

THE CONSUMER PROTECTION BILL

(No. of 2013)

Explanatory Memorandum

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

The Bill, *inter alia*, provides for –

- (a) the setting up of a National Consumer Council whose overall objective shall be to promote consumer rights;
- (b) the protection of consumer from discriminatory practices;
- (c) the consolidation of the existing Consumer Protection Act and the Fair Trading Act;
- (d) a framework whereby registered associations or the Permanent Secretary may institute civil proceedings on behalf of a consumer;
- (e) a system of fixed penalty with respect to contraventions of specified offences under consumer protection laws;
- (f) the Permanent Secretary to issue prohibition or enforcement notices where this Act is being, or is likely to be contravened;
- (g) the setting up of a Consumer Dispute Resolution Commission with a view to providing a mediation and conciliation service to consumers and traders;
- (h) the Minister to issue recall notices where goods do not comply with safety standards;
- (i) authorised officers to swear an information and conduct prosecutions before the District and Intermediate Courts in connection with breaches of consumer protection law s;
- (j) authorised officers to be vested with enhanced and wider powers of investigation, search and seizure;
- (k) the prohibition on traders to charge unfair prices, or engage in unconscionable and other prohibited conducts or activities;
- (l) the liability of manufacturers with respect to express warranties;

- (m) terms to be implied in consumer agreements for the supply of goods and services, and the remedies in connection with breaches thereof;
- (n) the prohibition against unfair terms in consumer agreements; and
- (o) related matters.

S.A. SAYED-HOSSEN
*Minister of Industry, Commerce
and Consumer Protection*

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THE CONSUMER PROTECTION BILL
(No. of 2013)

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A BILL

To consolidate and widen the scope of consumer protection legislation so as to make better provision for the promotion and

protection of consumer rights and welfare

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Consumer Protection Act 2013.

2. Interpretation

In this Act –

“ authorised officer” means an officer designated under section 18;

“ Certificate of Warranty” means a certificate issued under section 52;

“ commercial practice” includes –

- (a) any practice carried out in connection with the production of goods and supply of goods and services, whether by way of sale, advertisement, marketing or otherwise, and which not exclusively, relates to –
 - (i) the terms and conditions, whether as to price or otherwise, on or subject to which goods or services are supplied;
 - (ii) the manner in which those terms and conditions are communicated to consumers;
 - (iii) the methods of promotion of the supply of goods and services;
 - (iv) the methods of salesmanship employed in dealing with consumers;
 - (v) the way in which goods are packed, bottled, canned, labelled, marked or otherwise prepared for the purpose of being supplied;
 - (vi) the methods of demanding or securing payment for goods or services supplied; or
 - (vii) any matter connected with the practices specified in subparagraphs (i) to (vi);
- (b) any other practice that is so prescribed;

“Commission” means the Consumer Dispute Resolution Commission referred to in section 8;

“consumer” –

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

“consumer agreement” means an agreement between a trader and a consumer for the supply of goods and services, and includes a credit sale agreement or a hire purchase agreement;

“consumer protection law” includes the Consumer Protection (Price and Supplies Control) Act;

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

“Court” means the District, Intermediate or Supreme Court, as the case may be;

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

“defect” with respect to goods, includes –

- (a) any fault or malfunction which has not arisen –
 - (i) due to reasonable wear and tear through usage or the passage of time; or
 - (ii) the reasonable and proper use of the goods;
- (b) any non-compliance with a safety standard or other prescribed standard;

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

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

"enforcement notice" means a notice referred to under section 64;

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

“goods” means, unless otherwise provided for in this Act, any tangible item or article which is the subject of trade or business;

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

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

“information standard” means an information standard set in accordance with section 29;

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

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

“member” includes the Chairperson, any Vice-Chairperson and members of the Commission;

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

“NIC number” has the same meaning as in the Civil Status Act;

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for the subject of Consumer Protection;

“prize competition” means a lottery organised under Part XVII of the Gambling Regulatory Authority Act;

"prohibition notice" means a notice referred to under section 65;

“promotion” , in relation to the supply of goods and services, means promotion whether by way of advertising, canvassing, labelling, organising of prize competitions or otherwise;

“pyramid promotional scheme” means a scheme by which a person gives consideration in money or money’s worth, or makes a gift in money or money’s worth, for an opportunity to receive compensation derived primarily from the introduction of other persons into the scheme rather than from the supply or consumption of a product;

“recall notice” means a notice issued under section 33;

“record” includes any books or documents and any record in non-documentary form;

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

“registered association” means an association registered under the Registrar of Associations Act, and whose objects include the promotion and protection of consumer rights;

“safety standard” means, unless the context otherwise requires, any prescribed standard relating to the safety of goods, or where no such standard has been prescribed, a reasonable standard of safety with respect to such goods;

“services” do not, unless otherwise provided in this Act, include the services specified in the First Schedule;

“supply” –

(a) includes an offer to supply; and

(b) in relation to goods, includes –

(i) the supply or resupply by way of sale, trade, distribution, exchange, lease, a credit sale agreement, hire or a hire purchase agreement; and

(ii) the giving of goods as a prize or gift;

“tobacco” includes –

(a) any tobacco or tobacco product within the meaning of the National Agricultural Products Regulatory Office Act 2013; and

(b) any article or substance containing tobacco and intended for oral or nasal use;

“trade” includes –

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

(b) the supply of services;

“trader” –

(a) means a person engaged in any trade; and

(b) includes the agent of any such person;

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

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

3. Application of Act

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

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

(3) This Act shall not bind the State.

PART II – CONSUMER PROTECTION INSTITUTIONS

Sub-Part I – National Consumer Council

4. National Consumer Council

There shall be, for the purposes of this Act, a National Consumer Council whose object shall be to promote and protect consumer rights.

5. Functions of Council

The Council shall –

- (a) encourage consumer participation in decision-making processes concerning the market place and the interests of consumers;
- (b) advise the Minister on research to be conducted on consumer related issues;
- (c) formulate and submit to the Minister policy and legislative proposals in the interest of consumers;
- (d) advise the Minister on consumer education and information programmes and activities; and
- (e) exercise such other functions as may be conferred upon it under this Act or any other enactment.

6. Constitution of Council

- (1) The Council shall consist of the following members to be appointed by the Minister –
 - (a) a Chairperson;
 - (b) a representative of the Ministry of Consumer Protection;
 - (c) a representative of the Ministry of Commerce;
 - (d) a representative of the Ministry of Health and Quality of life;
 - (e) 3 representatives of Non-Governmental Organisations involved in the field of consumer protection;
 - (f) 3 representatives of business organisations; and
 - (g) 3 representatives of the civil society.

(2) The Chairperson and members of the Council shall be appointed by the Minister for a term of 2 years.

(3) The Chairperson and members of the Council shall be paid such allowances as the Minister may determine.

7. Meetings of Council

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

(2) Notwithstanding subsection (1), the Chairperson may, within 15 days of receiving a request signed by not less than 5 members, convene a meeting of the Council.

(3) In the absence of the Chairperson at a meeting of the Council, the members present shall elect a member to act as Chairperson of the meeting.

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

(5) A person co-opted under subsection (4) shall be entitled to take part in the Council's proceedings in relation to the specific matter for which he was co-opted and shall have no right to vote.

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

(7) A person co-opted under subsection (4) shall be paid such allowances as the Minister may determine.

(8) At least 5 members of the Council shall constitute a quorum at any meeting of the Council.

(9) The Council shall submit an annual report on its activities to the Minister.

Sub-Part II – Consumer Dispute Resolution Commission

8. Consumer Dispute Resolution Commission

There shall be, for the purposes of this Act, a Consumer Dispute Resolution Commission.

9. Functions of Commission

The Commission shall –

- (a) provide a conciliation and mediation service on any dispute arising out of a consumer agreement and referred to it by any trader, consumer or the Permanent Secretary;
- (b) advise a party to a dispute on the procedure to be followed in accordance with this Act;
- (c) record settlements between a consumer and a trader;

- (d) make recommendations in connection with disputes referred to it; and
- (e) have such other functions as may be prescribed, or conferred upon it by any enactment.

10. Constitution of Commission

- (1) The Commission shall consist of –
 - (a) a Chairperson to be appointed by the Minister, after consultation with the Attorney-General;
 - (b) such number of Vice-Chairpersons as may be determined by the Minister, and appointed by him; and
 - (c) such number of members as may be determined by the Minister, and appointed by him.
- (2) (a) The Chairperson and any Vice-Chairperson, shall be law practitioners.
 - (b) The members referred to in subsection (1)(c) shall have wide experience in consumer protection matters.
- (3) The members of the Commission shall be appointed on such terms and conditions, and be paid such allowances, as the Minister may determine.
- (4) (a) The Commission shall sit in such number of divisions as the Chairperson may direct.
 - (b) Every division of the Commission shall comprise the Chairperson or any Vice-Chairperson, and 2 other members.

11. Powers of Commission

In the discharge of its functions, the Commission shall, for the purposes of a hearing, be empowered to summon any person to appear before it and require any person to produce any relevant document, information, record, file or exhibit.

12. Referral of dispute

- (1) A trader, consumer, the Permanent Secretary, or a registered association may refer any dispute arising out of, or in connection with, a consumer agreement to the Commission.

(2) A referral under subsection (1) shall be made in such form and manner as the Commission may determine.

13. Proceedings before Commission

(1) Subject to this Act, the Commission may regulate its own procedure in such manner as it thinks fit.

(2) In the discharge of its functions, the Commission shall endeavour to take into account the interests of all parties and act with economy, informality and speed.

14. Recommendation of Commission

(1) Where an amicable settlement between the parties to a dispute cannot be reached, the Commission shall proceed to hear the parties and any witnesses summoned to give evidence before the Commission.

(2) The Commission shall, after hearing evidence and after having considered any relevant document, record, file, information and exhibit, make a recommendation as to the manner in which the dispute is to be resolved.

(3) Where –

- (a) a party to a dispute fails, without reasonable cause, to act on a recommendation of the Commission;
- (b) civil proceedings arising out of, or in connection with, the dispute have been instituted before a Court; and
- (c) the other party to the dispute, avers the matters set out in paragraph (a) in its pleadings,

that Court may, in its discretion, order the party to pay a sum representing up to 5 times the amount of costs that may have been taxed against him, had the Court awarded costs against it, to the other party.

(4) The sum referred to in subsection (3) shall be enforced in the same manner as costs are enforced.

15. Settlement before Commission

(1) Where the parties to a dispute agree that the dispute may be resolved amicably, the Commission shall –

- (a) record, in writing, the terms of the settlement in such form and manner as it may determine; and

- (b) cause all parties to the dispute to sign the record witnessing the settlement.

(2) Where the Court is satisfied that a person, who entered into and signed a settlement under subsection (1), has breached a term of the settlement, it may on application by the Permanent Secretary, make –

- (a) an order directing the person to comply with the terms of the settlement; and
- (b) any other order that it considers appropriate.

(3) Where the parties have reached a settlement in accordance with subsection (1), they shall not be entitled to institute civil proceedings against each other with respect to the subject matter of the dispute or any other matter arising out of, or connected with the dispute.

16. Suspension of time limit

Notwithstanding any enactment, where the Commission has been seized with a dispute in accordance with section 12, any time limit relating to the institution of proceedings arising out, or in connection with, the dispute shall be suspended from the date on which the dispute is lodged before the Commission to the date on which the Commission makes a recommendation under section 14.

17. Offences

Any person who –

- (a) fails, without reasonable cause, to appear before the Commission as required in a summons issued under section 11;
- (b) without reasonable cause, refuses to furnish any information or to produce any document, record, file or exhibit, when so required by the Commission;
- (c) knowingly gives to the Commission false evidence or evidence which he knows to be misleading;
- (d) insults members of the Commission;
- (e) without reasonable cause, refuses to depose before the Commission; or
- (f) wilfully obstructs the proceedings of the Commission,

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

PART III – POWERS OF AUTHORISED OFFICERS

18. General

(1) The Permanent Secretary may designate qualified public officers to be authorised officers for the purpose of ensuring compliance with this Act or any other consumer protection law.

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

19. Search and seizure with warrant

(1) Where a Magistrate, upon information on oath, is satisfied that there is reasonable cause to believe that in any premises, there are any goods, books, information, documents, records or other articles –

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

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

- (i) seize any such goods, books, documents, records or other articles;
- (ii) take samples of the goods; and
- (iii) make copies of, or take extracts of the books, documents, records or other article.

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

- (a) enter any premises; and
- (b) remove any obstruction to entry, search or seizure.

(3) Where, by reason of their nature, size, or amount, it is not practicable to remove any goods, books, documents, records or other articles

seized under subsection (1), an authorised officer may seal such goods, books, documents, records or other articles in the premises.

(4) Where any goods seized under subsection (1) are of a perishable nature, the Permanent Secretary may, in such manner as he thinks fit, authorise the sale of such goods and shall cause the value of the proceeds of such sale to be deposited with the Accountant-General.

(5) Where the person charged with an offence is convicted, the Court may order the forfeiture of any –

- (a) goods or documents seized under subsection (1); and
- (b) amount deposited under subsection (2).

(6) Where a judgment is delivered in favour of the owner of goods seized and disposed under subsection (4), the amount deposited with the Accountant-General shall be refunded to the owner together with interest at the legal rate from the date of the seizure of the goods to the date the amount is refunded.

20. Power to obtain information

(1) An authorised officer may require any person to furnish such information or record that he requires for the purpose of ensuring compliance with this Act.

(2) For the purposes of subsection (1), an authorised officer shall serve a notice on the person, and may require that the information or record requested be furnished within a specified period of time.

21. Power to make test purchases

Notwithstanding any other enactment, the Permanent Secretary may, for purposes of analysis and control, require an authorised officer to purchase on his behalf such goods as may be necessary for the purpose of determining whether or not this Act, or any other consumer protection law, is being complied with.

22. Power of inspection

(1) An authorised officer may, for the purpose of ensuring compliance with this Act or any other consumer protection law –

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

- (b) require any person, who has in his possession or custody or under his control or that of any other person on his behalf any document, to produce that document; and
- (c) examine, make copies of, or take extracts from, any document, which relates to the trade of such person.

(2) Where the authorised officer has reasonable grounds for suspecting that there has been a contravention in relation to any goods, he may –

- (a) inspect and make copies of the records of such goods, and seize the goods, if necessary;
- (b) take a sample of the goods.

23. Seizure and forfeiture

(1) An authorised officer may, without warrant –

- (a) seize any goods or document which, he has reasonable cause to believe, may be the subject matter of an offence under this Act or any other consumer protection law; and
- (b) detain such goods or documents –
 - (i) for so long as is necessary for the purpose of an investigation for an offence under this Act or any other consumer protection law;
 - (ii) if it is necessary for production in Court where criminal proceedings are contemplated.

(2) Where, by reason of their nature, size, or amount, it is not practicable to remove any goods, book, document, record or other article seized under subsection (1)(a), an authorised officer may seal such goods, book, document, record or other article in the premises.

(3) Where any goods seized under subsection (1) are of a perishable nature, the Permanent Secretary may in such manner as he thinks fit, authorise the sale of such goods and shall cause the value of the proceeds of such sale to be deposited with the Accountant-General.

(4) Where the person charged with an offence is convicted, the Court may order the forfeiture of any –

- (a) goods or document seized under subsection (1); and
- (b) amount deposited under subsection (3).

(5) Where a judgment is delivered in favour of the owner of goods seized and disposed under subsection (3), the amount deposited with the Accountant-General shall be refunded to the owner together with interest at the legal rate from the date of the seizure of the goods to the date the amount is refunded.

24. Identification of certain persons

- (1) Any person who –
- (a) is engaged in direct marketing in person at the premises of another person;
 - (b) performs any services for a consumer at the premises of the consumer;
 - (c) delivers goods to, or installs goods for, a consumer, at the premises of the consumer; or
 - (d) trades as a hawker,

shall produce, on demand to the authorised officer, the appropriate documents showing his personal identification and the trade in which he is involved.

(2) Where the person referred to in subsection (1) is employed by another person, he shall produce a document, on demand, to an authorised officer and in which mention is made of the person he is currently working for.

25. Obstruction of authorised officer

No person shall –

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

PART IV – CONSUMER PROTECTION **Sub-Part I – Consumer Education**

26. Consumer education

(1) The Ministry shall endeavour to promote and support the dissemination of consumer education and information in conjunction with registered associations and appropriate non-governmental organisations.

(2) Consumer education and information programmes may include –

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

(3) Consumer education and information programmes shall deal with the matters covered by this Act, including but not limited to –

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

Sub-Part II - Discrimination

27. Discriminatory practices

A trader shall not, without reasonable cause —

- (a) exclude any person from accessing goods or services offered by the trader;

- (b) grant any person exclusive access to goods or services offered by the trader;
- (c) assign priority of supply of goods or services offered by the trader to any person;
- (d) supply a different quality goods or services to any person;
- (e) target a particular person for exclusive, priority or preferential supply of goods or services; or
- (f) directly or indirectly treat any person differently than any other when –
 - (i) assessing the ability of the person to pay the cost, or otherwise meet the obligations, of a proposed consumer agreement;
 - (ii) deciding whether to enter into a consumer agreement, or to offer to enter into a such agreement;
 - (iii) determining any aspect of the cost of a consumer agreement to the consumer;
 - (iv) interacting with the consumer in the course of –
 - (A) displaying or demonstrating any goods;
 - (B) testing or fitting any goods; or
 - (C) negotiating the terms of a consumer agreement;
 - (v) selecting, preparing, packaging or delivering any goods to the consumer, or providing any services to the consumer;
 - (vi) proposing or agreeing the terms and conditions of a consumer agreement;
 - (vii) assessing or requiring compliance by the person with the terms of a consumer agreement;
 - (viii) exercising any right of the trader under a consumer agreement in terms of this Act or any other consumer protection law;
 - (ix) determining whether to continue, enforce, seek judgment in respect of, or terminate a consumer agreement; or

- (x) determining whether to report, or reporting, any personal information of such person.

Sub-Part III – Information Standards

28. Consumer information

- (1) A trader shall –
 - (a) provide consumers with true, sufficient, clear and timely information on goods and services to enable a them to make proper and reasonable choices; and
 - (b) where information standards have been set under section 29, provide such information in accordance with those standards.
- (2) Subject to any other enactment –
 - (a) where a trader has entered into a consumer agreement, the trader shall provide the consumer with a document witnessing the agreement in respect of goods or services of a value specified in the Second Schedule, and containing the terms and conditions of the consumer agreement;
 - (b) any labelling or other writing on goods supplied by a trader shall –
 - (i) be legible and of the appropriate font size; and
 - (ii) contain appropriate translation, in English or French, where any such label or writing is not in English or French; and
 - (c) a trader shall affix price of goods or services, which shall include any duty, tax, charge, fees or levy.
- (3)
 - (a) Where goods are not delivered immediately upon a consumer agreement being entered into, the trader shall, in the agreement, receipt, invoice or other document witnessing the transaction, specify the date and place of delivery.
 - (b) The trader shall deliver the goods referred to in paragraph (a) at the date and time specified in accordance with that subsection, unless both the trader and the consumer agree that the date and place of delivery is to be varied, in which case the trader shall comply with the varied date and place of delivery.

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

(d) The consumer may reject the goods where the trader fails to comply with paragraphs (a) and (b).

(e) Where the consumer elects to reject the goods, the trader shall refund to the consumer any sum already paid by the consumer to the trader in connection with the supply thereof.

29. Information standards for goods and services

(1) The Minister may, by written notice published in the *Gazette*, set information standards with respect to goods or services.

(2) An information standard for goods or services may –

- (a) provide for the content of information about goods or services;
- (b) require the provision of specified information about goods or services;
- (c) provide for the manner or form in which such information is to be provided;
- (d) provide that such information is, or is not to be provided in a specified manner or form;
- (e) provide that information of a specified kind is not to be provided about goods or services;
- (f) assign a meaning to specified information about goods or services; and
- (g) provide for the labelling on goods.

30. Non-compliance with information standards

(1) Subject to subsection (2), no person shall import or manufacture any goods, or offer to supply or supply goods or services, unless the appropriate information standards relating to those goods or services are complied with.

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

- (a) a manufacturer or importer of goods, or a person offering to supply or supplying goods intended to be used outside

Mauritius;

- (b) a manufacturer or importer of goods, if he proves that such goods were not intended to be supplied.

(3) Any trader who supplies goods or services in breach of subsection(1), and another person suffers injury, loss or damage as a result of such breach, shall be liable to compensate that person accordingly.

Sub-Part IV – Standards

31. Standards of goods

- (1) The Minister may make such regulations prescribing –
 - (a) standards, other than safety standards, of any goods; or
 - (b) safety standards of goods other than –
 - (i) growing crops or things comprised in land by virtue of being attached to it;
 - (ii) water, food, animal feed or chemical fertilisers;
 - (iii) aircrafts;
 - (iv) drugs or medicine;
 - (v) tobacco; and
 - (vi) goods intended exclusively for export.
- (2) Regulations made under subsection (1) may, in particular, provide for –
 - (a) the composition, design, construction, finish or packing of goods;
 - (b) the giving, refusing, alteration, cancellation or approval of goods;
 - (c) the prohibition from supplying goods to which this section applies, including components and raw materials thereof;
 - (d) standards to be applied in carrying out any test or inspection of goods; and

- (e) the requiring of a mark, warning or instructions to be put on or to accompany goods.

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

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

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

32. Prohibited goods

(1) The Minister may, by regulations, prescribe that any goods shall be prohibited goods.

(2) No person shall import, sell, offer to supply, supply, advertise, or otherwise deal in prohibited goods.

Sub-Part V – Recall of Goods

33. Compulsory recall of consumer goods

(1) The Minister may, by written notice issue a recall notice for goods of a particular kind if a trader supplies such goods, and –

- (a) it appears to the Minister that such goods will or may cause injury to any person;
- (b) it appears to the Minister that a reasonably foreseeable use, including any misuse, of such goods will or may cause injury to any person;
- (c) the goods does not comply with safety standards;
- (d) it appears to the Minister that the trader of such goods has not taken satisfactory action to prevent those goods from causing injury to any person.

(2) The written notice specified in subsection (1) shall be published in a daily newspaper having wide circulation.

34. Contents of a recall notice

A recall notice for goods may require one or more traders of the goods referred to in section 33 to –

- (a) recall the goods;
- (b) disclose to the public, or to a class of persons specified in the notice –
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods as identified in the notice;
 - (ii) the circumstances as identified in the notice in which a reasonably foreseeable use or misuse of the goods is dangerous; and
 - (iii) procedures as specified in the notice for disposing of the goods;
- (c) inform the public, or a class of persons specified in the notice, that he undertakes to –
 - (i) repair the goods;
 - (ii) replace the goods; or
 - (iii) refund to a person to whom the goods was supplied the price of the goods;
- (d) the manner in which any action required to be taken by the notice must be taken;
- (e) destroy the goods;
- (f) the period within which any action must be taken; and
- (g) take such other action as the circumstances may require.

35. Obligations of a trader in relation to a recall notice

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

- (a) repair them within a reasonable time, where no such time has been specified by the recall notice provided –
 - (i) the goods are capable of being repaired; or
 - (ii) the recall notice does not require the destruction of the goods.
 - (b) subject to subsection (2), replace the goods with similar goods; or
 - (c) refund –
 - (i) where the goods were not the subject matter of a hire purchase agreement or a credit sale agreement, the price at which the goods was sold to the consumer; or
 - (ii) where the goods were the subject matter of a hire purchase agreement or a credit sale agreement, all instalments previously paid by the consumer in pursuance of such agreements.
- (2) Where a trader elects to replace goods under subsection (1)(b) –
- (a) the replacement goods shall be deemed to be new goods for all intents and purposes;
 - (b) the terms and conditions of the consumer agreement of which the initial goods were the subject matter, shall apply, *mutatis mutandis*, to the replacement goods; and
 - (c) any hire purchase agreement or credit sale agreement, of which the initial goods were the subject matter, shall continue to apply to the replacement goods.
- (4) Where a trader elects to repair the consumer goods, he shall cause the goods to be repaired so that –
- (a) any defect in the goods identified in the recall notice is remedied; and
 - (b) it complies with the appropriate safety standard.
- (5) Where a trader elects to replace the goods, he shall replace them with similar goods which –
- (a) do not contain the defect or dangerous characteristic identified in the recall notice characteristic;

- (b) do not contain any other defect or other dangerous characteristic; and
- (c) comply with any safety standard.

(6) Where the trader undertakes to repair or replace the goods, the costs of the repair or replacement, including any necessary transportation costs, shall be borne by him.

(7) (a) Where a recall notice has been published in accordance with section 33(2), the trader or any other person, shall not supply any goods of the kind specified in the notice.

(b) Where a person fails to comply with paragraph (a), he shall be liable to twice the penalty that may be imposed for an offence under this Act if another person suffers loss or damage as a result of the defect in, or a dangerous characteristic of, the goods as specified in the recall notice.

(c) It shall not be a defence to a person who has failed to comply with paragraph (a) to invoke that the person who suffered loss or damage misused the goods.

Sub-Part VI – Voluntary Recall of Goods

36. Voluntary notification for recall of goods

- (1) Where –
- (a) a trader has reasonable grounds to believe that any goods supplied by him do not comply with the appropriate safety standard;
 - (b) no recall notice has been issued in connection with such goods;
 - (c) the trader has reasonable grounds to believe that the goods will or may cause injury to any other person; and
 - (d) a reasonably foreseeable use or misuse of the goods by any person may cause injury to any other person,

the trader shall, forthwith notify the Minister, in writing, to that effect.

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

Sub-Part VII – Prohibitions and Unfairness

37. Prohibited terms and conditions

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

- (a) its purpose or effect is to –
 - (i) defeat the purposes and policy of this Act;
 - (ii) mislead or deceive the consumer; or
 - (iii) subject the consumer to fraudulent conduct;
- (b) it directly or indirectly purports to –
 - (i) waive or deprive a consumer of a right in terms of this Act;
 - (ii) avoid a trader's obligation or duty under the Act;
 - (iii) set aside or override the effect of any provision of this Act;
 - (iv) authorise the trader to do anything that is, or fail to do anything that is required in terms of this Act;
 - (v) limit or exempt a trader, or his agent, from liability for any injury, loss or damage, directly or indirectly arising out of any non-compliance with this Act, or any other law, on the part of the trader or his agent;
 - (vi) constitute an assumption of risk or liability by the consumer for a loss contemplated in subparagraph (v);
 - (vii) impose an obligation on a consumer to pay for damage to, or otherwise assume the risk of handling, any goods displayed by the trader;
- (c) it falsely expresses an acknowledgement by the consumer that the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer;
- (d) it requires the consumer to forfeit any money to the trader –
 - (i) if the consumer exercises any right under this Act; and

- (ii) to which the latter is not entitled under this Act or any other law;
- (e) it imposes the compulsory referral to arbitration pursuant to a unilateral arbitration clause;
- (f) it authorises the provider or trader to unilaterally rescind a consumer agreement in the absence of any breach on the part of a consumer; or
- (g) it is prohibited by any enactment.

(2) The consumer agreement shall continue to bind the parties if it is capable of operating without any of the terms or conditions prohibited under subsection (1).

38. Unfair price

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

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

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

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

- (a) the cost of manufacturing the goods;
- (b) the country of origin of the goods;
- (c) the price paid by, and the mark-up of, the trader;
- (d) any cost associated with the advertisement, transportation, and delivery of the goods;
- (e) any tax, levy or duty levied on the goods;
- (f) any brand name or mark associated with the goods;
- (g) the market price of similar goods;
- (h) the functions and accessories of the goods;

- (i) any defect in the goods;
- (j) the demand and supply for the goods;
- (k) any criteria that may be prescribed; and
- (l) any other relevant criteria.

39. Unfair terms and conditions

(1) A term of a consumer agreement is void if the term is unfair.

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

40. Meaning of unfair term

(1) A term of a consumer agreement is unfair if –

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

(2) In determining whether a term of a consumer agreement is unfair under subsection (1), regard –

- (a) shall be had to the extent to which the term is transparent, and to the agreement as a whole.
- (b) may be had to whether –
 - (i) the term permits, or has the effect of permitting, one party, but not the other party to avoid or limit performance of the agreement;
 - (ii) the term permits, or has the effect of permitting, one party but not the other party to terminate the agreement;

- (iii) the term penalises, or has the effect of penalising, one party but not the other party for a breach or termination of the agreement;
- (iv) the term permits, or has the effect of permitting, one party but not the other party to vary the terms of the agreement;
- (v) the term permits, or has the effect of permitting, one party but not the other party to renew or not renew the agreement;
- (vi) the term permits, or has the effect of permitting, one party to vary the upfront price payable under the agreement without the right of another party to terminate the agreement;
- (vii) the term permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods or services to be supplied under the agreement;
- (viii) the term permits, or has the effect of permitting, one party unilaterally to determine whether the agreement has been breached or to interpret its meaning;
- (ix) the term limits, or has the effect of limiting, one party's vicarious liability for its agents;
- (x) the term permits, or has the effect of permitting, one party to assign the agreement to the detriment of another party without that other party's consent;
- (xi) the term limits, or has the effect of limiting, one party's right to sue another party;
- (xii) the term limits, or has the effect of limiting, the evidence one party can adduce in proceedings relating to the agreement;
- (xiii) the term imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the agreement;
- (xiv) the term, or its effect, is so prescribed.

(3) For the purposes of subsection (2), a term shall be transparent if the term is –

- (a) expressed in reasonably plain language;
- (b) legible;
- (c) presented clearly; and
- (d) readily available to any party affected by the term.

(4) For the purposes of subsection (1)(b), a term of a consumer agreement is presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.

Sub-Part VIII – Unconscionable conduct

41. Unconscionable conduct in business transactions

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

(2) In determining whether a conduct is unconscionable, regard may be had to –

- (a) the relative strengths of the bargaining positions of the trader and the consumer;
- (b) whether, as a result of conduct engaged in by the trader, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the trader;
- (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used, against the consumer by the trader or his agent, in relation to the supply or possible supply of the goods or services;
- (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the trader;
- (f) the extent to which the trader's conduct towards the consumer was consistent with the trader's conduct in similar transactions between the trader and other like consumers;

- (g) the requirements of any applicable industry code;
- (h) the requirements of any other industry code, if the consumer acted on the reasonable belief that the trader would comply with that code;
- (i) the extent to which the trader unreasonably failed to disclose material facts to the consumer;
- (j) any intended conduct of the trader that might affect the interests of the consumer;
- (k) any risks to the consumer arising from the trader's intended conduct, including risks that the trader should have foreseen and would not be apparent to the consumer;
- (l) where there is an agreement between the trader and the consumer for the supply of the goods or services –
 - (i) the terms and conditions of the agreement;
 - (ii) the extent to which the trader was willing to negotiate the terms and conditions of the agreement with the consumer;
 - (iii) the conduct of the trader and the consumer in complying with the terms and conditions of the agreement; and
 - (iv) any conduct that the trader or the consumer engaged into, in connection with their commercial relationship, after they entered into the agreement;
- (m) whether the trader has a contractual right to vary unilaterally a term or condition of a consumer agreement; or
- (n) the extent to which the trader and the consumer acted in good faith.

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

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

Sub-Part IX – Fair Trading

42. Interpretation

In this sub-part –

“services” includes the services specified in the First Schedule.

43. Unlawful conditions

(1) Subject to subsection (2), no trader shall, when supplying goods or services, impose any condition in connection with such supply except –

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

(2) Subsection (1) shall not apply where a trader charges a promotional price with respect to goods or services provided a notice is displayed in a conspicuous place stating the conditions imposed thereof.

44. Unfair commercial practices

(1) No trader shall engage in an unfair commercial practice.

(2) A commercial practice is unfair if it is –

- (a) contrary to –
 - (i) the principle of good faith in the trader’s field of activity; or
 - (ii) the standard of care and skill that the trader may reasonably be expected to exercise in respect of consumers; and
- (b) likely to cause, in relation to any goods or services –
 - (i) an impairment of a reasonable consumer’s ability to make an informed choice; or

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

45. Misleading commercial practices

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

(2) A commercial practice is misleading if a trader –

- (a) omits or conceals material information that a reasonable consumer needs to make an informed choice; or
- (b) provides false information to a consumer,

and which may lead that consumer to make a choice that a reasonable consumer would not otherwise make.

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

- (a) the geographical or commercial origin of the goods;
- (b) the availability of goods, including, without limitation, its availability at a particular time or place or at a particular price;
- (c) the quantity, weight or volume of the goods;
- (d) the benefits or fitness for a particular purpose of the goods;
- (e) the risks the goods present to consumers;
- (f) the usage or prior history of the goods;
- (g) the composition, ingredients or other component of the goods and any of their accessories;
- (h) any accessory accompanying the goods;
- (i) the specifications of the goods, including their grade, standard, style, status or model;
- (j) after sales customer assistance available to consumers in relation to the goods;
- (k) the handling of consumer complaints in relation to the goods;

- (l) the method or date of the goods' delivery, supply or manufacture;
- (m) the results and material features of tests or checks carried out on the goods;
- (n) in relation to services, their execution or performance;
- (o) the price of the goods or services, the manner in which that price is calculated or the existence or nature of a specific price advantage;
- (p) the need for any part, replacement, servicing or repair in relation to the goods;
- (q) the existence, extent or nature of any approval or sponsorship, direct or indirect, in relation to the goods or services;
- (r) the nature, attributes or rights of the trader, including –
 - (i) the trader' s identity, qualifications, assets or status;
 - (ii) relevant affiliations of the trader;
 - (iii) the existence, extent or nature of –
 - (A) any industrial, commercial or intellectual property rights the trader may have, or
 - (B) any award, distinction, approval or sponsorship, direct or indirect, the trader has or has obtained;
- (s) the trader' s motives for the commercial practice;
- (t) the nature of the trader' s supply process;
- (u) the legal rights of a consumer, whether contractual or otherwise, or matters respecting when, how or in what circumstances those rights may be exercised;
- (v) the likelihood of a person to confuse –
 - (i) a competitor' s goods with the trader' s goods, or
 - (ii) a competitor' s trade name, trade mark or some other distinguishing feature or mark with that of the trader;

(w) any other relevant consideration.

(4) Without prejudice to the generality of the preceding subsections, where a commercial practice involves a representation or creates an impression –

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

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

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

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

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

46. Aggressive commercial practices

(1) No trader shall engage in an aggressive commercial practice.

(2) A commercial practice is aggressive if, by harassment, coercion or undue influence, it is likely to cause –

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

(b) a reasonable consumer to make a transactional decision that the average consumer would not otherwise make.

(3) In determining whether a commercial practice is aggressive under subsection (2), the commercial practice shall be considered in its factual context, taking account of all of its features and the circumstances.

(4) Without prejudice to the generality of the preceding subsections, in determining whether the commercial practice involves harassment, coercion or undue influence, regard may be had to –

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

(5) In this section –

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

47. Prohibited commercial practices

A trader shall not engage in any of the following commercial practices –

- (a) a representation that the trader has an approval, authorisation or endorsement that the trader does not have, or making such a representation when the trader is not in compliance with that approval, authorisation or endorsement;
- (b) a representation that the trader is signatory to a code of practice if he is not so;
- (c) a representation that the trader is about to cease trading or move premises, if he is not about to do so;
- (d) a representation that any goods are able to facilitate winning in games of chance;

- (e) a representation, or creating such an impression, that supply of any goods is legal, if it is not;
- (f) a representation that any goods are able to cure an illness, dysfunction or malformation, if it cannot;
- (g) a representation that describes goods as “*gratis*” , “free” , “without charge” or any similar representation, if a consumer has to pay anything other than the necessary and reasonable cost of –
 - (i) responding to the representation; or
 - (ii) collecting the goods or having it delivered;
- (h) a representation that a commercial practice of the trader has an approval, authorisation or endorsement that it does not have, or making such a representation when the trader is not in compliance with the approval, authorisation or endorsement;
- (i) a representation that a code of practice has an approval or other endorsement that it does not have;
- (j) the displaying of a quality, standard or mark or symbol, without having obtained necessary authorisation to do so;
- (k) making an invitation to purchase goods without disclosing the existence of any reasonable grounds the trader may have for believing that the trader may not be able to supply, or procure another trader to supply, the goods or equivalent goods at the price specified in the invitation, or to do so for a reasonable period of time or in reasonable quantities, having regard to the scale of any marketing or advertising of the goods and the price specified;
- (l) making an invitation to purchase goods followed by –
 - (i) a demonstration of a defective sample of the goods, or
 - (ii) a refusal to –
 - (A) show or display any goods to the consumer;
 - (B) take an order from the consumer for the goods; or

- (C) deliver the goods to the consumer within a reasonable period of time, with the intention of promoting different goods;
- (m) making a false representation that goods are available only for a limited time, or on particular terms for a limited time, in order to elicit an immediate decision from a consumer, depriving the consumer of sufficient opportunity or time to make an informed choice in relation to the trader's goods;
- (n) making a representation or creating an impression that a right given to consumers under an enactment is a distinctive feature of the trader's promotion or supply;
- (o) using the editorial content in the media to promote goods, if a trader has paid for that promotion, if it is not made clear that the promotion is a paid promotion, whether in the content itself or in any oral, written, visual or descriptive representation in the promotion;
- (p) making a representation to a consumer that is materially inaccurate, in respect of the nature and extent of risk to the consumer's personal security, or that of other members of the consumer's household, if the consumer does not purchase the trader's goods;
- (q) promoting goods, similar to that of another manufacturer, in such a manner as to deliberately mislead or deceive a consumer into thinking that the goods are manufactured by that manufacturer, when they are not;
- (r) making a representation to a consumer that is inaccurate to a material degree in respect of market conditions, or in respect of the possibility of finding goods, with the intention of inducing the consumer to purchase goods at conditions less favourable than normal market conditions;
- (s) operating, running or promoting a competition or prize promotion without awarding the prizes described or reasonable equivalents;
- (t) making a representation or creating an impression that a consumer has won or will win a prize or other equivalent benefit, if –
 - (i) there is no prize or equivalent benefit; or

- (ii) in claiming the prize, the consumer has to make a payment or incur a loss;
- (u) including in marketing material an invoice or any similar document seeking payment from a consumer for goods that the consumer has not ordered;
- (v) making a representation or creating an impression that the trader –
 - (i) is not acting for purposes related to the trader's trade, business or profession, when the trader is so acting, or
 - (ii) is acting as a consumer, when the trader is not;
- (w) making a representation or creating an impression that after-supply service in relation to goods is available, when it is not so available;
- (x) making a representation or creating an impression that a consumer cannot leave the premises until an agreement is formed;
- (y) failing to comply with a consumer's request to leave the consumer's residence or not to return, except in circumstances and to the extent justified or permitted by or under law in order to enforce a contractual obligation;
- (z) persistently failing to comply with a consumer's request to cease –
 - (i) communicating or initiating unwanted or unsolicited contact with; or
 - (ii) making or sending unwanted or unsolicited representations to the consumer, by telephone, fax, email or any other electronic means or remote media, except in circumstances and to the extent justified or permitted by or under law in order to enforce a contractual obligation;
- (aa) including in an advertisement a direct exhortation to children to –
 - (i) purchase goods; or
 - (ii) persuade a parent or adult to purchase the goods for them;

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

PART V – LIABILITY FOR UNSOLICITED GOODS AND SERVICES

48. Liability of recipient of unsolicited goods

(1) A person, to whom unsolicited goods are supplied by a trader, is not liable to make any payment for the loss of or damage to the goods other than loss or damage resulting from the doing by the person of an unlawful act in relation to the goods during the period specified in subsection (5).

(2) Subject to subsection (3), where a trader sends unsolicited goods to a person –

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

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

- (a) the person has, during the period specified in subsection (5), unreasonably refused to permit the sender or the owner of the goods to take possession of the goods;
- (b) the sender or the owner of the goods has, within that time, taken possession of the goods; or
- (c) the goods were received by the person in circumstances in which he knew, or might reasonably be expected to have known, that the goods were not intended for him.

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

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

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

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

(ii) a period of 3 months following the day on which the person received the goods, whichever first expires;

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

(6) A notice under subsection (5) shall be in writing and shall –

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

(b) state the address at which possession may be taken of the goods if it is an address other than that of that person; and

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

49. Liability of recipient for unsolicited services

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

(a) to make any payment for the services; or

(b) for any loss or damage as a result of the supply of the services.

PART VI – LIABILITY OF MANUFACTURERS FOR GOODS WITH DEFECTS

50. Liability for injury to a person

(1) A manufacturer of goods shall compensate any injury that any person may suffer where –

- (a) goods manufactured are defective; and
- (b) that person suffers injury as a result of such defect.

(2) Where a person referred to in subsection (1) dies as a consequence of his injuries, his heirs shall be entitled to be adequately compensated by the manufacturer.

51. Liability for loss or damage to property

A manufacturer of goods shall compensate a person for any loss or damage caused to property belonging to that person where such loss or damage is caused by the goods, and such goods are defective.

PART VII – IMPLIED TERMS

Sub-Part I – Implied Terms for Goods

52. Implied term as to acceptable quality

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

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

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

- (a) if they –
 - (i) are fit for all the purposes for which goods of the type in question are commonly supplied;
 - (ii) are acceptable in appearance and finish;
 - (iii) are free from defects;
 - (iv) are durable; and
- (b) if a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard the goods as of acceptable quality having regard to –
 - (i) the nature of the goods;
 - (ii) the price of the goods;

- (iii) any statements made about the goods on any packaging or label on the goods;
- (iv) any representation made about the goods by the trader or the manufacturer;
- (v) all other relevant circumstances of the supply of the goods;
- (vi) the manner in which, and the purposes for which, the goods have been marketed;
- (vii) the use of any brand name or mark in relation to the goods;
- (viii) instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the goods;
- (ix) the time when the goods was supplied by its manufacturer to another person;
- (x) the risk of death or personal injury from the keeping, use or consumption of the goods; and
- (xi) any other relevant consideration.

(4) Where any defect, other than a non-compliance with a safety standard, relating to the goods has been expressly drawn to the consumer's attention before he agrees to the supply, the goods shall not be deemed to have failed to comply with the implied term as to acceptable quality by reason only of that defect.

(5) Where goods are displayed for supply and any defect in the goods is conspicuously disclosed on a written notice displayed on it, the defects shall be deemed as having been specifically drawn to the consumer's attention for the purpose of subsection (4).

(6) Notwithstanding this Act, the implied term specified in subsection (1) shall, with respect to the goods specified in the second column of the Third Schedule be valid for the minimum period specified in the third column of that Schedule, unless an extended period is agreed between the trader and the consumer.

(7) Where a trader supplies any of the goods specified in the second column of the Third Schedule, he shall issue a Certificate of Warranty, in the form and manner set out in the Fourth Schedule, to the consumer.

53. Implied term as to fitness for a particular purpose

(1) Subject to subsection (2), there shall be implied in a consumer agreement that goods are reasonably fit for any particular purpose which –

- (a) the consumer states, expressly or by implication, to the trader as the purpose for which the goods are being acquired by him; or
- (b) the trader represents that they or will be fit.

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

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

to represent that the goods are fit for that particular purpose

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

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

- (a) the trader represents that they are fit; or
- (b) the consumer states, expressly or by implication, to the trader as the purpose for which the goods is being acquired by him.

54. Implied term that goods comply with description

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

(2) Where a trader exposes any goods for supply, there shall be an implied term in a consumer agreement that any goods supplied to a consumer, on the basis of such exposition shall correspond, subject to minor variations, with the goods exposed for supply.

(3) Where a trader exposes any goods for supply, and goods, other than those exposed, are supplied to a consumer on the basis of such exposition,

the other goods shall, in all respects, correspond to the exposed goods, subject to minor variations.

55. Implied term that goods comply with sample

(1) Where a trader supplies goods to a consumer by reference to a sample or demonstration model, there shall be implied, in the consumer agreement –

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

(2) Where a trader supplies goods to a consumer by reference to a sample or demonstration model –

- (a) the goods supplied shall correspond, subject to minor variations, with the sample or demonstration model; and
- (b) he shall give that consumer a reasonable opportunity to compare the goods so supplied with the sample or demonstration model.

56. Implied term as to repairs and spare parts

(1) Where goods are supplied to a consumer, there shall be an implied term that the trader shall ensure that facilities for the repair of the goods and the supply of spare parts for the goods are available after the goods have been so supplied –

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

(2) Every trader shall ensure that, in connection with the supply of goods by him, facilities for the repair of the goods and the for the supply of spare parts for the goods are available after the goods have been so supplied –

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

57. Liability of trader for breach of certain implied terms

(1) A trader who has supplied goods in breach of the implied terms specified in sections 52 and 53 shall –

- (a) provided such goods are capable of being repaired, repair them –
 - (i) in such manner and within such period as may be prescribed; or
 - (ii) within a reasonable time where nothing has been prescribed under subparagraph (i).
- (b) subject to subsection (2), replace the goods with similar goods; or
- (c) refund –
 - (i) where the goods was not the subject matter of a hire purchase agreement or a credit sale agreement, the price at which the goods was sold to the consumer; or
 - (ii) where the goods was the subject matter of a hire purchase agreement or a credit sale agreement, all instalments previously paid by the consumer in pursuance of such agreements.

(2) Where a trader elects to replace goods under subsection (1)(b) –

- (a) the replacement goods shall be deemed to be new goods for all intents and purposes;
- (b) the terms and conditions of the consumer agreement of which the initial goods was the subject matter, shall apply, *mutatis mutandis*, to the replacement goods; and
- (c) any hire purchase agreement or credit sale agreement, of which the initial goods was the subject matter, shall continue to apply to the replacement goods.

(3) Where a trader elects to repair the consumer goods, he shall cause the goods to be repaired so that -

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

(4) Where a trader elects to replace the goods, the trader must replace the goods with similar goods which do not contain any defect.

(5) Where the trader undertakes to repair or replace the goods, the costs of the repair or replacement, including any necessary transportation costs, shall be borne by him.

(6) A trader who has supplied goods in breach of the implied terms specified in section 54 shall –

- (a) subject to subsection (7), replace the goods with similar goods; or
- (b) refund –
 - (i) where the goods was not the subject matter of a hire purchase agreement or a credit sale agreement, the price at which the goods were sold to the consumer; or
 - (ii) where the goods was the subject matter of a hire purchase agreement or a credit sale agreement, all instalments previously paid by the consumer in pursuance of such agreements.

(7) Where a trader elects to replace the goods –

- (a) the replacement goods shall be deemed to be new goods for all intents and purposes;
- (b) the terms and conditions of the consumer agreement of which the initial goods were the subject matter, shall apply, *mutatis mutandis*, to the replacement goods; and
- (c) any hire purchase agreement or credit sale agreement, of which the initial goods were the subject matter, shall continue to apply to the replacement goods.

(8) Where a trader elects to replace the goods, the trader shall replace the goods with similar goods which do not contain any defect.

(9) Where the trader undertakes to replace the goods, the costs of the replacement, including any necessary transportation costs, shall be borne by him.

(10) (a) Where a trader has supplied goods in breach of the implied term specified in section 55, he shall adequately compensate the consumer.

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

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

Sub-Part II – Implied Terms for Services

58. Implied term as to reasonable care and skill

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

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

59. Implied term as to fitness for particular purpose

(1) Where services are supplied to a consumer, there shall be implied a term in the consumer agreement that the services, and any goods resulting from supply of the services shall be –

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

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

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

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

60. Implied term as to time of completion

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

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

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

61. Breach of implied terms

Any consumer shall be entitled to obtain appropriate and adequate damages from a trader where the trader fails to comply with the implied terms referred to in sections 58 to 60.

PART VIII –WARRANTY BY MANUFACTURERS

62. Interpretation

In this section –

"express warranty", in relation to any goods, means any undertaking, assertion or representation in relation to –

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

63. Liability of manufacturer

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

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

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

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

(5) A consumer shall have a right of redress against a manufacturer of goods where the goods are defective or fail to comply with any express warranty given by the manufacturer that is binding on the manufacturer.

(6) There shall be no right of redress against the manufacturer under this Act in respect of goods which fail to comply with an express as to acceptable quality or compliance with description where the failure is due to –

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

(7) Subject to subsection (8), where a consumer has a right of redress against the manufacturer, the consumer shall be entitled to appropriate and adequate damages from the manufacturer for any loss, damage, injury or other prejudice.

(8) Where the consumer is entitled by an express warranty given by the manufacturer to require the manufacturer to remedy the failure by –

- (a) repairing the goods; or

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

no action shall be commenced under subsection (7) unless the consumer has required the manufacturer to remedy the failure and the manufacturer has refused or neglected to remedy, or has not succeeded in remedying, the failure within such time as may be prescribed, or within a reasonable time where no period has been prescribed.

(9) (a) Subject to this Act, where a manufacturer of goods extends an express warranty to a trader, that trader shall be bound to extend that express warranty to a consumer with whom he has entered into a consumer agreement for the supply of such goods.

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

PART IX – ENFORCEMENT POWERS OF PERMANENT SECRETARY

64. Enforcement notice

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

(2) An enforcement notice shall –

- (a) state the opinion of the Permanent Secretary;
- (b) specify the matter constituting the contravention, or the matter making it likely that the contravention will arise, as the case may be;
- (c) specify the measures that shall be taken to remedy the contravention, or to remedy or eliminate the matter making it likely that the contravention will arise, as the case may be; and
- (d) specify a period within which those measures shall be implemented.

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

65. Prohibition notice

(1) Where the Permanent Secretary is of the opinion that –

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

he may serve, or cause to be served, a prohibition notice on that trader.

(2) A prohibition notice may be served whether or not there is before any Court or Judge any case involving the subject matter in relation to which a notice is being issued, unless the Court or Judge has issued an order preventing the Permanent Secretary from serving the prohibition notice.

(3) A prohibition notice shall –

- (a) state the opinion of the Permanent Secretary;
- (b) specify the serious prejudice, or the risk of the serious prejudice, as well as the manner in which trader's activity is suspected to give rise to the risk;
- (c) specify the measures that shall be taken to eliminate the serious prejudice caused, or the risk of the serious prejudice, and the period within which they shall be implemented; and
- (d) specify –
 - (i) the activity, or any aspect of the activity of the trader, that is prohibited from operation or performance; or
 - (ii) any conditions subject to which the activity may be resumed.

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

(5) On receipt of any representations under subsection (4), the Permanent Secretary shall hear the person who made the representations within 15 days and take a decision.

(6) A prohibition notice shall not be a bar to a prosecution for any offence, even if there are consultations with the person served with the notice.

66. Application to Judge

(1) Where a recall notice, enforcement notice or prohibition notice has been issued under this Act and any trader fails to comply with any obligation arising out of, or in connection with, such notice the Permanent Secretary may apply to a Judge for an order directing the trader to fulfill his obligation, or such other order as may be necessary.

PART X – OFFENCES AND FIXED PENALTIES
Sub-Part I – Offences

67. Offences

- (1) Subject to section 17, any person who –
- (a) without lawful authority –
 - (i) breaks, tampers with or damages a seal affixed in accordance with section 19 or 23; or
 - (ii) removes any goods, books, documents, records or other articles under seal in pursuance of section 19 or 23;
 - (b) when served with a recall, enforcement or prohibition notice –
 - (i) fails, without reasonable cause, to comply with the notice; or
 - (ii) furnishes information which he knows is false in a material particular;
 - (c) otherwise contravenes this Act,

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

- (i) in the case of a first offence, to a fine of not less than 10,000 rupees and not exceeding 100,000 rupees; and
- (ii) in the case of a second or subsequent offence, to a fine of not less than 25,000 rupees and not exceeding 250,000 rupees and to imprisonment for a term not exceeding 3 years.

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

(3) In any prosecution for an offence under this Act, a Court may order –

- (a) the forfeiture of any goods, books, documents, records or other articles seized in connection with an offence under this Act, where it is satisfied that such goods, books, documents, records or other articles were the subject matter of, or were used in the commission of the offence under this Act;
- (b) that any goods, books, documents, records or other articles so seized be restored to the person from whom it was taken, where it is not satisfied that such goods, books, documents, records or other articles were the subject matter of, or were used in the commission of the offence under this Act.

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

68. Disposal of goods, books, documents, records or other articles seized

(1) Where any goods, books, documents, records or other articles are seized in connection with an offence under this Act, and –

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

the goods, books, documents, records or other articles shall be restored to the person from whom they were taken.

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

Sub-Part II – Fixed Penalties

69. Fixed penalty notice

(1) Notwithstanding this Act or any other enactment, where a person commits an offence specified in the first column of the Fifth Schedule, an authorised officer who detects the offence may immediately serve on that person a notice, or where that person refuses the notice, serve the notice on

that person by sending it by registered post at his usual or last known place of residence or business within 14 days of the commission of the offence calling upon him to pay the appropriate fine specified in the third column of that Schedule.

- (2) A notice under subsection (1) shall –
 - (a) be in such form as may be prescribed;
 - (b) be drawn up in quadruplicate; and
 - (c) specify –
 - (i) the name and address of the person committing the offence, where the name and address have been ascertained;
 - (ii) the time and place of the offence;
 - (iii) the nature of the offence;
 - (iv) the fixed penalty provided for the offence and the time within which it is to be paid;
 - (vi) the District Court where the fine is payable; and
 - (vii) the name and NIC number of the authorised officer who detected the offence.
- (3) The authorised officer who detects the offence shall –
 - (a) cause the original of the notice to be served on the offender;
 - (b) forward one copy to the Permanent Secretary and another copy to the appropriate District Court; and
 - (c) retain one copy.

70. Payment of fixed penalty

Every person who is served with a notice under section 69(1) may, within 20 days of the service and upon production of the notice, pay the appropriate fine in the prescribed manner at the appropriate District Court.

71. Non-payment of fixed penalty

Where a person who has been served with a notice under section 69(1) fails to pay the appropriate fine within the time limit mentioned in the notice and criminal proceedings are instituted against him for the offence in respect of which he was served with the notice, he shall, notwithstanding this Act or any other enactment, be liable, on conviction, to a fine which shall not be less than twice the amount specified in the third column of the Fifth Schedule in respect of that offence.

PART XI – MISCELLANEOUS

72. Proceedings by registered association

(1) A registered association may, with the consent of a consumer, institute civil proceedings in the name of, and on behalf of, that consumer with respect to any matter arising out of, or in connection with a consumer agreement.

(2) A Court –

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

in proceedings instituted under subsection (1).

(3) Where a Court awards costs against a registered association, the recovery of such costs may be enforced in the same manner as if the costs were awarded against the consumer in the course of proceedings instituted by the latter.

73. Proceedings by Permanent Secretary

(1) The Permanent Secretary may, with the consent of a consumer, institute such civil or criminal proceedings as he thinks necessary and conduct such proceedings in any Court, other than the Supreme Court, for or in the name of that consumer.

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

74. Court fees, costs and judgment

(1) No court fees shall be chargeable before a Court on any proceedings commenced by the Permanent Secretary in accordance with section 73.

(2) Where a Court is of the opinion that any proceedings instituted by the Permanent Secretary were frivolous or vexatious, it may make an order for the payment of costs by the Permanent Secretary as if he were a party to the proceedings.

75. Joint liability

Where a person elects to institute civil proceedings jointly against a trader and manufacturer in connection with any injury, loss, damage or other prejudice arising out of any contravention of this Act, the trader and manufacturer shall be jointly and severally liable.

76. Defences

A trader or manufacturer shall not incur any civil or criminal liability under this Act where he establishes that –

- (a) the goods did not comply with safety standards or other prescribed standard only because there was compliance with another mandatory safety standard or other prescribed standard with respect to such goods;
- (b) where no safety standard has been prescribed with respect to any goods, the state of scientific or technical knowledge, at the time when the goods were supplied by their manufacturer, was not such as to enable that safety defect to be discovered; or
- (c) any injury, loss, damage or prejudice in connection with the goods was the result of an act, default or omission of, or any representation made by, a person other than the manufacturer or trader, or a cause independent of human control, occurring after the goods have left the control of the manufacturer or trader.

77. Immunity

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

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

78. Regulations

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

(2) Without prejudice to the generality of subsection (1), regulations may provide for –

- (a) the levying of fees;
- (b) the amendment of the Schedules;
- (c) that any person who contravenes any regulations made under this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment not exceeding 12 months;
- (d) the issue of licences, permits, clearances or other similar authorisation in connection with the importation, exportation, sale, supply or distribution of goods;
- (e) the control of referral and distance selling, and pyramid promotional schemes; and
- (f) matters relating to express warranties.

79. Repeals

The enactments specified –

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

80. Consequential amendment

In any enactment, any reference to the “Fair Trading Act” shall be deemed to be a reference to the “Consumer Protection Act” .

81. Transitional provision

Any licence, certificate, clearance, permit or authorisation granted under the repealed or revoked enactments specified in the Sixth Schedule, and which is still valid at the time of coming into operation of this Act, shall be deemed to have been issued under this Act.

82. Commencement

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

(2) Different dates may be fixed for the coming into operation of

different sections of this Act.

FIRST SCHEDULE

[Section 2]

1. Professional services, including legal, medical, dental, engineering, accountancy, architectural, quantity surveying, land surveying, valuation services
2. Banking
3. Insurance
4. Transport

SECOND SCHEDULE

[Section 28]

1. where the price of the goods or services is Rs 2,000 or more, it shall be mandatory for the trader to furnish the document;
 2. only on request from the consumer for any goods or services of the value of not less than Rs 500, it shall be mandatory to furnish the document.
-

THIRD SCHEDULE

[Section 52]

MINIMUM WARRANTY PERIOD IN RESPECT OF GOODS

SN	Goods	Minimum period of validity of implied term as from the date of delivery of the goods
1.	Air conditioner	24 months
2.	Blender/Mixer	6 months
3.	Bread/Sandwich maker	6 months
4.	Bush cutter	6 months
5.	Coffee maker	6 months
6.	Digital camera	12 months
7.	Dish washer	12 months
8.	DVD/Blue ray players	12 months
9.	Electric cutter	6 months
10.	Electric fan	6 months
11.	Electric fryer	6 months
12.	Electric iron	6 months
13.	Electric kettle	6 months
14.	Electric oven	12 months
15.	Electric plate	6 months
16.	Electric razor	6 months
17.	Electric water heater	12 months
18.	Electric/Gas barbecue	6 months
19.	Exerciser	6 months
20.	Food processor	6 months
21.	<i>Friteuse</i>	6 months
22.	Gas stove	6 months
23.	Gas water heater	12 months
24.	Hair dryer/ curler/ straightener	6 months
25.	Hi Fi apparatus	12 months
26.	Home theatre	12 months

27.	Juicer	6 months
28.	Kitchen hood	6 months
29.	Laptop	12 months
30.	Lawn mower	6 months
31.	Microwave/Oven	12 months
32.	Mixer/Grinder/Blender	6 months
33.	Mobile phone	12 months
34.	Personal computer	12 months
35.	Pressure washer	12 months
36.	Printer and scanner	12 months
37.	Refrigerator	24 months
38.	Rice cooker	12 months
39.	Sewing machine	12 months
40.	Solar water heater	60 months
41.	Steamer	6 months
42.	Tablet	12 months
43.	TNT player	12 months
44.	Toaster	6 months
45.	Trimmer	6 months
46.	TV set	24 months
47.	Vacuum cleaner	12 months
48.	Washing machine	24 months

FOURTH SCHEDULE

[Section 52]

CERTIFICATE OF WARRANTY

Warranty Card No.

Name of trader	-	.....
Address of trader	-	.....
Business Registration Number	-	.....
VAT no.	-	.....
Telephone no.	-	.....
Name of goods	-	.....
Brand/goods description	-	.....
Serial number	-	.....
IMEI number (<i>where applicable</i>)	-	.....
Date of sale	-	.....
Sales Invoice no.	-	.....
Date of delivery	-	.....
Period of warranty	-	.....
Terms and conditions of warranty	-	..... ..... .....
Name and signature of purchaser	-	.....
Name and signature of trader	-	.....
NIC Number	-	.....
Date and stamp	-	.....

FIFTH SCHEDULE

[Section 69]

FIXED PENALTIES

Offences under the Consumer Protection (Price & Supplies Control) Act

Offences		Fine (Rs)
1.	Selling goods at a price higher than that displayed	Section 8 2,000
2.	Selling controlled goods at a price higher than that fixed	Section 3 2,000
3.	Selling controlled goods at a price which includes a mark-up which exceeds the maximum mark-up	Section 4 2,000
4.	Illegal charging of VAT	Section 6 2,000
5.	Failing to affix price labels on goods exposed for sale	Sections 7 and 18 1,000
6.	Misleading price indication	Section 9 2,000
7.	Failing to register warehouse	Section 10 1,000
8.	Failing to renew certificate of registration for warehouse	Section 11 1,000
9.	Failing to affix a signboard in respect of registered warehouse	Section 15 1,000
10.	Failing to expose goods kept for sale in that part of the trading premises to which the public has access	Section 17 2,000
11.	Failing to expose goods kept for sale in that part of the trading premises to which the public has access	Section 17 2,000

**Offence under the Consumer Protection
(Price Label) Regulations 1998**

12. Price labels not in conformity	Regulations 3, 4 and 5	1,000
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**Offence under the Consumer Protection (Consumer Goods) (Maximum Mark-Up)
Regulations 1998**

13. Failing to submit a return in respect of consumer goods within ten working days from the date of passing of the bill of entry	Regulation 3(1)	2,000
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SIXTH SCHEDULE

[Section 79]

Part I

Advisory Committee on Prices and Consumer Protection Act

Consumer Protection Act

Fair Trading Act

Part II

Traders Warranty Regulations 1981

Prepackaged Food Regulations 1989
