conviction to be punished under section 70.

Notice to produce information

53. (1) If the Commission considers that, for the purpose of deciding whether —

- (a) regulations under section 80 need to be made, varied or revoked; or
- (b) a prohibition notice needs to be served, varied or revoked; or
- (c) a warning notice needs to be served or revoked,

the Commission needs information which another person is able to furnish, it may serve on that other person a notice under this section.

(2) A notice served on a person under this section may require that person —

- (a) to furnish to the Commission, within a period specified in the notice, such information as is so specified;
- (b) to produce such records as are specified in the notice at a time and place so specified, and to permit a person appointed by the Commission for the purpose to take copies of the records at that time and place.

(3) A person who —

- (a) fails, without reasonable cause, to comply with a notice served on the person under this section; or
- (b) in purporting to comply with a requirement which by virtue of paragraph (a) of subsection (2) is contained in such a notice —
 - (i) furnishes information which the person knows is false in a material particular; or
 - (ii) recklessly furnishes information which is false in a material particular,

commits an offence.

Compulsory recall of goods

54. (1) Where a person, in trade or commerce, supplies goods that are intended to be used or are of a kind likely to be used by a consumer and —

- (a) it appears to the Commission that the goods are of a kind which will or may cause injury to any person; or
- (b) the goods are of a kind in respect of which there are standards referred to in section 50(2)(b)(i) or (ii), and the goods do not comply with those standards; or

(c) the goods are of a kind in relation to which there is in force a notice under section 52(1)(a) or (b), and it appears to the Commission that the supplier has not taken satisfactory action to prevent the goods causing injury to any person,

the Commission shall by notice in writing served on the supplier, which notice shall be published in at least one daily newspaper, require the supplier of the goods to do one or more of the following —

(i) take action within the period specified in the notice to recall the goods;

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

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

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

(cc) procedures for disposing of the goods specified in the notice;

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

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

(bb) replace the goods;

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

within the period specified in the notice.

(2) Prior to the publication by the Commission of the notice referred to in subsection (1), the Commission shall notify its intention to the affected party and give the party an opportunity to be heard as to why such notice should not be published and shall inform the party of its decision within 10 days of the hearing.

(3) The affected party referred to in subsection (2) may appeal against the decision of the Commission made under that subsection in accordance with procedures prescribed by Regulations.

(4) Where the supplier under subsection (1) undertakes to repair or replace goods, the supplier shall cause the goods to be repaired or replaced so that any defect in the goods specified in the notice under that subsection is remedied or the goods have been replaced and the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

Compliance with notice

55. Where a notice under section 54(1) is in force in relation to a person, the person —

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

(b) shall not, in trade or commerce —

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

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

Liability for loss or damage due to non-compliance

56. Where a person contravenes section 55 by —

(a) supplying goods of a kind in relation to which a notice under section 54(1) is in force; or

(b) failing to comply with the requirements of such a notice,

and another person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods, the first mentioned person shall be liable to that other person who has suffered the loss or damage.

Powers of Commission

57. (1) Where the Commission or an officer authorised by the Commission for the purposes of this section, in this section referred to as an “authorised officer”, has reason to believe that a person who, in trade or commerce, supplies consumer goods of a kind which will or may cause injury to any other person, is capable of furnishing information, producing documents or evidence relating to goods of that kind, the Commission or the authorised officer may, by notice in writing served on that person, require the person —

(a) to furnish to the Commission or to an authorised officer, within such reasonable time as is specified in the notice, any such information;

(b) to produce to the Commission or to an authorised officer, in accordance with such reasonable requirements as are specified in the notice, any such documents; or

(c) in person or by the person's representative to appear before the Commission or an authorised officer at such reasonable time and place as are specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(2) Where an authorised officer has reason to believe that consumer goods will or may cause injury to a person, the authorised officer may, for the purposes of ascertaining whether goods of that kind will or may cause injury to any person, enter any premises in or from which the authorised officer has reason to believe that a person supplies goods of that kind in trade or commerce, and —

(a) inspect goods of that kind;

(b) take samples of goods of that kind;

(c) inspect any documents relating to goods of that kind and make copies of, or take extracts from, those documents;

(d) inspect equipment used in the manufacturing, processing or storage of goods of that kind.

(3) The powers of an authorised officer under subsection (2) shall not be exercised except —

(a) pursuant to an authorisation given by the Commission under subsection (4); or

(b) in circumstances where the exercise of those powers is required without delay in order to protect life or ensure public safety.

(4) The Commission may authorise an authorised officer with such assistance as the officer thinks necessary to enter the premises specified in the authorisation and to exercise the powers specified in subsection (2) in relation to those premises.

(5) A person who —

(a) refuses or fails to comply with a notice under this section to the extent the person is capable of complying with it;

(b) in purported compliance with such a notice furnishes information or gives evidence that, to the person's knowledge, is false or misleading in a material particular; or

(c) refuses or fails to provide an authorised officer acting under subsection (2) with all reasonable facilities and assistance for the exercise of the authorised officer's powers under that subsection,

commits an offence punishable on conviction under section 70.

(6) Any information furnished, evidence given or document produced by a person under this section, shall not be admissible in evidence against that person —

(a) in any proceedings instituted by that person; or

(b) in any other proceedings, except proceedings against that person for a contravention of this section.

Voluntary recall to be notified

58. (1) Where a person voluntarily takes action to recall goods because the goods will or may cause injury to any person, that person shall, within 2 days after taking that action, give notice in writing to the Commission —

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

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

(2) The Commission may by notice in writing served on the person who or which has served it a notice under subsection (1) require that person to disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice —

- (a) the goods that are subject to recall; and
- (b) the nature of the defect in, or dangerous characteristic of, the goods specified in the notice; and
- (c) the circumstances in which the use of the goods is dangerous,

and where a person fails to comply with a notice served on it by the Commission under this subsection, the Commission may make the disclosure referred to in this subsection.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to be sentenced under section 70.

Liability of insurer in certain cases

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

- (a) the recall of goods supplied or proposed to be supplied by that person; or
- (b) that person's liability with respect to possible defects in goods supplied or proposed to be supplied by that person,

shall not be affected by reason only that that person gives to the Commission or to an authorised officer information relating to any goods supplied or proposed to be supplied by that person.

PART VII - INDUSTRY CODES

Interpretation of this Part

60. In this Part —

“applicable industry code”, in relation to a person who is a participant in an industry, means —

- (a) the provisions of any mandatory industry code relating to the industry; or
- (b) the provisions of any voluntary industry code relating to the industry that bind that person;

“consumer”, in relation to an industry, means a consumer of goods or services supplied by participants in that industry;

“industry” includes franchising, and franchisors and franchisees are participants in the industry of franchising, whether or not they are also participants in another industry;

“industry code” means a code regulating the conduct of participants in an industry towards other participants in the industry or towards consumers in the industry;

“mandatory” and “voluntary”, in relation to an industry code or specified provisions of such a code, mean respectively a code or specified provisions of a code that is or are declared by

regulations made under section 62 to be mandatory or voluntary, as the case may be, in relation to that industry;

“participant” means a person participating in, or conducting business within an industry as a supplier.

Contravention of industry codes

61. A participant in an industry shall not, in trade or commerce, contravene an applicable industry code.

Industry codes

62. The Minister may, by regulations —

- (a) prescribe an industry code, on the recommendation of the Commission, in accordance with section 63;
- (b) withdraw all or part of an industry code prescribed under paragraph (a) in accordance with section 64;
- (c) declare an industry code, or specified provisions of an industry code, to be mandatory or voluntary;
- (d) for a voluntary industry code, or specified provisions of a voluntary industry code, specify—
 - (i) the method by which a person is bound by the code or those provisions; and
 - (ii) the method by which a person ceases to be so bound, whether by reference to provisions of the code or otherwise;
- (e) make such provision as the Commission recommends for the registering of persons bound or otherwise affected by an industry code.

Procedure for recommending industry codes

63. (1) For the purposes of section 62(a), the Commission, acting on its own initiative, or in response to a proposal from persons conducting business within a particular industry, may recommend an industry code to the Minister after —

- (a) publishing the proposed industry code for public comment;
- (b) considering any submissions made during the public comment period;
- (c) consulting with —
 - (i) persons conducting business within the relevant industry;
 - (ii) relevant accredited consumer protection groups;
- (d) making any revisions to the proposed industry code as published for comment.

(2) An industry code recommended under subsection (1) may include any existing scheme that has been voluntarily established within an industry by the participants of that industry to regulate the conduct of participants within that industry.

Industry codes to be consistent with purposes and policies of this Act

64. An industry code shall be consistent with the purposes and policies of this Act and the Commission —

(a) shall monitor the effectiveness of any industry code relative to such purposes and policies; and

(b) shall at intervals of at least 5 years review the effectiveness of any industry code relative to such purposes and policies; and

(c) may, after conducting a review under paragraph (b), and taking the steps required under section 63(1), make further recommendations to the Minister including a recommendation to amend or withdraw all or part of an industry code prescribed under section 62(a).

Power of Commission to require information

65. The Commission may reasonably require persons conducting business within the relevant industry to provide the information necessary for the purposes of —

(a) monitoring under section 64(a);

(b) a review under section 64(b).

Binding force of industry codes

66. For the purposes of this Part —

(a) a mandatory industry code, or provisions of such a code, binds or bind any and all participants within that industry;

(b) a voluntary industry code, or provisions of such a code, binds or bind a person who has agreed, as prescribed, to be bound by the code or those provisions and who has not subsequently ceased, as prescribed, to be bound by it or them.

PART VIII - PENALTIES AND REMEDIES

Penalties for breach of provisions of this Act

67. (1) Where the Commission determines after a formal hearing that a person has contravened any requirement or prohibition contained in sections 19 to 38 the Commission may order the person —

(a) in the case of an individual, to pay a penalty of a sum not exceeding R100,000; or

(b) in the case of a person other than an individual, to pay a penalty of a sum not exceeding R400,000.

(2) Where a body corporate is found to be in breach of this Act, any director or officer of the body corporate who knowingly authorised, permitted or acquiesced in the act or omission that constituted the breach shall also be liable to a penalty of a sum not exceeding R100,000.

(3) In determining an appropriate penalty for the purposes of this section, the Commission shall have regard to the following —

- (a) the nature, duration, gravity and extent of the contravention;
- (b) any loss or damage suffered as a result of the contravention;
- (c) the behaviour of the respondent;
- (d) the market circumstances in which the contravention took place;
- (e) the level of profit derived from the contravention;
- (f) the degree to which the respondent cooperated with the Commission; and
- (g) whether the respondent has previously been found in contravention of this Act.

(4) Penalties collected by the Commission shall be paid into the Consolidated Fund.

Directions

68. (1) In addition to a penalty imposed under section 67, the Commission —

- (a) shall where applicable, direct the person to cease the conduct constituting the contravention within a specified period;
- (b) may require the person to take such further action as, in its opinion, is necessary.

(2) A direction given under subsection (1) shall be in writing.

Offences by body corporate

69. (1) Where in a proceeding under this Act, in respect of any conduct engaged in by a body corporate, it is necessary to establish the intention of the body corporate, it is sufficient to show that a director of the body corporate by whom the conduct was engaged in had that intention.

(2) Any conduct engaged in on behalf of a body corporate by a director of the body corporate or by any other person, at the direction or with the consent or agreement, whether express or implied, of a director of the body corporate shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

Enforcement of direction, order or undertaking

70. A person who fails or refuses to comply with an order, direction or undertaking of the Commission or order or direction of the Tribunal, commits an offence and is liable on conviction —

(a) where the person is an individual, to a fine not exceeding R100,000 or to imprisonment for a term not exceeding 2 years, or to both;

(b) where the person is a person other than an individual to a fine not exceeding R400,000.

PART IX - ENFORCEMENT

Enforcement functions of Commission

71. The Commission is responsible for enforcing this Act in accordance with this Part.

Compliance notice

72. (1) Subject to subsection (2), where the Commission has reasonable grounds to believe that a person has engaged in prohibited conduct, the Commission may issue a compliance notice in the prescribed form to that person.

(2) A compliance notice issued under subsection (1) shall set out —

(a) the person to whom the notice applies;

(b) the provision of this Act that has been contravened;

(c) details and extent of the non-compliance;

(d) any action that is required to be taken and the period within which that action should be taken; and

(e) any penalty that may be imposed in terms of this Act if that action is not taken.

(3) A compliance notice issued under subsection (1) remains in force until —

(a) it is set aside by the Tribunal or a Court upon a review of a decision of the Tribunal concerning the notice; or

(b) the Commission issues a compliance certificate in accordance with subsection (4).

(4) If the requirements of a compliance notice issued under subsection (1) have been satisfied, the Commission shall issue a compliance certificate.

(5) A person to whom a compliance notice has been issued, who fails to comply with the notice commits an offence and is liable on conviction to be sentenced under section 70.

Objection to compliance notice

73. (1) A person issued with a notice under section 72 may apply to the Tribunal in the prescribed manner and form to review that notice within —

(a) 15 business days of receiving that notice; or

(b) such longer period as may be allowed by the Tribunal on good cause shown.

(2) After considering any representations by the applicant and any other relevant information, the Tribunal may confirm, modify or cancel the whole or part of a notice.

(3) If the Tribunal confirms or modifies the whole or part of a notice, the applicant shall comply with that notice as confirmed or modified, within the time period specified by it.

Interim measures

74. (1) A person who has made a complaint to the Commission, may apply to the Commission for an interim order in respect of that complaint and the Commission may grant such an order —

- (a) if there is evidence that the allegations may be true; and
- (b) an interim order is reasonably necessary to prevent serious, irreparable damage to that person; and
- (c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings.

(2) An interim order made under this section shall not extend after the earlier of —

- (a) the conclusion of a hearing of a complaint; or
- (b) the date that is 6 months after the date of issue of the interim order.

(3) If an interim order has been granted, and a hearing into that matter has not been concluded within 6 months of the date of that order, the Commission may on good cause shown extend the interim order for a further period not exceeding 6 months.

Undertakings

75. (1) The Commission may accept a written undertaking given by a person for the purposes of this section in connection with a matter relating to the Commission's functions under this Act.

(2) A person who gives an undertaking under subsection (1) may withdraw or vary the undertaking with the consent of the Commission.

(3) If on an application to withdraw or vary an undertaking, the Commission is satisfied that the person who gave the undertaking has breached a term of the undertaking, the Commission may make all or any of the following orders —

- (a) an order directing the person to comply with the terms of the undertaking;
- (b) an order directing the person to pay to the Commission a penalty of an amount up to the amount of such financial benefit that the person has obtained and is reasonably attributable to the breach;
- (c) an order that the Commission considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the Commission considers appropriate.

Other orders

76. (1) Where, in any proceedings under this Act, the Commission finds that a person, whether or not that person 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;
- (b) aiding, abetting, counselling, or procuring such a contravention;
- (c) inducing by threats, promises or otherwise such a contravention;
- (d) being in any way directly or indirectly knowingly concerned in, or party to a contravention by any other person; or
- (e) conspiring with any other person to commit a contravention,

of a provision of this Act, the Commission may whether or not it makes any order under this Part of this Act, make all or any of the orders referred to in subsection (2).

(2) For the purposes of subsection (1), the Commission may make the following orders —

- (a) an order declaring 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 of a collateral arrangement relating to such a contract, to be void and, if the Commission thinks fit, to have been void ab initio or at all times on and after such date before the date on which the order is made;
- (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Commission thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date or before the date on which the order is made;
- (c) an order directing the person who engaged in the conduct referred to in subsection (1) to refund money or return property to the person who suffered the loss or damage;
- (d) an order directing the person who engaged in the conduct referred to in subsection (1) to pay to the person who suffered the loss or damage the amount of the loss or damage;
- (e) an order directing the person who engaged in the conduct referred to in subsection (1), at that person's own expense, to repair, or provide parts for, goods supplied by the person who engaged in the conduct to the person who suffered, or is likely to suffer, the loss or damage;
- (f) an order directing the person who engaged in the conduct referred to in subsection (1), at that person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.

(3) An application for an order under subsection (1) may be made at any time within 5 years from the time when the matter giving rise to the application occurred.

(4) An order made under subsection (2)(a) or (b) shall not prevent proceedings being instituted or commenced under this Act.

PART X - MISCELLANEOUS

Appeals

77. (1) A party dissatisfied with an order or direction of the Commission may appeal to the Tribunal against or with respect to the order or direction.

(2) An appeal under subsection (1) shall be prosecuted in the form and manner provided by the Tribunal.

(3) A person dissatisfied with an order or direction of the Tribunal may appeal to the Supreme Court against, or with respect to, the order or direction.

(4) Part VIII of the Fair Trading Commission Act, applies to an appeal to the Supreme Court.

Relationship with regulatory and other authorities

78. (1) The Commission may —

(a) liaise with any regulatory authority on matters of common interest, and without limiting the generality of this power, may require necessary information from, exchange information with, and receive information from any such authority relating to —

(i) matters of common interest; or

(ii) a specific complaint or investigation;

(b) negotiate and enter into agreements with any regulatory authority which exercises jurisdiction over consumer matters within a particular industry or sector, so as to —

(i) co-ordinate and harmonise the exercise of jurisdiction over such matters within that industry or sector; and

(ii) to ensure the consistent application of this Act.

(2) The Commission may liaise with any foreign or international authority having similar functions and powers as those of the Commission.

Promotion of awareness in consumer protection matters

79. The Commission is responsible for promoting awareness of consumer protection matters by —

(a) implementing education and information measures to develop public awareness of the provisions of this Act; and

(b) providing guidance to the public by issuing explanatory notices outlining its procedures.

Regulations

80. The Minister may, in consultation with the Commission, make regulations under this section

- (a) generally for carrying the provisions of this Act into effect;
- (b) prescribing anything which by this Act is permitted or required to be prescribed; and
- (c) imposing penalties for breach of the regulations made under the Act.

Consumer Protection Act 1977 repeal

81. The Consumer Protection Act 1977* is repealed.

Note: There is and was no Consumer Protection Act 1977 in Seychelles Law. The Act that section 81 was supposed to repeal was the Consumer Protection Act 1997. Accordingly, as at 6 January 2014, it is prudent to operate on the assumption that both the Consumer Protection Act 1997 and the Consumer Protection Act 2010 remain in existence.

SCHEDULE - CONTRACT TERMS DEEMED UNFAIR IF NOT INDIVIDUALLY NEGOTIATED

(Section 15(4))

1. Any contract term which has the object or effect of —
- (a) excluding or limiting the legal liability of a supplier resulting from an act or omission of that supplier, in respect of the quality of product or service;
 - (b) inappropriately excluding or limiting the legal rights of the consumer vis-a-vis the supplier or another party in the event of total or partial non-performance or inadequate performance by the supplier of any of the contractual obligations of the supplier, including the option of off-setting a debt owed to the supplier against any claim which the consumer may have against the supplier; or
 - (c) making an agreement binding on the consumer whereas provision of services by the supplier is subject to a condition the realisation of which depends on the supplier's will alone; or
 - (d) permitting the supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the supplier where the latter is the party cancelling the contract; or
 - (e) requiring the consumer to pay a disproportionately high sum in compensation if the consumer fails to fulfil his or her obligation; or
 - (f) authorising the supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the supplier to retain the sums paid for services not yet supplied by the supplier where it is the supplier who dissolves the contract; or

- (g) enabling the supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so; or
- (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his or her desire not to extend the contract is unreasonably early; or
- (i) irrevocably binding the consumer to terms with which the consumer had no real opportunity of becoming acquainted before the conclusion of the contract; or
- (j) enabling the supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract; or
- (k) enabling the supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided; or
- (l) providing for the price of goods to be determined at the time of delivery or allowing a supplier to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded; or
- (m) giving the supplier the right to determine whether the goods or services supplied by the supplier are in conformity with the contract, or giving the supplier the exclusive right to interpret any term of the contract; or
- (n) limiting the supplier's obligation to respect commitments undertaken by the supplier's agents, or making the supplier's commitments subject to compliance with a particular formality; or
- (o) obliging the consumer to fulfil all his or her obligations where the supplier does not perform his or her obligations; or
- (p) giving the supplier the possibility of transferring the supplier's rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement; or
- (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to the consumer or imposing on the consumer a burden of proof which, according to the applicable law, should lie with another party to the contract.

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

3. Paragraph 1(j) does not apply to a term under which a supplier of financial services reserves the right to alter the rate of interest payable by or due to the consumer, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties at the earliest opportunity and that the latter are free to dissolve the contract immediately.

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

5. Sub-paragraphs (g), (j) and (l) of paragraph 1 do not apply to —

(a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the supplier does not control; or

(b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

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

NO SUBSIDIARY LEGISLATION
