

EXPLANATORY NOTE**CONSUMER PROTECTION BILL**

1. The Bill for consideration is the Consumer Protection Bill. It is largely based on Model Consumer Protection Legislation prepared by the Drafting Unit of the CARICOM Secretariat for adoption by each CARICOM Member State.
2. The Bill makes provision for the promotion and protection of consumer rights in relation to the supply of goods and the provision of services. The Bill additionally, ensures protection of life, health and safety of consumers; it also establishes a Consumer Protection Board and a Consumer Protection Appeals Tribunal.
3. Preliminary provisions in the Bill provide for the short title, commencement and interpretation in clauses 1 and 2 of the Bill. The purpose of the Bill and its application are contained in clauses 3 and 4 of the Bill.
4. Part I of the Bill has provisions for a Consumer Protection Board. This Board is established by clause 5 of the Bill with the constitution specified in clause 6 of the Bill. Persons who are disqualified from the Board are identified in clause 7 of the Bill. The functions and powers of the Board are stated in clauses 8 and 9 of the Bill, respectively. Provisions relating to the Board, such as acting members, resignations and revocation are in clauses 10, 11 and 12 of the Bill.
5. In addition, Part I contains requirements for the publication of names of members of the Board and the procedure for meetings of the Board under clauses 13 and 14 of the Bill. In accordance with clauses 15 to 17 of the Bill, the Board must have a seal, its members are protected and members must disclose interest. By virtue of clause 18 of the Bill members of the Board are to be remunerated. The expenses of the Board are provided for in clauses 19 of the Bill. The Board must be independent according to clause 20 of the Bill.
6. Part II of the Bill provides for the receipt and investigation of complaints in clauses 21 to 36 of the Bill. Complaints may be made by the public, to the Board (clause 21). Once made, the Bill

provides that persons making complaints are protected (clause 22). The receipt and investigation of the complaint by the Department is provided for under clauses 23 to 26 of the Bill. The Board receives a report from the Department upon conclusion of the investigation in clause 27. The Director may also make rules governing the procedure to be followed by officers of the Department in clause 28 of the Bill. Consideration of the complaint by the Board is provided for under clauses 29 to 32 of the Bill. In considering a complaint, the Board may reject the complaint, informally dispose the complaint or institute a hearing to inquire into the complaint.

7. Clauses 33 to 36 of the Bill provide for non-attendance of parties, recommendation of complaint for hearing (in providing the requisite documentation to the Board as well as notifying the parties), the rights and obligations of the persons summoned and the documents received as evidence.
8. Clauses 37 to 40 of the Bill provide for complaints regarding goods and clause 41 of the Bill provides for complaints regarding services.
9. Clauses 42 to 47 of the Bill provide for the findings and decisions of the Board. The Board may issue an order to the supplier in clause 42 of the Bill where the allegations are proved by the complainant. Fixed penalties are provided for by clause 43 of the Bill (the details of which are housed in Schedule 4). The Secretary is to prepare and forward the relevant notice of the decision to the parties in clause 44 and shall cause same to be filed in the court office in clause 45 of the Bill. Clause 46 of the Bill provides for the options after the issue of the order and clause 47 of the Bill provides for the payment of the order.
10. An Appeals Tribunal is established under Part III of the Bill under clauses 48 to 60 of the Bill which provides for its constitution, functions and administration.
11. Terms of a consumer agreement are stated in Part IV of the Bill. Terms must be plain and intelligible under clause 61 of the Bill. Unfair terms are provided for in clause 62 of the Bill. The remaining provisions in this Part (clauses 63 to 66 of the Bill) provide for indemnity from liability, satisfying reasonableness where agreement terminated and liability for breach.

12. Consumer rights are set out in Part V of the Bill. These rights are reserved under clause 67 of the Bill and a consumer's rights are protected by clause 68 of the Bill. Substantive and procedural rights are mentioned in clause 69 of the Bill. Various rights are provided in clauses 70 to 80 of the Bill. Therefore, a consumer has the right to select a supplier, goods or service, choose and examine goods and to accept goods or service. There are also rights in relation to unsolicited goods or service, to authorize a service and for the consumer's estate to choose whether to uphold an agreement. A consumer has the right to cancel a reservation, to rescind or cancel an agreement and rights with respect to delivery of goods or supply of a service as well. Other rights provided to consumers under this Part are to information in plain and understandable language and to information in the English language.
13. Duties are imposed on suppliers by Part VI of the Bill. Clauses 81 and 82 of the Bill make provision for registration of a supplier and identification of the supplier. The Part requires a supplier to label products and provide trade descriptions and to disclose environmental facts and used, re-conditioned, re-built or re-made goods by clauses 83 to 85 of the Bill. Suppliers have responsibility with respect to the quality of goods or services and must provide information to consumers and disclose the price of goods and services in accordance with clauses 86 to 89 of the Bill. Further duties are stated in clauses 90 to 114 of the Bill and include duties relating to warranties, sales records and damage and return of goods.
14. Unfair trade practices are identified in Part VII of the Bill. Clauses 115 to 130 of the Bill provide for unfair trade practices, such as bait advertising, dual pricing and pyramid selling.
15. Consumer safety is dealt with by Part VIII of the Bill. Consumer safety is defined under clause 131 of the Bill and the general consumer safety requirement is set out in clause 132 of the Bill. In clauses 133, 134 and 135 of the Bill provision is made for information on goods with inherent risk, consumer safety regulations and contravention of the consumer safety regulations. Unsafe goods may be declared under clause 136 of the Bill and a permanent ban may be imposed under clause 137 of the Bill. A regional alert system may be established in accordance with clause 138 of the Bill.

16. Goods can be recalled under Part IX of the Bill which provides for voluntary recall and compulsory recall in clauses 139 and 140 of the Bill. The repair and replacement of goods, refunds and effect of recall notice are provided for in clauses 141 to 143 of the Bill. Loss or damage caused by contravention of the recall notice, opportunity for conference and recommendations of the Board are considered in clauses 144 to 146 of the Bill.
17. The Director must have regard to the recommendations of the Board under clause 147 of the Bill but there are exceptions in case of danger to public under clause 148 of the Bill. In clauses 149 to 151 of the Bill provision is made for notices, notification of persons outside Saint Lucia and the right of appeal against a notice. Certain actions that do not affect insurance contracts are highlighted under clause 152 of the Bill.
18. Product liability is created in Part X of the Bill. The Interpretation provisions are housed in clause 153 of the Bill. In clauses 154 to 156 of the Bill provision is made for liability for defects, when a defect is inferred and damage giving rise to liability. Exclusions from liability are prohibited by clause 157 of the Bill and defences in civil proceedings are outlined in clause 158 of the Bill.
19. Provisions on distance selling are included in Part XI of the Bill. Interpretation and application provisions for the purposes of the Part are provided in clauses 159 and 160 of the Bill. Agreements for distance selling contracts, Prior information requirements as well as acceptance or refusal of distance contracts and the right to cancellation are provided for in clauses 161 to 164 of the Bill. Payment by credit or debit card and performance of the distance contract are set out in clauses 165 and 166 of the Bill.
20. Miscellaneous provisions are in Part XII of the Bill. Reasonableness, ambiguities to benefit consumer and trade coupons and similar promotions are dealt with in clauses 167 to 169 of the Bill. Promotional competitions, prohibitions and privileges and secrecy are provided for in clauses 170 to 172 of the Bill. The channel of communication, offences and offences by body corporate are stated in clauses 173 to 175 of the Bill. Protection of officers of the Department is provided for in clause 176 of the Bill. Clause 177 of

the Bill provides a general penalty. The Schedules may be amended by the Minister according to clause 178 of the Bill and the Minister may make Regulations for the purposes of the Bill under clause 179 of the Bill.

21. Schedule 1 of the Bill lists the Member States of the Community as defined under clause 2 of the Bill. Schedule 2 houses a complaint form for the purposes of clause 21 of the Bill. Schedule 3 houses the summons form for the purposes of clause 9 of the Bill. Schedule 4 houses the offences and fixed penalties for the purposes of section 43 of the Bill.

SAINT LUCIA

No. of 2016

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SAINT LUCIA

No. of 2016

AN ACT to provide for the promotion and protection of consumer rights in relation to the supply of goods and the provision of services; ensure the protection of life, health and safety of consumers; to establish of a Consumer Protection Board and a Consumer Protection Appeals Tribunal and for related matters.

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BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

PRELIMINARY**Short title**

1.—(1) This Act may be cited as the Consumer Protection Act, 2016.

(2) Subject to subsection (3), this Act shall come into force on a date to be fixed by the Minister by Order published in the *Gazette*.

(3) The Minister may fix different dates for the coming into force of different Parts or section of this Act.

Interpretation

2.—(1) In this Act-

“acquire”, in relation to -

(a) goods, includes obtaining by way of gift, purchase, or exchange, the taking on lease or hire purchase;

(b) a service, includes accepting the provision of a service;

“acquisition of goods” includes a reference to the acquisition of property in, or rights in relation to goods, in pursuance of a supply of the goods;

“advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting goods or a service;

“Appeals Tribunal” means the Consumer Protection Appeals Tribunal established under section 48;

“authorized officer” means a public officer designated as an authorized officer by the Minister in writing;

“Board” means the Consumer Protection Board established under section 5;

“Bureau” means the Saint Lucia Bureau of Standards established under section 3 of the Standards Act, Cap. 13:25;

“business” includes a professional practice or any other undertaking that is carried on for gain or reward or in the course of which goods or services are supplied otherwise than free of charge;

“Chairperson” means the Chairperson of the Board appointed under section 6;

“Community” means the Caribbean Community established by article 2 of the Revised Treaty and includes the Caribbean Single Market and Economy established by the Revised Treaty;

“commercial purpose” in relation to a consumer-

- (a) means all cases where goods are purchased for being used in any activity directly intended to generate profit;
- (b) does not include use by a person of goods bought and used or a service availed exclusively for the purposes of earning a livelihood by means of self-employment;

“competent officer” means an officer of the supplier authorized by the supplier to conduct specific business on behalf of the supplier;

“complainant” means –

- (a) a consumer;
- (b) any voluntary consumer association registered under any law for the time being in force;
- (c) the Crown;
- (d) one or more consumers, where there are numerous consumers having the same interests;
- (e) in case of the death of a consumer, his or her legal heir or representative;

who makes a complaint;

“complaint” means any allegation made by a complainant that –

- (a) an unfair term or an unfair trade practice has been adopted by a supplier;
- (b) goods bought by him or her or agreed to be bought by him or her is defective;
- (c) a service hired or availed or agreed to be hired or availed by him or her is defective in any respect;

- (d) the supplier has charged for the goods or for the services mentioned in the complaint at an amount in excess of the price –
 - (i) fixed by or under any law for the time being in force,
 - (ii) displayed on the goods or any package containing the goods,
 - (iii) displayed on the price list exhibited by the supplier,
 - (iv) agreed between the parties;
- (e) goods which will be hazardous to life and safety when used are being offered for sale to the public –
 - (i) in contravention of any standard relating to the safety of such goods as required to be complied with, by or under any law for the time being in force; and
 - (ii) the supplier ought to have known with due diligence that the goods so offered are unsafe to the public;
- (f) a service which is hazardous or likely to be hazardous to life and safety to the public when used, is being offered by the supplier where such person ought to have known with due diligence that the service is injurious to life and safety;
- (g) the supplier has contravened a provision of this Act, which is not included in paragraphs (a) to (f);

“consumer agreement” means an agreement between a supplier and a consumer in which the supplier agrees to supply goods or services to a consumer for payment;

“consumer” means a person who -

- (a) buys any goods under an agreement or transaction and includes any other user of the goods, when such use is made with the consent of the person who buys the goods, but does not include a person who obtains the goods for resale or for any commercial purpose;

- (b) hires or avails any service under an agreement or transaction and includes any other beneficiary of the service, when the service is availed with the consent of the hirer, but does not include a person who hires or avails the service for any commercial purpose;

“consumer protection group” means a consumer protection group that is registered under the Companies Act, Cap.13.01 as a non-profit company to -

- (a) commence or undertake any act to protect the interests of a consumer individually, or of consumers collectively, in any matter or before any forum contemplated in this Act; and
- (b) intervene in any matter before any forum contemplated in this Act, if the interests of consumers represented by that group are not otherwise adequately represented in that forum;

“Court” means the Magistrate’s Court or High Court;

“defect” in relation to goods, means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the supplier in any manner whatsoever;

“Department” means the department responsible for consumer affairs within the Ministry responsible for consumer affairs;

“Deputy Director” means the Deputy Director of the Department appointed as such by the Public Service Commission;

“Deputy Chairperson” means the Deputy Chairperson appointed under section 6;

“Director” means the Director of the Department appointed as such by the Public Service Commission;

“document” includes an electronic record;

“goods” include all kinds of property other than immovable property, securities or money;

“hire-purchase agreement” means an agreement for the purchase of goods by instalment payments and under which the person who agrees to purchase the goods is given possession of the goods on hire on condition that such person pays the agreed amount in periodical instalments and the owner agrees that the property in the goods is to pass to such person on the payment of the last of such instalments;

“member” means a member of the Board;

“Member State” means a State listed in Schedule 1;

“Minister” means the Minister responsible for consumer affairs;

“negligence” includes the breach –

(a) of any obligation, arising from the express or implied terms of a contract, to take reasonable care and to exercise reasonable skill in the performance of the contract; and

(b) of any common law duty to take reasonable care;

“payment” means consideration of any kind, including a deposit fee;

“person” includes a body corporate or an unincorporated body;

“prescribed” means prescribed in the Regulations;

“price” includes any representation that may reasonably be inferred to be an indication of the cost of the goods or services to the consumer;

“Regulations” means Regulations made under section 179;

“Revised Treaty” means the Revised Treaty of Chaguaramas signed at Nassau, The Bahamas on 5 July 2001 the text of which is set out in the Caribbean Community Act, Cap. 19:21;

“Saint Lucia National Consumers Association” means the independent non-profit non-governmental organization in the business of promoting consumer awareness;

“Secretary” means the Secretary to the Board referred to under section 6;

“service” includes –

- (a) a service of any description which is made available to consumers;
- (b) the provision of facilities in connection with banking, finance, insurance, transport, processing, boarding or lodging, housing construction, entertainment, amusement or the supply of news or other information or media services, but does not include the rendering of any service free of charge or under a contract of personal service or employment services;

“sustainable consumption” means the use of goods and service as required to meet basic needs and improve the quality of life without jeopardizing the needs of future generations;

“supplier” means –

- (a) a seller of goods or a service;
- (b) a person providing a service;
- (c) any person responsible for the provision of goods or services including a manufacturer, producer or distributor or the agent of a manufacturer, producer or distributor; or
- (d) a competent officer;

“supply of a service” includes –

- (a) the undertaking and performance for gain or reward of engagements for any matter other than the supply of goods; and
- (b) the rendering of a service to order and the provision of a service by making the service available to potential consumers;

but does not include the rendering of a service under a contract of employment;

“supply or acquisition of goods or services” includes a reference to –

- (a) an agreement to supply or acquire goods or services;

(b) the supply or acquisition of goods or services together with other property or other services or both.

(2) A reference in this Act to the Director is a reference to the Deputy Director where the Deputy Director acts in the absence of the Director.

Purpose

3. The purpose of this Act is to promote and advance the social and economic welfare of consumers by –

- (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible;
- (b) promoting fair business practices;
- (c) protecting consumers from –
 - (i) unfair, unconscionable or otherwise improper trade practices, and
 - (ii) deceptive, misleading or fraudulent conduct;
- (d) promoting environmental responsibility in consumer markets;
- (e) improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour; and
- (f) providing for an accessible, consistent, harmonized, effective and efficient system of redress for consumers.

Application

4.—(1) Subject to subsection (3), this Act applies to all persons involved in trade or business whether through the purchasing or supplying of goods or services.

(2) In determining whether this Act applies to a body or transaction, a court or tribunal shall consider the real substance of the body or transaction.

(3) The Minister may by order, subject to affirmative resolution, exempt categories of trade or business from the application of this Act.

PART I**CONSUMER PROTECTION BOARD****Establishment of Board**

5. There is established a Consumer Protection Board.

Constitution of Board

6.—(1) Subject to subsections (2) and (3), the Board consists of no more than five members to be appointed by the Minister after consultation with –

- (a) the Saint Lucia Manufacturers' Association;
- (b) the Saint Lucia Chamber of Commerce, Industry and Agriculture;
- (c) the Saint Lucia Bar Association; and
- (d) the Saint Lucia National Consumers Association.

(2) The Board consists of:

- (a) a member who has knowledge and experience in industry;
- (b) a member who has knowledge and experience in commerce;
- (c) a member who is an attorney-at-law of at least seven years standing who shall be the Chairperson of the Board;
- (d) a member who has knowledge and experience in public administration;
- (e) a member who has knowledge and experience in consumer protection.

(3) The Minister appoint one of the members of the Board to be the Chairperson and another member to be the Deputy Chairperson of the Board.

(4) The Director is *ex officio*, Secretary to the Board and his or her absence, the Chairperson may delegate any other member to act as Secretary.

(5) A member holds office for a period not exceeding three years, and is eligible for reappointment.

Disqualification

7. A person is disqualified from being a member of the Board if that person –

- (a) is declared by a court to be a bankrupt;
- (b) is declared by a court or certified by a registered health practitioner to be physically or mentally incapacitated;
- (c) has been convicted of a criminal offence except where the offence is a minor traffic offence or has been spent under the Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.13; or
- (d) is a member of Parliament.

Functions of Board

8.—(1) Subject to subsection (3), the Board shall—

- (a) receive complaints from the Department;
- (b) monitor the investigation of a complaint of the Department;
- (c) review reports of the Department;
- (d) where necessary, seek to resolve disagreements between a consumer and supplier in relation to goods and services;
- (e) hear, deliberate and resolve consumer complaints or other disagreements between consumers and suppliers;
- (f) provide redress against violations of this Act;
- (g) where appropriate, dismiss complaints; and
- (h) carry out such other functions incidental to the proper discharge of the functions under paragraphs (a) to (g).

(2) Subject to this Act, the Board may for the purpose of exercising or discharging any functions under this Act, do anything and enter into any transaction which in the opinion of the Board, is necessary to ensure the proper exercise or discharge of its functions.

(3) The Board, in addition to its functions, may provide guidelines published in the *Gazette* on the concept of sustainable consumption with respect to the provision of any goods or service.

Powers of the Board

9.—(1) For the purposes of the discharge of the functions under section 8, the Board has power to request any information, document or thing, with respect to a complaint from —

- (a) the Director;
- (b) the Department;
- (c) a complainant;
- (d) the supplier against whom the complaint is made; or
- (e) any other person who, in the opinion of the Board, may be able to assist.

(2) The Board may —

- (a) issue a summons and enforce the attendance of any party or witness and examine the party or witness on oath;
- (b) order the production of any document or other material object to be produced as evidence;
- (c) receive evidence on affidavit;
- (d) requisition the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (e) have the authority to do any other thing which may be prescribed.

(3) Where a summons is issued under subsection (2)(a), the summons shall be —

- (a) in the form set out in Schedule 3;
- (b) served by —
 - (i) a member of the Royal Saint Lucia Police Force,
 - (ii) a bailiff, or
 - (iii) any other person authorized by the Department.

Acting members

10.—(1) Where the Chairperson, Deputy Chairperson or any other member of the Board is absent or unable to act, the Minister may appoint any person to act temporarily in the place of the Chairperson, Deputy Chairperson or such member.

(2) Where the Minister appoints a person temporarily under subsection (1), the appointment must comply with the requirements in section 6 as to the constitution of the Board.

Resignations

11.—(1) Any member of the Board, other than the Chairperson or Deputy Chairperson, may at any time resign his or her office by notice in writing addressed to the Minister and transmitted through the Chairperson or Deputy Chairperson, and from the date of the receipt by the Minister of such notice, such member ceases to be a member of the Board.

(2) The Chairperson or the Deputy Chairperson may at any time resign his or her office by notice in writing addressed to the Minister and such resignation takes effect as from the date of the receipt by the Minister of such notice.

Revocation of appointment

12. The Minister may at any time revoke the appointment of any member of the Board if that member —

- (a) becomes disqualified in accordance with section 7;
- (b) neglects his or her duty as a member or engages in misconduct or malfeasance; or

- (c) is absent from three consecutive meetings without being excused by the member chairing the meeting.

Publication of names of members

13. The names of all members of the Board as first constituted and every change in the membership of the Board must be published in the *Gazette*.

Procedure for meetings

14.—(1) The Board shall meet at least once every month or at such times as may be necessary or expedient for the transaction of business, and the meetings are to be held at such places and times and on such days as the Board determines.

(2) The Chairperson and any other member are deemed to be present at a meeting of the Board if that Chairperson or member participates by telephone, video link or other electronic means, and all members participating in the meeting are able to hear and speak to each other.

(3) The Chairperson, or in his or her absence the Deputy Chairperson, shall preside at meetings of the Board, and in the absence of both the Chairperson and the Deputy Chairperson from any meeting, the members present at that meeting shall elect one of their number to preside at that meeting.

(4) The quorum of the Board is a majority of the members of the Board, including the member presiding at the meeting.

(5) The decision of the Board is by a majority of votes and, in any case in which the voting is equal, the Chairperson or other member presiding at the meeting has a casting vote in addition to an original vote.

(6) Minutes in proper form of each meeting shall be kept by the Secretary and shall be confirmed by the Chairperson or other member presiding as soon as practicable at the next meeting.

(7) The Board may co-opt persons with expert knowledge or experience required by the Board in the discharge of its functions.

(8) The acts of the Board are authenticated by the signature of the Chairperson of the Board.

(9) The validity of any proceedings of the Board is not affected by any vacancy amongst the members or by any defect in the appointment of a member.

(10) Subject to this section, the Board may regulate its own procedure.

Seal

15.—(1) The Board must have an official seal which is kept in the custody of the Secretary.

(2) The affixing of the official seal of the Board must be witnessed and signed by the Chairperson, or in his or her absence, the Deputy Chairperson.

(3) All documents which are executed by the Board and all decisions of the Board shall be signed by the Chairperson or in his or absence the Deputy Chairperson or any other member authorized in writing by the Chairperson to act on behalf of the Chairperson.

Protection of members

16. A member of the Board is not personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operations of the Board.

Disclosure of interest

17. A member of the Board who is in any way interested in a company, undertaking or matter which is under consideration by the Board shall disclose to the Board the fact and nature of his or her interest and shall not take part in and shall be absent from any deliberation or any decision of the Board relating to such matter and such a disclosure must immediately be recorded in the records of the Board.

Remuneration of members

18. There shall be paid to the members of the Board, such remuneration, if any, whether by way of honorarium, salary or fees, and such allowances as Cabinet determines.

Expenses of the Board

19. The expenses of the Board, including the remuneration of the members and any fees related to a complaint are to be paid out of the Consolidated Fund.

Independence

20. Subject to this Act, the Board is not subject to the direction or control of any person in the exercise of its powers.

PART II**RECEIPT AND INVESTIGATION OF COMPLAINTS****Complaints**

21.—(1) Any person who has reasonable grounds to believe that a supplier is in breach of the provisions of this Act may, make a complaint, to the Board through the Department.

(2) A complaint under subsection (1) shall be made in the form set out in Schedule 2.

(3) A complaint to the Board under this section may be made orally but shall be reduced to writing by the person receiving the complaint and the complainant shall confirm with his or her signature or other identifying mark on the prescribed form.

(4) Notwithstanding the procedure set out for making a complaint under this Act, a person who wishes to complain about the actions of a supplier may file a criminal complaint or a civil claim in any court having jurisdiction to hear such matter.

Protection of persons making complaint

22. Where a person makes a complaint to the Board under section 21 —

- (a) in good faith;
- (b) reasonably believing that the complaint made and any allegations contained in it, are substantially true, and in the circumstances it is reasonable for him or her to make the complaint,

he or she is not liable to any damage caused to the supplier.

Receipt of complaint by the Department

23.—(1) Upon receipt of a complaint, the Director shall –

- (a) give a certified copy of the complaint to the person making the complaint;
- (b) submit a copy of the complaint to the Board.

(2) In this section “certified copy” means a copy of the complaint signed by the person receiving the same and stamped “certified” with the official stamp of the Board.

Investigation by the Department

24. Where upon examination of a complaint, the Director is of the view that an investigation is necessary to ascertain whether any supplier has committed a breach of any provision of this Act, the Department shall investigate the complaint.

Power to investigate not precluded

25.—(1) The Department shall not be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to the court for redress under any other law.

(2) The Department is not precluded from investigating a complaint where an action is commenced in any court in connection with such investigation unless the court otherwise directs.

Power to obtain information, documents and evidence

26.—(1) Where the Director or an authorized officer conducts an investigation and the supplier, consumer or any other person is capable of furnishing information or producing documents relating to the investigation, the Director or the authorized officer may, by notice in writing served on the supplier, consumer or person require the supplier, consumer or person to —

- (a) furnish the Director or an authorized officer in writing signed by the supplier, the consumer or other person, in the manner, and within such reasonable time, as is specified in the notice, such information;

- (b) produce to the Director or an authorized officer in accordance with such reasonable requirements, as are specified in the notice, such documents; or
- (c) cause the supplier, the consumer or other person, to appear before the Director or an authorized officer at such reasonable time and place as is specified in the notice to give such evidence, either orally or in writing, and to produce such documents.

(2) Subject to subsection (3), where the Director or an authorized officer has to conduct an investigation, the Director or the authorized officer may, for the purposes of the investigation, enter any premises and may —

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

(3) The Director or an authorized officer shall exercise the powers under subsection (2) where a warrant is issued under subsection (5).

(4) Where an application for a warrant is made, the Magistrate may issue a warrant authorizing the Director or authorized officer named in the warrant, to enter the premises specified in the warrant and to exercise the powers of the Director or the authorized officer under subsection (2) in relation to those premises.

(5) A Magistrate shall not issue a warrant under subsection (4) unless —

- (a) an affidavit has been furnished to the Magistrate setting out the grounds on which the issue of the warrant is being sought;
- (b) the applicant or some other person has given to the Magistrate such further information, if any, on oath as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

- (c) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (6) A warrant issued under subsection (5) shall —
- (a) specify the purpose for which the warrant is issued;
 - (b) specify the hours within which entry is authorized to be made;
 - (c) include a description of the kind of goods authorized to be inspected, sampled or removed; and
 - (d) specify a date, not being less than seven days after the day on which the warrant is issued, after which the warrant ceases to have effect.
- (7) The Director or authorized officer shall, before entering the premises under a warrant issued under subsection (5) —
- (a) announce that he or she is authorized to enter the premises;
 - (b) give any person at the premises an opportunity to allow entry to the premises; and
 - (c) give a copy of the warrant to the supplier or a competent officer or in the absence of such a person on the premises to any person on the premises who appears to be employed by the supplier.
- (8) A person who interferes with the Director or an authorized officer in the execution of a warrant under this section commits an offence and upon summary conviction is liable to a fine not exceeding three thousand dollars and in default of payment of the fine, to imprisonment for a term not exceeding one year.
- (9) Any information furnished by a person, any document produced by a person, and any information or document obtained by a person under this section, may only be used by the Director or an authorized officer or a person assisting the Director or authorized officer in proceedings against the supplier for contravention of a provision of this Act.

Report to Board

27.—(1) Upon conclusion of an investigation, the Department shall prepare a full report of the investigation together with its findings and recommendations and submit a copy to the Board.

(2) The Director shall review all reports prepared under subsection (1).

Rules by the Director

28. The Director may make Rules governing the procedures to be followed by officers of the Department in receiving, recording, or investigating complaints, and may require that all complaints be notified to such person as the Director may specify.

Receipt of report by the Board

29. Upon receipt of a report, the Board may –

- (a) reject the complaint under section 30;
- (b) informally dispose of the complaint under section 31; or
- (c) institute a hearing to inquire into the complaint under section 32.

Rejection of complaint by the Board

30.—(1) The Board may on receipt of a complaint and after examining the complaint, reject the complaint if the Board is of the opinion that –

- (a) the subject matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or not made in good faith;
- (c) the complainant has delayed for more than six months from the day the grounds for complaint arose or a period expressed in relation to the goods or services whichever is greater;
- (d) having regard to all the circumstances of the case, no investigation or further investigation is necessary;
- (e) the complaint does not pertain to a matter the Board is empowered to deal with under this Act.

(2) In considering a complaint, the complainant shall be given a reasonable opportunity to be heard.

(3) Where the Board decides to reject a complaint, the Secretary shall, in writing, inform the complainant of that decision and give reasons for so deciding.

(4) Where the Board finds that a complaint is frivolous or vexatious or not made in good faith the complainant bears any costs related to the complaint.

(5) A person may appeal against a decision of the Board to the Appeals Tribunal.

Informal disposal

31.—(1) The Board shall consider whether a complaint can be disposed of informally and, with the consent of the complainant and the supplier, may attempt to dispose of the complaint.

(2) An answer or statement made, in the course of attempting to dispose of a complaint informally by the complainant or the supplier must not be used or received in any criminal proceedings.

(3) Where a complaint is disposed of informally, the supplier must be informed of the disposition in writing.

Hearing instituted by the Board

32.—(1) The Board shall institute a hearing by sending a notice of the hearing to the complainant and the supplier who is the subject-matter of the complaint.

(2) The notice of hearing must –

(a) specify the complaint and purpose of the hearing;

(b) specify the place and time of the hearing; and

(c) be in such form as may be specified by Regulations made by the Board.

(3) The complainant and the supplier concerned shall attend the hearing.

Non-attendance of parties

33.—(1) Where the complainant does not attend the hearing, having had due notice of the time and place of hearing, the Board may dismiss the complaint, unless having received a reasonable excuse for the non-appearance of the complainant the Board thinks it fit to adjourn the matter.

(2) Where a person who –

- (a) refuses or neglects without reasonable cause, to attend a hearing in compliance with the requirements of a notice issued under section 32; or
- (b) departs from a hearing without the authority of the person holding the hearing,

the Board may proceed with the hearing and render a decision in his or her absence in accordance with the provisions of this Act.

Recommendation of complaint for hearing

34. Where a complaint is recommended to the Board under section 27, the Director and in his or her absence the Deputy Director shall –

- (a) furnish the Board with –
 - (i) the complaint and any supporting materials or documents tendered by the complainant;
 - (ii) the response of the supplier and any supporting materials and documents tendered by the supplier, where available; and
- (b) in writing, notify the complainant and the supplier -
 - (i) that the complaint has been recommended for hearing by the Board; and
 - (ii) of the date, time and place at which they are to appear before the Board.

Rights and obligations of person summoned

35.—(1) A person summoned to attend and give evidence or to produce a document before the Board shall be entitled –

- (a) in respect of his or her attendance, the giving of evidence, the disclosure of any communication or the production of any document, to the same rights and privileges as a person summoned before a court of law; and
- (b) to be paid his or her expenses, including travelling expenses, at the rates prescribed for witnesses in civil proceedings who are entitled to have their expenses paid from the public fund.

(2) The Board may, if it thinks fit, disallow the whole or any part of any expenses referred to in subsection (1)(b).

(3) A person commits an offence, if he or she –

- (a) without sufficient cause, fails or refuses to obey a summons issued by the Board;
- (b) being a witness before the Board, without sufficient cause –
 - (i) leaves the hearing without the permission of the Board; or
 - (ii) refuses to answer any question put to him or her by or with the permission of the Board; or
- (c) without sufficient cause, obstructs or interrupts the proceedings of the Board.

(4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding three

thousand dollars or to imprisonment for a term not exceeding one year or to both.

Documents to be received as evidence

36. In all legal proceedings, any document submitted to the Board under section 35 shall be received as *prima facie* evidence of the truth of the statements contained in the document.

*Complaints and Disputes Regarding Goods***General procedure for resolving complaints and disputes in relation to goods****37.** Where —

- (a) on a recommendation made under section 34, the Board admits, for hearing, a complaint in relation to goods;
- (b) the Board is satisfied that the parties have been notified in accordance with section 34 (b); and
- (c) the supplier –
 - (i) denies or disputes the allegations contained in the complaint, or
 - (ii) omits or fails to take any action to represent his or her case within the time specified under section 26,

the Board shall, subject to subsection (2), resolve the complaint.

(2) In resolving a complaint the Board shall make a decision on the basis of evidence brought to its attention, which may include any reports issued by an appropriate laboratory.

(3) Where a complaint in relation to goods is recommended to be heard and determined by the Board but the procedure set out in sections 37 to 40 cannot be followed, the procedure set out in relation to complaints and disputes regarding services shall be followed.

Alleged defects requiring proper analysis and laboratory report

38.—(1) Where the complainant alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the Board shall, in the prescribed manner –

- (a) obtain a sample of the goods from the complainant;
- (b) seal the sample and authenticate it; and
- (c) subject to subsection (2), refer the sealed sample to an appropriate laboratory along with a direction to the laboratory to –
 - (i) make an analysis or test of the goods, whichever may be necessary;

- (ii) determine whether the goods suffer from any defect alleged in the complaint, from any other defect or pose any health risk; and
- (iii) report its findings to the Board within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the Board.

(2) Before any sample of the goods is referred to an appropriate laboratory, the Board shall require the complainant to deposit such fees as may be prescribed, for payment to the laboratory for carrying out the necessary analysis or test in relation to the goods in question.

(3) The Board shall remit the amount deposited to its credit under subsection (2) to the laboratory to enable the laboratory to carry out the necessary analysis or tests.

(4) Upon completion of the requisite analysis or tests, the laboratory shall submit its report to the Board in the prescribed form.

Receipt and distribution of laboratory report

39.—(1) Upon receipt of the report from the laboratory, the Board shall forward to the complainant and the supplier, a copy of the report along with such remarks as the Board considers appropriate.

(2) If any party disputes the accuracy of the findings of the laboratory or the accuracy of the methods of analysis or test adopted by the laboratory, the Board shall require the supplier or the complainant to submit in writing the grounds and nature of his or her dispute with regard to the report made by the laboratory.

(3) Upon receipt of a written submission under subsection (2), the Board shall give reasonable opportunity to the complainant and the supplier to be heard as to the accuracy or otherwise of the report made by the appropriate laboratory.

Procedure subsequent to receipt of laboratory reports and responses

40.—(1) Upon receipt of the responses of the parties, the Board shall, in its deliberations, examine the laboratory report, the parties' responses and all other evidence to which sections 37 to 40 apply.

(2) The Board, after considering all the evidence shall, by order, perform its functions under section 42.

Complaints and Disputes Regarding Services

General procedure for resolving complaints and disputes in relation to services

41.—(1) Where –

- (a) on a recommendation made under section 27, the Board may admit, for hearing, a complaint in relation to services;
- (b) the Board is satisfied that the parties have been notified in accordance with section 34 (b); and
- (c) the supplier—
 - (i) denies or disputes the allegations contained in the complaint; or
 - (ii) omits or fails to take any action to represent his or her case within the time specified under section 26, the Board shall proceed to resolve the complaint in accordance with subsection (2) notwithstanding that the matter complained of constitutes a criminal offence under this Act.

(2) The Board shall resolve each complaint—

- (a) on the basis of evidence brought to its attention by the complainant and the supplier, where the supplier denies or disputes the allegations contained in the complaint; or
- (b) *ex parte*, on the basis of evidence brought to its attention by the complainant where the supplier omits or fails to take any action to represent his or her case within the time and manner specified by the Board.

(3) Where the complainant fails to appear on the date of hearing before the Board, the Board may dismiss the complaint for default, adjourn the matter or decide the matter on its merits.

(4) No proceedings complying with the procedure laid down in this Part shall be called in question on the ground that the principles of natural justice have not been complied with.

(5) The Board shall hear and determine every recommended complaint as expeditiously as possible and decide the complaint no later than three months from the date of receipt of notice by the supplier where the complaint does not require analysis or testing of commodities and within five months, if the complaint requires analysis or testing of commodities.

(6) No adjournment shall be ordinarily granted by the Board unless sufficient cause is shown and the reasons for a grant of adjournment have been recorded in writing by the Board.

(7) The Board may make such orders as to the costs occasioned by the adjournment as may be prescribed.

(8) Where a complaint is disposed of, the Board shall at the time of disposal of the complaint record, in writing, the reasons for the disposal.

(9) Where during the pendency of any proceeding before the Board, an interim order appears to the Board to be necessary, just and proper, given the facts and circumstances of the case, the Board may pass the interim order.

Findings, Completion and Decisions of the Board

Decisions of the Board

42.—(1) If the Board is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, the Board shall issue an Order within fourteen days after the hearing, directing the supplier to do one or more of the following —

- (a) to remove the defect from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to remove the deficiencies in the services in question;

- (e) to desist and discontinue the unfair trade practice or the restrictive trade practice;
- (f) to refrain from offering the hazardous goods for sale;
- (g) to withdraw the hazardous goods from being offered for sale;
- (h) to cease the manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (i) to pay such fixed penalties as may be determined by the Board as set out in Schedule 4;
- (j) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the supplier responsible for issuing such misleading advertisement; or
- (k) to provide for prescribed costs to parties in addition to the fees, if any paid to the laboratory for analysis or testing of goods.

(2) Where the Board finds a complaint to be false, frivolous or vexatious it shall, issue an Order –

- (a) dismissing the complaint;
- (b) for the complainant to pay to the supplier such prescribed costs, as may be specified in the Order.

(3) Every Order made by the Board under this Part shall be signed by the Chairperson who conducted the proceeding provided that where any of the members differ on any point, they shall state the point on which they differ and the opinion of the majority shall be the Order of the Board.

Fixed penalties and Orders of the Board

43.—(1) The offences listed in Schedule 4 are designated offences for which criminal proceedings may be commenced.

(2) A fixed penalty shall be issued by the Board in respect of designated offences, as specified in Schedule 4.

(3) Where a person fails to pay a fixed penalty issued by the Board or comply with an Order of the Board within fourteen days of notice of the Order, the Secretary shall file the Order in the court for enforcement.

(4) Upon its filing in the court a fixed penalty, an Order for costs or other Order of the Board shall be levied out of the property of the party against whom it is made and shall be registered as a judgement.

Completion of hearing

44. On completion of a hearing, the Secretary shall prepare and send to the complainant and to the supplier concerned, a notice of the decision of the Board setting out the Board's findings and recommendations with respect to the complaint.

Registration of Order of the Board

45.—(1) The Director shall cause an Order made by the Board to be filed in the office of the court upon the expiry fourteen days after the Order is brought to the attention of the party against whom the Order is made.

(2) An Order filed in respect of an offence relating to the breach of any of the provisions of this Act shall be accompanied by a statement of the Board as to the findings of the Board.

Options after issue of Order

46. Within fourteen days of the issue of the order, a person may—

- (a) pay the total amount set out in the Order in accordance with section 47; or
- (b) request an appeal in accordance with section 58.

Payment of Order

47.—(1) A person who is served with an Order shall deliver the total amount set out in the Order to the Accountant General, within the time specified in the Order and shall be entitled to have endorsed on the Order the details of payment.

(2) Payment of the total amount within the time specified shall constitute the satisfactory disposition of the matter and shall operate in like manner as an absolute discharge.

PART III

APPEALS TRIBUNAL

Composition, Functions, Powers and Proceedings

Establishment of Appeals Tribunal

48. There is established a Tribunal to be known as the Consumer Protection Appeals Tribunal.

Constitution of Appeals Tribunal

49.—(1) The Appeals Tribunal comprise of three persons, appointed by Cabinet to include members possessing knowledge or experience in one or more of the fields of law, industry, public administration and consumer protection.

(2) The Chairperson of the Appeals Tribunal shall be a legal practitioner of not less than ten years standing.

Tenure

50. A member of the Appeals Tribunal holds office for a period not exceeding three years but is eligible for reappointment.

Resignation

51.—(1) Any member of the Appeals Tribunal, may at any time resign from office by instrument in writing addressed to Cabinet and transmitted through the Chairperson, and such resignation takes effect as from the date of receipt of that instrument by Cabinet.

(2) The Chairperson may at any time resign from his or her office, by instrument in writing addressed to Cabinet, and such resignation takes effect as from the date of receipt of that instrument by Cabinet.

Revocation of appointment

52.—(1) Cabinet may at any time revoke the appointment of any member of the Appeals Tribunal, including the Chairperson, if the member or Chairperson-

- (a) neglects his or her duty as a member or engages in misconduct or malfeasance; or
- (b) is absent from three consecutive meetings without excuse from the Chairperson.

(2) Where Cabinet revokes the appointment of a member of the Appeals Tribunal or the Chairperson, Cabinet shall state the reasons of the revocation.

Temporary members

53.—(1) Where the Chairperson or any member of the Appeals Tribunal –

- (a) is unable to perform the functions of the office of Chairperson or member of the Appeals Tribunal;
- (b) is absent;
- (c) dies;
- (d) resigns or the appointment is revoked,

Cabinet may appoint another person to act temporarily in place of the Chairperson or that member.

(2) A person appointed pursuant to subsection (1) shall be appointed in a manner that complies with the requirements in section 49 for the constitution of the Appeals Tribunal and holds office –

- (a) in the case of the absence or inability of the Chairperson or member to perform his or her functions, only for the portion of the term of the absence or inability;
- (b) in the case of the death, resignation or revocation of appointment of the Chairperson or member, the unexpired portion of the term of the former member.

Publication in the Gazette

54. The appointment of any member of the Appeals Tribunal and the termination of office of any person as a member whether by death, resignation, removal, passing of time or otherwise, shall be published in the *Gazette*.

Secretary of Appeals Tribunal

55.—(1) The Appeals Tribunal shall appoint a recording secretary of the Appeals Tribunal who has no voting rights.

(2) The Secretary shall keep a written record of all proceedings of the Appeals Tribunal, which shall be confirmed by the Chairperson.

Remuneration and allowances

56. There shall be paid to members of the Appeals Tribunal such remuneration and allowances, if any, whether by honorarium, salary or fees, as Cabinet determines.

Hearings, deliberations and decisions

57.—(1) A person who is dissatisfied by a decision of the Board may appeal to the Appeals Tribunal within fourteen days of receipt of the decision of the Board.

(2) The Appeals Tribunal shall convene at such time, at such place and on such days as may be necessary or expedient for the discharge of its functions.

(3) The quorum for proceedings of the Appeals Tribunal shall comprise a majority of the members.

(4) Where an appeal is lodged, the Appeals Tribunal shall convene a hearing within a period of thirty days from the date of receipt of the appeal.

(5) At least fourteen days before the date fixed for the hearing of an appeal, the Secretary to the Appeals Tribunal shall by notice in writing advise the appellant, the respondent and the Appeals Tribunal of the date, the time and the place at which the appeal has been set down for hearing.

(6) A notice under subsection (5) shall be given to the Appeals Tribunal and to the appellant and the respondent personally to his or her given address for service or by sending the notice by registered mail.

(7) At least seven days before the hearing of the Appeals Tribunal, the Secretary shall, whenever practicable, cause the notice referred to under subsection (5) to be published in the *Gazette*.

(8) At every hearing of the Appeals Tribunal the appellant and respondent shall be entitled to appear in person or by a representative.

(9) The hearing of an appeal by the Appeals Tribunal shall be in private.

(10) The decision of the Appeals Tribunal shall be by a majority of votes of those members present and voting and, in addition to an original vote, the Chairperson has a second or casting vote in any case in which the voting is equal.

(11) The decision of the Appeals Tribunal referred to it shall be conveyed to the Board and the appellant in writing.

(12) An appeal to the Appeals Tribunal may be made from a decision of the Board on a point of law, but not on any matter of fact or on the merits of any decision made by the Board.

(13) A member of the Appeals Tribunal shall, as soon as is practicable inform the Chairperson of any matter in which he or she has, either directly or indirectly, personally or by his or her relative, partner, business associate or company, any pecuniary or business interest and that member shall not take part, directly or indirectly, in any hearing, deliberation or decision by the Appeals Tribunal on that matter.

(14) The decision of the Appeals Tribunal shall be authenticated by the signature of the Chairperson and the Secretary.

Functions and powers of Appeals Tribunal

58. For the purposes of this Part, the Appeals Tribunal—

- (a) shall review the proceedings before the Board and consider any submissions made by the parties;
- (b) may decide on costs and such other matters as may be prescribed.

Proceedings of Appeals Tribunal

59. Subject to subsection (2) and section 49, every proceeding of the Appeals Tribunal shall be conducted by the Chairperson of the Appeals Tribunal and two other members sitting together.

(2) Where a member of the Appeals Tribunal, other than the Chairperson, is unable to conduct proceedings to completion, the Chairperson and the other member shall continue the proceedings from the stage at which it was last heard by the previous member and conclude the hearing.

Validity of proceedings

60. The validity of any proceedings of the Appeals Tribunal is not affected by any vacancy in its membership or by any defect in the appointment of any of its members.

PART IV

TERMS OF CONSUMER AGREEMENT

Written terms to be plain and intelligible

61.—(1) A supplier shall ensure that a written term in a consumer agreement is expressed in plain and intelligible language.

(2) Where there is doubt about the meaning of a written term, the interpretation that is most favourable to the consumer prevails.

(3) In so far as a term is plain and intelligible, the assessment of its fairness must not relate to -

- (a) the definition of the main subject matter of the consumer agreement; or
- (b) in the case of price, the adequacy of the price or remuneration as against the goods or service supplied in exchange.

Unfair terms

62.—(1) A term in a consumer agreement is unfair if it is to the detriment of the consumer and it causes a significant imbalance in the rights of the supplier and the consumer.

(2) In determining whether a term is unfair the Board or Appeals Tribunal shall have regard to all the circumstances of the case and in particular to the following -

- (a) the bargaining strength of the parties to the consumer agreement relative to each other, taking into account -
 - (i) the availability of equivalent goods or service, and
 - (ii) suitable alternative sources of supply;
 - (b) whether the consumer received an inducement to agree to the term, or, in agreeing to the term, had an opportunity of acquiring the goods or service or equivalent goods or service, from any source of supply under a contract that did not include that term;
 - (c) whether the consumer knew or ought reasonably to have known of the existence and extent of the term, having regard to any custom of trade and any previous dealings between the parties;
 - (d) in the case of supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer;
 - (e) the nature of the goods or service for which the consumer agreement was concluded;
 - (f) the interest of the supplier;
 - (g) the other terms of the consumer agreement or of another consumer agreement on which it is dependent;
 - (h) the interest of the particular class of consumers who are likely to adhere to the consumer agreement; and
 - (i) the circumstances surrounding the conclusion of the consumer agreement at the time of its conclusion.
- (3) An unfair term in a consumer agreement is unenforceable against the consumer.
- (4) Where a consumer asserts that a term in a consumer agreement is unfair, it is for the supplier to prove that the term is not unfair.
- (5) Where the Board or Appeals Tribunal, after having considered all the circumstances contemplated under subsection (2), is of the opinion that a term is unfair, it may -

- (a) rescind or amend the consumer agreement or a term of the consumer agreement; or
- (b) make any other order as may be necessary to prevent the effect of the consumer agreement being unfair or unreasonable to any of the parties, notwithstanding the principle that effect must be given to the contractual terms agreed upon by the parties.

Excluding, restricting or modifying liability

63.—(1) A term of a consumer agreement, including a term that is incorporated in that agreement by a term of the agreement, is void if it purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying –

- (a) the application of any provision of this Act to the consumer agreement; or
- (b) the exercise of a right conferred by Part V.

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

(3) A supplier shall not in trade or commerce and by reference to –

- (a) any term of a consumer agreement;
- (b) a notice given to persons generally; or
- (c) particular persons,

exclude or restrict his or her liability for death or personal injury resulting from negligence.

(4) In the case of other loss or damage, a supplier shall not in trade or commerce exclude or restrict the supplier's liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness as provided under sections 65 and 167.

(5) Where a term of a consumer agreement or a notice purports to exclude or restrict the liability of a supplier for negligence, the fact that a person agrees with it or is aware of it is not in itself to be taken as indicating the person's voluntary acceptance of any risk.

Indemnity from liability

64. A consumer shall not by reference to any term of a consumer agreement be made to indemnify another person, whether a party to the agreement or not, in respect of liability that may be incurred by the other person for negligence or breach of contract, except in so far as the term of the agreement satisfies the requirement of reasonableness under section 167.

Satisfying reasonableness where agreement terminated

65.—(1) Where, for the purpose of reliance upon it, a term of a consumer agreement has to satisfy the requirement of reasonableness, it may be found to do so and be given effect notwithstanding that the agreement has been terminated by breach or by a party electing to treat it as repudiated.

(2) Where on a breach, a consumer agreement is nevertheless affirmed by a party entitled to treat it as repudiated, such affirmation does not of itself exclude the requirement of reasonableness in relation to any term of a consumer agreement.

Liability for breach

66. Liability for breach of the obligations arising from any provision in an enactment relating to any implied condition or implied warranty in relation to goods is not excluded or restricted by reference to any term in a consumer agreement.

PART V**CONSUMER RIGHTS****Right reserved**

67. Nothing in this Act is interpreted so as to limit any right or remedy that a consumer has in law.

Protection of consumer right

68.—(1) Where a consumer has exercised, asserted or sought to uphold any right set out in this Act or in a consumer agreement with the supplier, a supplier who, in response –

- (a) discriminates directly or indirectly against that consumer, compared to the supplier's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right;
- (b) penalizes the consumer;
- (c) alters, or proposes to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or
- (d) takes any action to accelerate, enforce, suspend or terminate an agreement with the consumer, commits an offence.

(2) Where a consumer agreement, or any provision of such an agreement is, in terms of this Act, declared to be unlawful, or is severed from the agreement, the supplier who is a party to that agreement shall not, in response to that decision -

- (a) alter any term or condition of any other transaction or agreement with another party to the unlawful or severed agreement, except to the extent necessary to correct a similarly unlawful provision; or
- (b) take any action to accelerate, enforce, suspend or terminate another consumer agreement with another party to the unlawful or severed agreement.

(3) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.

Substantive and procedural rights

69.—(1) The substantive and procedural rights given under this Act apply notwithstanding any agreement or waiver to the contrary.

(2) Without limiting the generality of subsection (1), any term or acknowledgement in a consumer agreement that requires or has the effect of requiring that disputes arising out of the consumer agreement be submitted to arbitration is invalid insofar as it purports to prevent a consumer from exercising a right given under this Act.

(3) Notwithstanding subsections (1) and (2), where a dispute over which a consumer may commence an action in the court arises, the consumer, the supplier and any other person involved in the dispute may agree to resolve the dispute using any procedure that is available in law.

(4) A settlement or decision that results from the procedure agreed to under subsection (3) is as binding on the parties as such a settlement or decision would be if it were reached in court.

Right to select supplier, goods or service

70.—(1) A supplier shall not require, as a condition of offering to supply, or supplying, any goods or service, or as a condition of entering into a consumer agreement, that the consumer –

- (a) purchase any other goods or service from that supplier;
- (b) enter into an additional agreement or transaction with the same or another supplier; or
- (c) agree to purchase any goods or service from a designated third party.

(2) Without limiting the generality of subsection (1), a supplier requires a consumer to purchase additional goods or service if the supplier –

- (a) supplies the primary goods and any additional goods in a common package, and offers the goods for supply at a single price;
- (b) attaches to or inserts within, or in the packaging of, any primary goods a promotional coupon, credit slip, voucher or similar device to be used as full consideration for the purchase of any additional goods or service; or
- (c) installs within or encodes on the primary goods, or any component of the goods, any additional goods but does not alternatively offer the goods for supply separately and at individual prices.

Right to choose and examine goods

71.—(1) Where any goods are displayed in or sold from open stock, the consumer has the right to select or reject any particular goods from that stock.

(2) In accordance with article 286 of the Commercial Code, Cap. 244 of the Revised Laws of Saint Lucia 1957, where the consumer has agreed to purchase goods on the basis of a description or sample of the goods it is an implied condition of the agreement that the goods -

- (a) delivered to the consumer corresponds with the description or sample; and
- (b) are free from any defect that would not be apparent from the description or on reasonable examination of the sample.

(3) Where the consumer has agreed to purchase or lease goods on the basis of a sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

(4) In accordance with articles 286 and 305 of the Commercial Code, Cap. 244 of the Revised Laws of Saint Lucia 1957, where the supplier delivers goods to a consumer under a consumer agreement, the supplier shall allow the consumer a reasonable opportunity to examine the goods for the purpose of ascertaining whether the goods are in conformity with the consumer agreement.

(5) Where goods are delivered to the consumer that the consumer has not previously examined, the consumer is deemed not to have accepted the goods until the consumer has had a reasonable opportunity of examining it for the purpose of ascertaining whether it is in conformity with the consumer agreement.

Right to accept goods or service

72.—(1) In accordance with article 306 of the Commercial Code, Cap. 244 of the Revised Edition of the Laws 1957, a consumer is deemed to have accepted goods when -

- (a) the consumer expressly or implicitly communicates to the supplier that the consumer has accepted the goods;

- (b) the goods have been delivered to the consumer, and the consumer does any act in relation to the goods that is inconsistent with the supplier's ownership of the goods; or
- (c) after the lapse of a reasonable time, the consumer retains the goods without informing the supplier that the consumer has rejected them.

(2) Where a supplier delivers to a consumer a larger quantity of goods than the consumer agreed to buy, the consumer may accept the goods, and -

- (a) pay for the agreed quantity at the agreed rate; and
- (b) treat the excess quantity as unsolicited goods in accordance with section 73.

(3) Where a supplier delivers to a consumer some of the goods the supplier agreed to sell together with goods of a different description not contemplated in the consumer agreement, the consumer may -

- (a) accept the goods that are in accordance with the consumer agreement and reject the remainder; or
- (b) reject all the goods.

Right in relation to unsolicited goods or service

73.—(1) A consumer is not required to pay a supplier for any goods or service supplied to the consumer under a consumer agreement unless -

- (a) the consumer has implicitly requested the supplier to supply the particular goods or service by -
 - (i) tendering payment for the goods or service, or
 - (ii) conduct that could reasonably lead the supplier to believe that the consumer has requested the supplier to supply the particular goods or service;
- (b) the consumer has expressly requested the supplier to supply the particular goods or service before the goods or service is supplied to the consumer; or

(c) the supplier has undertaken to supply the goods or service of that particular class from time to time to the consumer without further approval or specific request.

(2) Subject to subsection (4), a supplier is not entitled to demand payment or make any representation that suggests that a consumer is required to make payment in respect of any unsolicited goods or service, despite the subsequent use, receipt, misuse, loss, damage or theft of the goods or service.

(3) Subject to subsection (4), a supplier is liable to pay to the consumer, such reasonable costs as are incurred in respect of the storage of the unsolicited goods.

(4) Subsections (2) and (3) do not apply to or in relation to a consumer who receives unsolicited goods if -

(a) the consumer who receives the goods has unreasonably refused to permit the supplier or the owner of the goods to take possession of the goods;

(b) the supplier or the owner of the goods has, within ten business days of receipt of the goods taken possession of the goods; or

(c) the goods were received in circumstances in which the consumer knew or might reasonably be expected to have known, that the goods were not intended for him or her.

(5) A request for particular goods or service is not inferred solely on the basis of payment, inaction or the passing of time.

(6) Where a consumer is a party to an agreement contemplated in subsection (1)(c) and, during the course of that agreement there is a material change in the goods or service, the goods or service is treated as unsolicited from the time of the material change unless the supplier is able to establish that the consumer consented to the material change.

(7) Where a consumer consents to a material change, whether orally, in writing or by other affirming action, a supplier may rely on the consent but has the onus of proving such consent.

(8) Where a supplier has received payment from or on behalf of a consumer in respect of unsolicited goods or service, the consumer

may demand a refund of the payment within three months after having made the payment.

(9) A supplier who receives a demand for a refund under subsection (8) shall refund the payment within the prescribed period of time.

(10) Where a consumer receives any unsolicited goods from a supplier, the consumer—

(a) may—

(i) subject to paragraph (b)(ii), retain the goods without payment, or

(ii) return the goods to the supplier at the supplier's risk and expense; and

(b) notwithstanding subsection (4) is not liable for any—

(i) loss or damage to the goods while in transit, or at any time after the goods are received by the consumer, whether or not the goods remains in the consumer's possession; or

(ii) use or depletion of, or damage to the goods at any time after ten business days after receipt by the consumer, unless during that time, the supplier has notified the consumer that the goods were delivered in error and the supplier arranged to recover the goods, at the supplier's risk and expense.

(11) In this section “unsolicited goods” means goods that are supplied to a consumer who did not request the goods, but does not include –

(a) goods that the consumer knows or ought to know is intended for another person;

(b) a change to periodically supplied goods, if the change is not a material change; or

(c) goods supplied under a written future performance agreement that provides for the periodic supply of the goods to the consumer without further solicitation.

(12) In this section “unsolicited service” means a service that is supplied to a consumer who did not request the service, but does not include –

- (a) a service that was intended for another person and the consumer knew or ought to have known that the service was so intended;
- (b) a change to an ongoing or periodic service that is being supplied, if the change to the service is not a material change; or
- (c) a service supplied under a written future performance agreement that provides for the ongoing or periodic supply of a service to the consumer without further solicitation.

Right to authorize service

74.—(1) This section applies to any consumer agreement in terms of which a supplier supplies a repair or maintenance service to, or supplies or installs any replacement parts or components in, any property belonging to or in the control of the consumer, if –

- (a) the supplier has or takes possession of that property for the purpose contemplated in this subsection; or
- (b) in any other case, the consumer requests an estimate before any service is supplied.

(2) A supplier to whom this section applies is not entitled to charge a consumer for the supply of any goods or service contemplated in subsection (1) unless –

- (a) the supplier has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorized the work; or
- (b) the consumer has, in writing –
 - (i) declined the offer of an estimate, and authorized the work, or

(ii) pre-authorized any charges up to a specified maximum, and the amount charged does not exceed that maximum.

(3) A supplier is not entitled to charge a consumer for –

(a) an estimate required under subsection (2)(a), unless the supplier has disclosed the price for preparing that estimate, and the consumer has approved it; or

(b) any diagnostic work, disassembly or re-assembly required in order to prepare an estimate, or for any damage to or loss of material or parts in the course of preparing an estimate, in addition to any estimate charge imposed under paragraph (a).

(4) The Minister may make Regulations to exempt from this section any transaction or consumer agreement referred to in subsection (1) that is below a prescribed threshold.

Right of consumer's estate to choose whether to uphold agreement

75.—(1) Where a consumer enters into a consumer agreement for the supply of any goods or service, but dies before the supply of the goods or service, in the absence of any written agreement to the contrary –

(a) the personal representative of the consumer's estate may give notice to the supplier –

(i) requiring delivery of the goods or supply of the service, in accordance with the agreement, or

(ii) terminating the agreement as from the date of the death of the consumer;

(b) any deposit paid by the consumer remains with the supplier for the benefit of the consumer's estate.

(2) Where a consumer agreement that has been terminated under subsection (1)(a)(ii) relates to the supply of any special-order goods, the supplier, after receiving notice of the termination –

(a) shall not order, procure or make anything not ordered, procured or made, and shall ensure the diligent completion of anything that had been ordered, procured or begun;

- (b) is entitled to reimbursement for any costs for the procurement or work, on the terms contemplated in the consumer agreement; and
- (c) upon acquisition or completion of the special-order goods, holds the goods in trust for the benefit of the consumer's estate, subject to further direction by the personal representative of the deceased.

(3) This section does not apply in respect of a consumer agreement for the supply of funeral or burial services.

Right to cancel reservation

76.—(1) Subject to subsections (2) and (3), a consumer has the right to cancel any advance booking or reservation for goods or service.

(2) A supplier who makes a commitment or accepts a reservation to supply goods or service on a later date -

- (a) may require payment of a deposit in advance, not exceeding the prescribed amount or prescribed percentage of the cost of the goods or service that has been reserved; and
- (b) may impose a reasonable charge for cancellation for the order or reservation.

(3) For the purposes of this section, a cancellation charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to -

- (a) the nature of the service that was reserved or booked;
- (b) the length of notice of cancellation provided by the consumer; and
- (c) the reasonable potential for the supplier, acting diligently, to find an alternative consumer between the time of receiving the notice, and the time of the cancelled reservation.

(4) Where a consumer is unable to carry out a reservation or advance booking by reason of the death of the consumer, the supplier -

- (a) may not impose any cancellation fee in respect of the reservation or booking; and
- (b) shall refund to the personal representative of the deceased any deposit paid by the consumer in respect of the reservation or booking.

Right to rescind or cancel agreement

77.—(1) This section does not apply with respect to a consumer agreement where goods have been delivered to the consumer, if after having been supplied to, or at the direction of, the consumer—

- (a) any other law prohibits the return of the goods to the supplier; or
- (b) the goods have been –
 - (i) partially or entirely eaten, consumed, depleted or destroyed, unless the consumer was reasonably unable to determine that the goods were unfit for the intended purpose without partially eating, consuming, depleting or destroying the goods, or
 - (ii) partially or entirely disassembled, physically altered, or affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

(2) The provisions of this section are in addition to and not in substitution for any right to return goods and receive a refund that may otherwise exist in law between a supplier and a consumer.

(3) A consumer may rescind a consumer agreement –

- (a) within ten business days after delivery of the goods to be supplied under the agreement, if the agreement arises as a result of –
 - (i) direct, distance or electronic marketing by the supplier and contemplates the delivery of the goods to the consumer, or
 - (ii) any other marketing in circumstances in which the consumer,

is unable to choose or examine the goods as contemplated in section 71;

- (b) within five business days after entering into the consumer agreement, if the consumer agreement arises as a result of direct, distance or electronic marketing by the supplier but does not contemplate the delivery of goods to the consumer.

(4) Notwithstanding the time limits set out in subsection (3), a consumer may rescind a consumer agreement as contemplated in that subsection within three months after the agreement, if the supplier -

- (a) was required to be licensed or registered in terms of any other law, and was not so licensed or registered;
- (b) contravened any provision of this Act in respect of the transaction.

(5) At any time, by giving one month's notice to the supplier, a consumer may cancel without penalty, a consumer agreement -

- (a) for the supply of a continuous service;
- (b) to purchase the goods or service on a recurring basis by subscription; or
- (c) to make a donation on a recurring basis.

(6) A supplier -

- (a) is obliged to return any payment received from a consumer within five business days after receiving notice of the rescission of a consumer agreement; and
- (b) is not entitled to collect any payment in terms of a rescinded agreement.

Right with respect to delivery of goods or supply of service

78.—(1) Unless otherwise expressly provided or anticipated in a consumer agreement, it is an implied condition of every consumer agreement for the supply of goods that -

- (a) the supplier is responsible to deliver the goods to the consumer-

- (i) within a reasonable time,
 - (ii) subject to subsection (2)(a) at the supplier's place of business, if the supplier has one, and if not, the supplier's residence, and
 - (iii) at the cost and risk of the supplier;
- (b) the goods remain at the supplier's risk until the consumer has accepted delivery.
- (2) The consumer has the right to require –
- (a) delivery of any goods at the –
 - (i) date and time agreed, and
 - (ii) place of the consumer's choice, but the supplier may require the consumer to pay the costs of delivery at any location other than a location referred to under subsection (1); or
 - (b) performance of any service at the time agreed with the supplier.

(3) Where a consumer agreement does not provide a specific time for delivery of any goods or the supply of any service, the supplier shall be required to deliver the goods or performance of the service at a reasonable time.

Right to information in plain and understandable language

79.—(1) A document that is required to be delivered to a consumer in terms of this Act, must be provided –

- (a) in the prescribed form, if any, for that document;
- (b) in a minimum font size of 12; or
- (c) in plain language, if no form has been prescribed for the document.

(2) For the purposes of this Act, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or

service, could be expected to understand the content and significance of the document without undue effort, having regard to the -

- (a) context, comprehensiveness and consistency of the document;
- (b) organization, form and style of the document;
- (c) vocabulary, usage and sentence structure of the text; and
- (d) use of any illustrations, examples, headings, or other aids to reading and understanding.

Right to information in English language

80. A consumer has a right to receive any document and information as required in terms of this Act in the English language.

PART VI DUTIES OF SUPPLIERS

Registration of supplier

81.—(1) A supplier who offers a service to consumers for purchase, shall be appropriately registered as a company, partnership, co-operative, sole proprietor or informal commercial operator.

(2) Where a supplier is registered under any Act the instruments of registration, or any official number or identification mark issued by the relevant authorities shall where applicable, be displayed by the supplier for viewing by the consumer.

(3) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Identification of supplier

82.—(1) A supplier shall not carry on business, advertise, promote, offer to supply or supply any goods or service, or enter into a transaction or consumer agreement with a consumer under any name except -

- (a) the supplier's name, as -

- (i) in the case of a person, recorded in a distinctive badge, tag or other identification device, or
 - (ii) registered under any other law; or
- (b) a name registered to, and for the use of, that supplier under any other law.

(2) A supplier referred to under subsection (1) shall include the following particulars on any trade catalogue, trade circular, business letter, order for goods, sales record, invoice or statement of account issued —

- (a) the name, title or description under which the business is carried on;
- (b) a statement of the place at which, or from which, the business is carried on; and
- (c) if the activity is carried on under a name contemplated in subsection (1)(b), the name of the person to whom that name is registered.

(3) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or to both.

Product labelling and trade descriptions

83.—(1) A supplier of goods shall not display, offer to supply or supply any goods, other than goods that are exempt under subsection (3), unless a trade description of the goods is —

- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
- (b) displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or
- (c) contained in any sign, advertisement, invoice, wine list, business letter, business paper, or other commercial communication on the basis of which a consumer may request or order the goods.

- (2) A supplier of goods shall –
- (a) not offer to supply, display, or supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that –
 - (i) a trade description applied to the goods is likely to mislead the consumer as to any matter implied or expressed in that trade description, or
 - (ii) a trade description or trade mark applied to the goods has been altered as contemplated in subsection (4); and
 - (b) with respect to any goods within that person’s control, take reasonable steps to prevent any other person from doing anything prohibited in paragraph (a).
- (3) The Minister may make Regulations to –
- (a) exempt particular goods or a category of goods from the application of subsection (1) if –
 - (i) the goods, or that category of goods, are subject to regulation under any other enactment, and the Minister is satisfied that the regulatory scheme provides for adequate disclosure of information to the consumer to achieve the purposes of this section, or
 - (ii) the information required under this section is self-evident given the nature of the goods, and the manner and circumstances in which the goods are customarily made available for supply to the public; or
 - (b) prescribe circumstances of displaying or selling particular goods or a category of goods, which if satisfied, would exempt the goods from the application of this section.
- (4) A supplier shall not –
- (a) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter expressed or implied in that trade description;

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

(5) A supplier shall take reasonable steps to prevent any other person under his or her control from doing anything prohibited in subsection (4).

(6) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars and in default of payment of the fine, or to a term of imprisonment not exceeding two years or to both.

(7) Nothing in this section limits the supplier's duty to comply with any standard declared by the Bureau.

(8) In this section "trade description" means any description, standard, statement or other direct or indirect indication, except a trade mark, as to -

- (a) the size, number, quantity, measure or weight of any goods;
- (b) the name of the producer of any goods;
- (c) the ingredients of any goods, or material of which any goods is made;
- (d) the place or country of origin of any goods;
- (e) the mode of manufacturing or producing any goods;
- (f) any goods being the subject of any patent, privilege or copyright; or
- (g) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraphs (a) to (f).

Disclosure of environmental facts

84.—(1) Without prejudice to the generality of section 83, a person who packages any prescribed goods, or imports any such goods, for supply to consumers, shall display on or in association with that

packaging or the goods, a notice in the prescribed manner and form that discloses –

- (a) the presence, nature and extent of any –
 - (i) unless otherwise provided by law, genetically modified ingredients or components of the goods, or
 - (ii) ingredients or components that have been determined to present a chemical or biological hazard to humans and the environment, relative to their concentration in the goods;
- (b) the estimated energy requirements per hour of use, if the operation of the goods require the utilization of energy other than muscle power;
- (c) the nature and intensity of any potentially harmful energy radiation, if the goods, or any component of the goods, emit any such radiation; and
- (d) the need for special handling, or waste disposal, of the goods, any component of them or any material in which the goods were packaged, if such special handling or waste disposal is –
 - (i) required in terms of any other enactment, or
 - (ii) advisable in the interest of personal, public health or safety and environmental health.

(2) A person who, in connection with the supply of any services to a consumer, supplies to a consumer prescribed goods under subsection (1) shall -

- (a) inform the consumer of any relevant information before supplying the goods; and
- (b) obtain the express consent of the consumer to install the goods that are the subject of a notice required by subsection (1), before supplying the goods.

(3) Subsection (1) does not apply to goods or service in respect of which a substantially similar label or notice has been applied or provided in terms of any other enactment.

- (4) A supplier of goods shall –
- (a) not offer to supply, display, or supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that –
 - (i) a notice applied to the goods is likely to mislead the consumer as to any matter implied or expressed in that notice, or
 - (ii) a notice applied to the goods has been altered as prohibited in subsection (5); and
 - (b) with respect to any goods within that person's control, take reasonable steps to prevent any other person under his or her control from doing anything prohibited in paragraph (a).
- (5) A supplier shall not –
- (a) knowingly apply to any goods a notice that is likely to mislead the consumer as to any matter implied or expressed in that notice; or
 - (b) alter, deface, cover, remove or obscure a notice applied to any goods in a manner calculated to mislead consumers or with respect to any goods within that supplier's control.
- (6) A supplier shall take reasonable steps to prevent any other person under his or her control from doing anything prohibited in subsection (5).

(7) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.

Disclosure of used, re-conditioned, re-built or re-made goods

- 85.—(1) A supplier who offers or agrees to supply, or supplies, any goods that –
- (a) have been used, re-conditioned, re-built or re-made; and
 - (b) bear the trade mark of the original manufacturer or supplier,

shall apply a notice to the goods stating clearly that the goods have been used, reconditioned, re-built or re-made.

(2) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or to both.

Quality of goods or service

86.—(1) A supplier is deemed to warrant that the goods or service supplied under a consumer agreement is of a reasonable acceptable quality.

(2) The implied conditions and warranties applying to the sale of goods by virtue of the Civil Code of Saint Lucia, Cap. 4.01 and the Commercial Code, Cap. 244 of the Revised Edition of the Laws 1957 are deemed to apply with necessary modifications to goods that are leased or traded or otherwise supplied under a consumer agreement.

(3) A term or acknowledgement that purports to negate or vary any implied condition or warranty under the Civil Code of Saint Lucia, Cap. 4.01 and the Commercial Code, Cap. 244 of the Revised Edition of the Laws 1957 or any deemed condition or warranty under this Act, is void.

(4) A term or acknowledgement referred to in subsection (3) is severable from the agreement and shall not be construed as evidence of circumstances showing intent that the implied condition or warranty does not apply.

Charging consumer for assistance

87.—(1) Subject to subsection (2), a supplier may charge a consumer for assisting the consumer to obtain any benefit, right or protection to which the consumer is entitled under this Act.

(2) Where a supplier charges a consumer under subsection (1), the supplier shall disclose the existence and direct availability of the entitlement to the consumer and the cost, if any, the consumer would be required to pay for the entitlement if the consumer obtained the entitlement directly.

Information to consumer

88.—(1) At any time before a consumer agreement is made for any goods, whether sold as used or new, a supplier shall, in addition to the requirements of any other enactment relating to packaging, labelling or description of goods, provide all reasonable information to the consumer concerning the goods being sold.

(2) The information referred to in subsection (1) is –

- (a) where applicable, the origin, care, terms, components, hazards, proper use, weight, size and instructions for assembly and installation of the goods;
- (b) where chargeable, the professional fees of the supplier in respect of the goods; and
- (c) the contract terms.

(3) Subject to subsection (4), where the consumer believes that he or she fully understands the information given as to the matters specified in subsection (2), the supplier shall require the consumer to sign a statement to the effect that the information was given to the consumer and that the consumer understands.

(4) Subsections (1) and (3) do not apply where in all the circumstances it is not reasonable for the information to be given or for the statement to be signed.

(5) Where a supplier fails to comply with this section, he or she shall, notwithstanding anything to the contrary in the warranty document relating to the goods, be responsible for any damage done to the goods by the consumer that can be directly attributable to the consumer's lack of information.

(6) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or, to imprisonment for a term not exceeding six months or to both.

Disclosure of price of goods or service

89.—(1) A supplier shall not display goods for sale, or offer to supply any service without displaying a price in relation to the goods

or service, unless the display is –

- (a) designed and intended predominantly as a form of advertisement of the supplier, or of the goods or service; and
- (b) in the case of goods, in an area within the supplier's premises to which the public does not ordinarily have access.

(2) For the purposes of this section –

- (a) a price is displayed in relation to particular goods if it is –
 - (i) annexed or affixed to, written, printed, stamped or located on, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale,
 - (ii) published in relation to the goods in a catalogue available to the public if a time is specified in the catalogue as the time after which the goods may not be sold at that price, and that time has not yet passed or in any other case, the catalogue may reasonably be regarded as not out of date, or
 - (iii) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or service; and
- (b) a price is not displayed in relation to goods if –
 - (i) the price was affixed to the goods outside Saint Lucia in relation to the supply of the goods outside Saint Lucia, or
 - (ii) the display of that price is fully covered and obscured by a second displayed price.

(3) Subject to subsection (4), where a supplier displays goods or offers to supply any service in relation to which more than one price is concurrently displayed, section 124 applies.

(4) Subsection (3) does not apply in respect of the price of the

goods or service if the price of the goods or service is determined by any other law.

(5) Where a supplier has provided an estimate for any service, or goods and services, as contemplated in section 107, the price for that service, or goods and services, must not exceed the estimate unless -

- (a) the supplier has informed the consumer of the additional estimate charges; and
- (b) the consumer has authorized the work to continue.

(6) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Warranties

90.—(1) Warranties in relation to goods or service, as the case may be, whether the goods are new or used, and whether the service offered is the repair of any appliance, furniture, equipment, or other goods are as set out in the Civil Code of Saint Lucia, Cap. 4.01 or the Consumer Credit Act, Cap. 13.15.

(2) Where a warranty given by a manufacturer is attached to goods sold, or provided in the course of a service, the supplier is -

- (a) deemed to have issued to the consumer, the manufacturer's warranty as an explicit warranty by the supplier; and
- (b) notwithstanding any geographical limitations in the warranty, liable to the consumer under the warranty as if the supplier were the manufacturer.

(3) Where the service provided is the repair or replacement of defective goods -

- (a) there is implied, a warranty that the repair or replacement is carried out within a reasonable time; and
- (b) implied warranties applicable to a contract for the sale of goods apply to repaired or replacement goods.

(4) Implied warranties in the absence of explicit warranties, apply to the sale and repair of goods.

(5) Where a supplier is liable only for the free replacement of parts under a warranty agreement, the supplier shall not require the consumer to use the services of the supplier in effecting the repairs to the equipment as a condition for the free replacement.

(6) In the absence of an explicit warranty, and subject to the standard conditions of warranties, an implied warranty of six months on parts and labour is attached to every transaction.

Measurement of goods

91.—(1) A consumer is entitled, when practicable, to check the weight, volume or other measurement of any goods that he or she intends to purchase where the weight, volume or other measurement of the goods materially affects or determines the price of the goods.

(2) For the purposes of subsection (1), a supplier of any goods that is sold by reference to its weight, volume or other measurement shall provide, to the consumer at the time of purchase, appropriate measurement standards in accordance with the Metrology Act, Cap. 13.18.

Written consumer agreement

92.—(1) This section applies only to a continuous service agreement or other prescribed categories of agreements.

(2) A supplier shall deliver, without charge to the consumer, a copy of a document that records a consumer agreement, transmitted to the consumer in a paper form, or in a printable electronic medium.

(3) The Minister may prescribe -

- (a) categories of additional consumer agreements to which this section applies; and
- (b) any specific wording to be included in such a consumer agreement to give full effect to the purposes of this Act.

(4) Irrespective of whether or not a particular written agreement is required in terms of this section -

- (a) a change to a document recording a written consumer agreement, or an amended consumer agreement, after it

is signed by the consumer, if applicable, or delivered to the consumer, is void unless –

- (i) the change reduces the consumer’s obligations or liabilities under the consumer agreement, or
 - (ii) after the change is made, the consumer signs or initials in the margin opposite the change; and
- (b) if the parties to a written consumer agreement agree to change its terms, the supplier shall deliver to the consumer a document that reflects the amended consumer agreement within twenty business days after the date of the amended consumer agreement.

Unlawful provisions of consumer agreement

93.—(1) A supplier shall not include in a consumer agreement for the supply of any goods or service, whether or not it is in writing, an unlawful provision or an unlawful condition.

(2) A provision of a consumer agreement, or a condition to which a consumer agreement is subject, is unlawful if—

- (a) its general purpose or effect is to—
 - (i) defeat the purpose 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 set out in this Act,
 - (ii) avoid a supplier’s obligation or duty in terms of this Act,
 - (iii) set aside or override the effect of any provision of this Act,
 - (iv) authorize the supplier to do anything that is unlawful in terms of this Act or fail to do anything that is required in terms of this Act;

- (c) it expresses an acknowledgement by the consumer that -
 - (i) before the consumer agreement was made, no representations or warranties were made in connection with the agreement by the supplier or a person on behalf of the supplier, or
 - (ii) the consumer has received any goods or service, or a document that is required by this Act to be delivered to the consumer that has not in fact been delivered or rendered to the consumer;
- (d) it expresses an agreement by the consumer to forfeit any money to the supplier if the consumer—
 - (i) exercises the right of rescission under section 77, or
 - (ii) fails to comply with a provision of the agreement before the consumer receives any goods or service in terms of the agreement;
- (e) it expresses, on behalf of the consumer—
 - (i) an authorization for any person acting on behalf of the supplier to enter any premises for the purposes of taking possession of the goods to which the agreement relates,
 - (ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed, or
 - (iii) a consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with this Act;
- (f) it expresses an agreement by the consumer to—
 - (i) deposit with the supplier, or with any other person at the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device, or

- (ii) provide a personal identification code or number to be used to access an account.

(3) Notwithstanding subsection (2)(e)(i), a provision in a consumer agreement, or a condition to which a consumer agreement is subject, is not unlawful if it expresses on behalf of the consumer, an authorization for any person acting on behalf of the supplier to enter any premises for the purposes of taking possession of the goods to which the agreement relates in the case of default.

(4) In any matter before a court or tribunal respecting an agreement that contains a provision contemplated in subsection (2), a court or tribunal shall -

- (a) sever that unlawful provision from the agreement, or alter it to the extent required to render it lawful, if it is reasonable to do so having regard to the agreement as a whole; or
- (b) declare the entire agreement unlawful as from the date that the agreement, or amended agreement, took effect; and
- (c) make any further order that is just and reasonable in the circumstances with respect to that unlawful provision, or the entire agreement, as the case may be.

(5) A supplier shall not -

- (a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision that would be unlawful if it were included in a primary agreement;
- (b) request or demand a consumer to -
 - (i) give the supplier temporary or permanent possession of a document referred to in subsection (2)(f)(i) other than for the purpose of identification, or to make a copy of the document,
 - (ii) reveal any personal identification code or number contemplated in subsection (2)(f)(ii); or
- (c) direct, or knowingly permit, any other person to do anything referred to in this section on behalf of or for the benefit of the supplier.

(6) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.

Conditions of demanding and accepting payment

94.—(1) A supplier shall not demand or accept payment or other consideration for the supply of goods or service, if at the time of the demand or acceptance, that supplier –

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

(2) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars and in default of payment of the fine, to imprisonment for a term not exceeding one year or to both.

Over-selling and over-booking

95.—(1) A supplier shall not accept payment or other consideration for any goods or service if the supplier –

- (a) has no intention to supply the goods or service;
- (b) intends to supply goods or service that is materially different from the goods or service in respect of which the payment or consideration was accepted.

(2) Where a supplier makes a commitment or accepts a reservation to supply goods or service on a specified date or at a specified time, and on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply the goods or service or similar or comparable goods or service of the same or better quality, class or nature, the supplier shall –

- (a) refund to the consumer any amount paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of re-imburement; and
- (b) in addition, compensate the consumer for breach of contract in an amount equal to the full contemplated price of the goods or service that were committed or reserved.

Management of pricing

96. Subject to any other law that determines the price of any goods or service, a supplier may determine any scoring or other evaluative mechanism or model to be used in managing or pricing goods or service offered by the supplier.

Sales record

97.—(1) A supplier of goods or service shall provide a written record of each transaction to the consumer to whom the goods or service is supplied, including in that record, the following information –

- (a) the supplier's name, or registered business name;
- (b) the address of the premises at which or from which the goods or service was supplied;
- (c) the date on which the transaction occurred;
- (d) a name or description of the goods or service supplied or to be supplied;
- (e) the unit price for each of the goods or service supplied or to be supplied;
- (f) the quantity of each of the goods or service supplied or to be supplied;
- (g) the total price of the transaction, before any applicable taxes;
- (h) the amount of any applicable taxes;
- (i) the total price of the transaction, including any applicable taxes; and

- (j) such other information as may be specified under this or any other law.

(2) A written record provided under subsection (1) must be durable.

(3) The Minister may, by notice, exempt any category of goods or service, or circumstance of trade, from the application of subsection (1).

(4) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Utility of sales record

98. The sales record provided by the supplier under section 97—

- (a) is adequate proof of the purchase of the goods or service; and
- (b) may be used for the purposes of refund in any of the circumstances specified in this Act.

Delivery date

99.—(1) Where —

- (a) a supplier has advertised a date or period for delivery of any goods, whether new, used or repaired; and
- (b) a consumer has entered into a contract with, and given a deposit to the supplier to deliver the goods,

that date or period forms part of the contract between the supplier and the consumer.

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

- (a) refund the deposit, together with interest of ten per cent per annum; or
- (b) deliver the goods by another date or within another period agreed with the consumer.

(3) A supplier who has advertised a completion or delivery date, and has obtained from the consumer a deposit in cash or kind or both, against the provision of the goods or service, may elect to terminate the contract within seven days after the receipt of the deposit and in such a case, shall refund the full value of the deposit received.

Approved and non-approved service

100.—(1) A supplier shall —

- (a) provide such service as is approved by the consumer; and
- (b) not require a consumer to commit to pay for a service which, in addition to the contracted service, may, in the opinion of the supplier, be necessary or appropriate.

(2) A consumer is not liable to pay for any service not approved by him or her.

Damage resulting from use of goods or service

101.—(1) A supplier shall, upon presentation by the consumer of a decision from the Board —

- (a) pay the consumer the sum awarded;
- (b) initiate payment of compensation within seven days after the decision is received by the supplier;
- (c) appeal the decision in accordance with section 57.

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

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

(3) A supplier is not relieved of liability if —

- (a) the consumer fails to avail himself or herself of some other goods or service that may be recommended by the supplier as supplementary or complementary;

- (b) he or she has provided complementary goods or service which fail to function well or cause damage or other loss.

(4) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Damaged goods sold to consumer

102.—(1) Where –

- (a) within the warranty period, goods sold to a consumer fail to provide the benefit and uninterrupted enjoyment for which it was intended; or
- (b) the goods are repaired more than once and still fail to provide the benefit and uninterrupted enjoyment for which it was intended; and
- (c) the failure is determined by the Board, after a hearing with the supplier, not to be due to negligence or abuse by the consumer,

the supplier is responsible for the replacement or repair of the goods, at no cost to the consumer.

(2) The supplier shall, in the event of the repair of the goods referred to in subsection (1) –

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

Return of defective goods

103.—(1) Subject to subsections (3) and (5) where a consumer is encouraged to acquire goods by the supplier's declaration and description of the goods and the consumer subsequently discovers that the goods are defective in a material particular from the goods that

are declared or described, the consumer may return the goods to the supplier.

(2) Where goods are returned under subsection (1) the supplier shall, in exchange for the returned goods -

- (a) replace the goods with goods declared and described by the supplier within thirty days of the return of the goods to the supplier;
- (b) at the election of the consumer, refund the value of the goods or such other amount as may be agreed between the consumer and supplier.

(3) A supplier shall replace or make refunds on the goods returned to him or her under subsection (2) where the goods are returned -

- (a) in the condition in which it was purchased; or
- (b) with minimal damage resulting from reasonable exposure in the normal course of use prior to discovery of the material difference between the goods received and the goods declared and described.

(4) Where there is a dispute as to the condition of the goods, the Board may, upon request, examine the goods with a view to making a determination as to the condition of the goods.

(5) A consumer who acquires goods that in every way is similar or identical to the goods requested or described by the consumer and declared by the supplier is not entitled to a refund if, having left the place from which the supplier sold the goods, the consumer for any reason decides that he or she no longer wants it.

(6) A supplier who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or to both.

Loss or damage of defective goods or negligence of manufacturer

104.—(1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage —

- (a) arises from the goods proving defective while in use by a consumer; and

- (b) results from the negligence of a person concerned in the manufacture or distribution of the goods,

liability for loss or damage is not excluded or restricted by reference to any term or notice contained in or operating by reference to, a guarantee of the goods.

(2) For the purposes of this section —

- (a) goods are to be regarded as being in consumer use when a person is using the goods, or is in possession of the goods for use, otherwise than exclusively for a commercial purpose; and
- (b) a representation in writing is a guarantee if it contains or purports to contain some promise or assurance however worded or presented, that defects will be corrected by complete or partial replacement, or by repair, monetary compensation or otherwise.

Return of materially different goods

105.—(1) Subject to subsections (2) and (3), where a consumer is encouraged to acquire goods by the supplier's declaration and description of the goods, and the consumer subsequently discovers that the goods acquired are different in a material particular from that intended to be acquired —

- (a) the consumer may return the goods acquired to the supplier;
- (b) the supplier must be afforded a reasonable opportunity to inspect the goods;
- (c) if the defect is not fixed after a reasonable time, the supplier shall give to the consumer in exchange for the returned goods, monetary compensation to the value of the goods or another amount agreed between the consumer and the supplier;
- (d) the supplier shall not charge the consumer a restocking fee for the returned goods.

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

(3) A consumer who acquires goods that is in every way similar or identical to the one requested or described and declared by the supplier is not entitled to a refund if, having left the place from which the supplier sold the goods, the consumer for any reason decides that he or she no longer wants the goods.

Return of electrical goods

106.—(1) This section applies where —

- (a) a consumer purchases electrical goods, believing the goods to be fully functional and operational; and
- (b) upon attempting to use the goods, discovers that it is faulty or non-functional.

(2) Where subsection (1) applies, the consumer may return the goods within thirty days.

(3) Unless the supplier is able to establish that the goods were damaged as a direct result of neglect or abuse by the consumer or an Act of God, the consumer is, on return of the goods to the supplier, entitled to —

- (a) an exchange of the faulty goods for goods that are new, similar goods and functional; or
- (b) a refund of the amount paid by the consumer for the goods.

Suppliers offering repair service

107.—(1) A supplier who offers a repair service to a consumer shall keep a record stating —

- (a) the name, address and telephone number of the consumer;

- (b) a reasonably accurate description of the goods to be repaired, including any identification number or mark;
- (c) where applicable, the replacement value of the goods in its present state as agreed with the consumer;
- (d) an estimate of the labour and other costs to be paid by the consumer in respect of the repairs to be effected;
- (e) the date on which the goods —
 - (i) are received for repair,
 - (ii) will be ready for delivery.

(2) The supplier shall give a copy of the record under subsection (1) to the consumer before the repairs are commenced.

(3) A supplier who offers a repair service shall disclose to the consumer any additional related repairs that he or she considers necessary for the consumer to enjoy reasonably long and uninterrupted use of the repaired goods.

(4) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Promotion of goods or service

108.—(1) A supplier of goods or service shall not promote any goods or service –

- (a) in a manner that is misleading, fraudulent or deceptive in any way, including in respect of –
 - (i) the nature, properties, advantages or uses of the goods or service,
 - (ii) the manner in or conditions on which the goods or service may be purchased, leased or otherwise acquired,
 - (iii) the price at which the goods may be acquired, or the existence of, or relationship of the price to, any previous

price, or competitors price for comparable or similar goods or service,

- (iv) the sponsoring of any event, or
- (v) any other material aspect of the goods or service;
- (b) in a manner that is reasonably likely to imply a false or misleading representation concerning the goods or service, as contemplated in section 115;
- (c) if the supply, purchase, sale or possession of the goods or service is unlawful;
- (d) to be supplied in a manner that is inconsistent with any law; or
- (e) in a manner that –
 - (i) is degrading to the dignity of any person,
 - (ii) depicts, simulates, suggests, represents or reasonably appears to promote a use or application of the goods or service that is inconsistent with any law, or
 - (iii) implies or expresses a preference for any particular group of consumers distinguishable from the general population on the basis of a prohibited ground of unfair discrimination set out in the Constitution of Saint Lucia, Cap. 1.01, except to the extent that particular goods or a service is reasonably intended or designed to satisfy specific needs or interests that are common to or uniquely characteristic of the particular group of consumers.

(2) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or to both.

Goods or service acquired by instalment

109.—(1) This section applies to any case where a supplier contracts to provide a consumer with any goods or service over an extended

period of time, and to receive periodic payments from the consumer for the goods or service.

(2) The supplier shall —

- (a) present a claim for the exact amount of, or the exact percentage of, the total value of the goods or service actually received to date by the consumer; and
- (b) on presentation of a claim, be entitled to terminate the consumer agreement if payment in full is not made within a reasonable time after the presentation of the claim, or by a predetermined payment date which forms part of the consumer agreement.

(3) In the event that the supplier is unable to present a claim under subsection (2), the supplier may -

- (a) present the consumer with an estimated claim; and
- (b) if the estimated claim is reasonable, request that the consumer pays the estimated amount on the conditions specified in subsection (4).

(4) The conditions referred to under subsection (3) are —

- (a) the amount paid will be credited to the amount owing at the next time that an accurate claim is presented; and
- (b) the supplier shall under no circumstances, be able to terminate the agreement or impose any penalty contained in the agreement in the event of breach by the consumer, solely on the ground that the consumer has not paid the estimated amount, either in full or in part.

(5) A supplier who presents an estimated claim for any goods or service shall present an accurate claim no later than ninety days after presentation of the estimate.

(6) Subsection (5) applies notwithstanding that the consumer of the goods or service does not pay the estimated amount claimed or pays it in full or in part.

Apportionment of payment where service not received

110.—(1) Where a service is provided to a consumer —

- (a) the supplier is deemed to be providing the consumer with a benefit under the consumer agreement;
- (b) subsection (2) applies where a fee is collected from the consumer for that service.

(2) Subject to subsection (3), a supplier —

- (a) is liable to make a full refund to the consumer, if for reasons not attributable to the consumer, the benefit is not received by the consumer; or
- (b) shall where the benefit is received only in part —
 - (i) refund a proportionate part of the fees collected, or
 - (ii) subject to subsection (3), be entitled to receive a similar proportionate part of any unpaid fees.

(3) Subsection (2) does not apply in any case where the consumer contracts to pay the supplier a prescribed fee regardless of whether the consumer receives the benefit.

(4) A supplier who offers a service to a consumer shall —

- (a) stipulate the extent of the benefit that is deemed to be attached to the service; and
- (b) provide the consumer with an appropriate warranty that -
 - (i) the benefit is enjoyed for a reasonable time, subject to the fulfillment of such conditions attached by the supplier as may be reasonable to the enjoyment by the consumer of that benefit, and
 - (ii) if the benefit is not so enjoyed, the supplier shall again provide the service free of charge to the consumer.

Supplier purporting to act on Bill of Sale

111.—(1) A supplier shall not –

- (a) personally act on the powers contained in a Bill of Sale of property pledged by a consumer; or

(b) employ any person other than a bailiff to recover any or all of the property pledged in the Bill of Sale to the supplier in the event of default in repayment of a loan.

(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars and in default of payment of the fine, to imprisonment for a term not exceeding one year.

(3) A supplier shall not, in taking action to recover any or all of the property pledged by the consumer in the Bill of Sale to the supplier in the event of default in repayment of a loan, carry out an act of seizure although the indebtedness of the consumer to the supplier has already been discharged or is currently being serviced in accordance with existing contractual provisions.

(4) A supplier who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars and in default of payment of the fine, to imprisonment for a term not exceeding two years.

(5) The court may order a supplier convicted of an offence under subsection (3) to pay to the consumer compensation for the property seized plus an additional amount per day for every day that the consumer has been deprived of the use and enjoyment of the property.

(6) A bailiff who, acting in bad faith, seizes the property of a consumer, commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars and in default of payment of the fine, to imprisonment for a term not exceeding one year.

(7) The court may order a bailiff or person convicted under subsection (6) to pay to the consumer compensation for the property seized plus an additional amount per day for every day that the consumer has been deprived of the use and enjoyment of the property.

(8) Any person who –

(a) threatens to seize property of a consumer under the powers contained in a Bill of Sale although the indebtedness of the consumer to the vendor has already been discharged; or

- (b) recklessly damages property of the consumer while exercising distraint,

commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars and in default of payment of the fine, to imprisonment for a term not exceeding one year.

(9) The court may order a supplier convicted of an offence to compensate the consumer for all expenses reasonably incurred as a result of the breach and the legal action.

Exclusion and restriction from liability from breach of contract and claims

112. A supplier who in trade or commerce is a party to a contract shall not —

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

except in so far as the contract term satisfies the requirement of reasonableness under section 167.

Liability for breach of duty or obligation

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

Mediation

114. A supplier shall ensure that a consumer agreement includes a clause providing for the parties to attempt to settle their disagreements through mediation by the Board before taking the matter to court.

PART VII**UNFAIR TRADE PRACTICES****False, misleading or deceptive representation**

115.—(1) It is an unfair practice for a person in the course of trade or commerce to make a false, misleading or deceptive representation or to engage in conduct that is or is likely to be misleading or deceptive, particularly in relation to the nature, manufacturing process, characteristics, suitability for purpose or quality of goods or service.

(2) With respect to any goods or service that is the subject of a consumer agreement or in the marketing of any such goods or service, a supplier shall not, by words or conduct—

- (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;
- (b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception;
- (c) knowingly permit a consumer to believe a false, misleading or deceptive state of facts; or
- (d) fail to correct an apparent misapprehension on the part of a consumer that amounts to a false, misleading or deceptive representation or permit or require any other person to do so on behalf of the supplier.

(3) Without limiting the generality of subsection (1), it is a false, misleading or deceptive representation to falsely state or imply, or allow a consumer to incorrectly believe, that—

- (a) the supplier has status, affiliation, connection, sponsorship or approval that he or she does not have;
- (b) goods or a service –
 - (i) have ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval that the goods or a service does not have,

- (ii) is of a particular standard, quality, grade, style or model,
- (iii) subject to subsection (4), is new or unused, if the goods are not or if the goods are re-conditioned, reclaimed or rebuilt,
- (iv) has been used for a period, to an extent, or in a manner that is materially different from the facts,
- (v) has been supplied in accordance with a previous representation,
- (vi) are available, or can be delivered or performed within a specified time;
- (c) a necessary service, maintenance or repair facility or part is readily available for or within a reasonable period;
- (d) a service, part, replacement, maintenance or repair is needed or available;
- (e) a specific price advantage exists;
- (f) a charge or proposed charge is for a specific purpose;
- (g) an employee, salesperson, representative or agent has authority to negotiate the terms of, or conclude, a consumer agreement;
- (h) the transaction affects, or does not affect, any rights, remedies or obligations;
- (i) a particular solicitation of, or communication with, the consumer is for a particular purpose; or
- (j) the consumer will derive a particular benefit if he or she assists the supplier in obtaining a new customer.

(4) A representation contemplated in subsection (3)(b)(iii) to the effect that goods are new is not false, misleading or deceptive if the goods have been used by or on behalf of the manufacturer, importer, distributor or supplier for the purposes of reasonable testing, servicing, preparation or delivery.

(5) A consumer agreement concluded on the basis of a false, misleading or deceptive representation is unenforceable at the option of the consumer.

(6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Restrictive trade

116.—(1) A supplier shall not adopt trade practices which –

- (a) tend to bring about manipulation of price or conditions of delivery or affect flow of supplies in the market relating to goods or service in such manner as to impose on the consumer unjustified costs or restrictions;
- (b) delay beyond the period agreed to by a supplier in supply of goods or service which has led or is likely to lead to rise in the price;
- (c) requires a consumer to buy, hire or avail any goods or, as the case may be, service as a condition precedent to buying, hiring or availing other goods or service.

(2) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Unfair method or unfair or deceptive practice

117.—(1) A supplier shall not in the course of trade or commerce, adopt, for the purpose of promoting the sale, use or supply of goods or the provision of any service, an unfair method or unfair or deceptive practice, including the practice of making any statement, whether orally or in writing or by visible representation which –

- (a) falsely represents that the goods are of a particular kind, standard, quality, grade, quantity, composition, style or model, or have had a particular history or particular previous use;

- (b) falsely represents that the service is of a particular kind, standard, quality, or quantity or that the service is supplied by any particular person or by any person of a particular trade qualification or skill;
- (c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
- (d) represents that goods or service has any sponsorship, approval, performance, characteristics, accessories, uses or benefits which the goods or service does not have;
- (e) represents that the supplier has any sponsorship, approval, or affiliation which the supplier does not have;
- (f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or service;
- (g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test;
- (h) makes to the public a representation in a form that purports to be -
 - (i) a warranty or guarantee of a product or of any goods or service, or
 - (ii) a promise to replace, maintain or repair goods or any part of any goods, or to repeat or to continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (i) misleads the public concerning the price at which a product or like product or goods or service, has been or is, ordinarily sold or provided; or
- (j) gives false or misleading facts disparaging the goods, service or trade of another supplier.

- (2) For the purposes of subsection (1), a statement that is –
- (a) expressed on any goods offered or displayed for sale, or on its wrapper or container;
 - (b) expressed on anything attached to, inserted in, or accompanying any goods offered or displayed for sale, or on anything on which the goods are mounted for display or sale; or
 - (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

is deemed to be a statement made to the public by the person who had caused the statement to be so expressed, made or contained.

(3) Notwithstanding subsection (1)(g), where a defence is raised to the effect that a warranty or guarantee is based on an adequate or proper test, the burden of proof of the defence is on the person raising the defence.

(4) For the purpose of subsection (1)(i), a representation as to price is deemed to refer to the price at which the product or goods or service has been sold or provided by a supplier generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or service has been provided by the person by whom or on whose behalf the representation is made.

(5) A supplier shall not permit the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or service that is not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business carried on, the nature and size of business, and the nature of the advertisement.

- (6) For the purposes of subsection (5), “bargain price” means –
- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or
 - (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a

bargain price having regard to the price at which the product advertised or like product is ordinarily sold.

(7) A supplier shall not permit the –

- (a) offering of gifts, prizes or other items with the intention of not providing them as offered or creating an impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;
- (b) conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

(8) A supplier shall not withhold from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure, the information about final results of the scheme.

(9) For the purposes of subsection (8), the participants of a scheme are deemed to have been informed of the final results of the scheme where such results are, within a reasonable time, published in the same media in which the scheme was originally advertised.

(10) A supplier shall not permit the sale or supply of goods intended to be used, or that are of a kind likely to be used by a consumer, knowing or having reason to believe that the goods did not comply with the standards prescribed by a competent authority relating to performance, composition, contents, design, construction, finishing or packaging, as are necessary to prevent or reduce the risk of injury to the person using the goods.

(11) A supplier shall not hoard or destroy goods, or refuse to sell the goods or to make it available for sale or to provide any service, if the hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of the goods or service or other similar goods or service.

(12) A supplier shall not manufacture spurious goods or offer such goods for sale or adopt deceptive practices in the provision of a service.

(13) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two

thousand dollars or to imprisonment for a term not exceeding six months or to both.

Misleading public as to nature of goods or service

118.—(1) A supplier shall not in the course of trade or commerce engage in conduct that is likely to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose or quantity of the goods or service as the case may be.

(2) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Unreasonable transactions

119.—(1) A supplier shall not supply or agree to supply any particular goods or service to a consumer if the supplier knows, or reasonably ought to have known, or recognized from the interaction between the supplier and the consumer –

- (a) that the goods or service is materially unsuitable for the purpose to which the consumer intends to apply the goods or service, irrespective of whether the goods or service is of good quality or is reasonably fit for its customary intended purpose; and
- (b) that the consumer is unlikely to be able to make such a determination, having regard to the nature of the goods or service, and the consumer's apparent age, education, experience, familiarity with such goods or service, and general consumer sophistication.

(2) An unreasonable transaction is unenforceable against a consumer.

(3) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Unfair or unjust transactions

120.—(1) A supplier shall not –

- (a) offer to supply, supply, or enter into a consumer agreement to supply any goods or service at a price or on terms that are unfair or unjust; or
- (b) market any goods or service, or negotiate, enter into or administer a consumer agreement for the supply of any goods or service, in a manner that is unfair or unjust, having regard to –
 - (i) the fair value of the goods or service,
 - (ii) the circumstances of the consumer agreement,
 - (iii) the parties to that consumer agreement,
 - (iv) the relationship of the parties to each other; and
 - (v) the relative capacity, education, experience, sophistication and bargaining position of the parties.

(2) For the purposes of this section, a consumer agreement is unfair or unjust if –

- (a) the consumer agreement is excessively one-sided in favour of any person other than the consumer or other person to whom goods or service is to be supplied;
- (b) the terms of the consumer agreement are so adverse to the consumer as to be inequitable; or
- (c) the consumer relied upon a false, misleading or deceptive representation, or statement of opinion, provided by or on behalf of the supplier, to the detriment of the consumer.

(3) An unfair or unjust transaction is unenforceable against a consumer.

Unconscionable conduct

121.—(1) A supplier shall not use physical force, coercion, undue influence, pressure or harassment, unfair tactics or any other conduct, in connection with –

- (a) the marketing of any goods or service;
- (b) the supply of goods or service to a consumer;
- (c) the negotiation, conclusion, execution or enforcement of a consumer agreement to supply any goods or service to a consumer;
- (d) the demand for, or collection of, payment for goods or service by a consumer; or
- (e) the recovery of goods from a consumer.

(2) Without prejudice to subsection (1), it is unconscionable for a supplier to take advantage of the fact that a consumer was substantially unable to protect his or her own interests because of disability, illiteracy, ignorance, inability to understand the language of a consumer agreement, or any other similar factor.

(3) In determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the employer of the person or principal knows or ought to know that -

- (a) the consumer is not reasonably able to protect his or her interests due to disability, ignorance, illiteracy, inability to understand the language of a consumer agreement or similar factors;
- (b) the price grossly exceeds the price at which similar goods or services are readily available to like consumers;
- (c) the consumer is unable to receive a substantial benefit from the subject matter of the representation;
- (d) there is no reasonable probability of payment of the obligation in full by the consumer;
- (e) the terms of the consumer agreement are so adverse to the consumer as to be inequitable;
- (f) a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment; or

(g) the consumer is being subjected to undue pressure to enter into a consumer agreement.

(4) A consumer agreement concluded on the basis of an unconscionable conduct is unenforceable at the option of the consumer.

(5) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Renegotiation of terms

122.—(1) A person who has custody or control of goods shall not use such custody or control to induce the consumer into renegotiating the terms of a consumer agreement.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or to both.

Bait advertising

123.—(1) A person shall not, in the course of trade or commerce, advertise for supply, at a specified price, goods or a service which that person –

(a) does not intend to offer for supply; or

(b) has no reasonable grounds for believing he or she can supply, immediately or within a reasonable time,

at that price, for a period and in quantities that are unreasonable, having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

Dual pricing

124.—(1) Where more than one price is displayed on goods –

- (a) the consumer is entitled to pay the lowest of the prices that are displayed on the goods; and
- (b) a supplier shall not in the course of trade or commerce supply the goods at a price that is higher than the lowest price displayed on the goods.

(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both.

(3) It is a defence to a prosecution of a person for a contravention of this section that –

- (a) the contravention in respect of which the prosecution was instituted was due to –
 - (i) the act or default of another person, other than a director, employee or agent of the defendant, or
 - (ii) an accident or to some other cause beyond the control of the defendant; and
- (b) the defendant had taken all reasonable precautions and exercised due diligence to avoid the contravention.

Referral selling

125.—(1) A supplier shall not induce a consumer to acquire goods or service under a consumer agreement by representing that the consumer will, after the consumer agreement is made, receive a rebate, commission or other benefit in return for giving the supplier the names of consumers or otherwise assisting the supplier to supply the goods or service to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after the consumer agreement is made.

(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or to both.

Pyramid selling

126.—(1) A person shall not promote, operate or participate in a pyramid selling scheme.

(2) For the purposes of this section, the term “pyramid selling scheme” means a scheme that provides for the supply of goods or a service or both for reward to many participants that constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or a service and is unfair, or is likely to be unfair, to many of the participants in that –

- (a) the financial rewards of many of the participants are dependent on the recruitment of additional participants; and
- (b) the number of additional participants that must be recruited to produce reasonable rewards to participants is either not attainable, or is not likely to be attained, by many of the participants.

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

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.

(5) This section is subject to existing financial services legislation and where there is conflict between that legislation and this section, the financial services legislation takes precedence.

(6) The Board shall cooperate and share information with the Financial Services Regulatory Authority established under the Financial Services Regulatory Authority Act, cap.12.23 in the identification and investigation of pyramid selling scheme activity.

Non-delivery of goods or service on contracted date

127.—(1) Where it can be proved that a supplier has contracted to provide goods or a service and pursuant to that contract, has received a deposit in cash or kind and on the contracted delivery date is unable to deliver the goods or service or demonstrate that the goods or service is in a reasonably advanced state of production without reasonable excuse, that supplier is deemed to have acted in a fraudulent manner and commits an offence.

(2) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or to both.

Printing, publishing, distributing, broadcasting or telecasting

128. It is not an unfair practice for a person to print, publish, distribute, broadcast or telecast a representation on behalf of a supplier of goods or service which the person accepted in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of business.

Rescission

129.—(1) Where a consumer has entered into a consumer agreement in the course of which transaction the supplier has engaged in an unfair practice the consumer agreement may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law.

(2) Where rescission of the agreement under subsection (1) is not possible because -

- (a) the return or restitution of the goods or service is no longer possible; or
- (b) rescission would deprive a third party of a right in the subject-matter of the agreement which the third party acquired in good faith and for value,

the consumer is entitled to recover the amount by which the payment by the consumer under the agreement exceeds the reasonable value of the goods or service or to recover damages, or both.

Defences for contravention of this Part

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

- (a) that the contravention in respect of which the proceeding was instituted was due to -
 - (i) a mistake,
 - (ii) reliance on information supplied by another person,
 - (iii) the act or default of another person,
 - (iv) an accident, or
 - (v) some other cause beyond his or her control; and
- (b) that he or she took reasonable precautions and exercised due diligence to avoid the contravention.

(2) Where a defence under subsection (1) involves an allegation that a contravention was due to -

- (a) reliance on information supplied by another person; or
- (b) the act or default of another person,

the defendant is not, without leave of the court, entitled to rely on that defence unless he or she has, not later than seven days before the day on which the hearing of the proceeding commenced, served on the person by whom the proceeding was instituted, a notice in writing giving such information as was then in his or her possession that would identify or assist in the identification of the other person.

(3) In a proceeding under this section in relation to a contravention of a provision of this Part by the publication of an advertisement, it is a defence if the defendant proves that he or she –

- (a) is a person whose business it is to publish or arrange for the publication of advertisements, and that he or she received the advertisement for publication of advertisements in the ordinary course of business; and
- (b) did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Part.

PART VIII
CONSUMER SAFETY

Interpretation of “consumer safety”

131. In this Part “consumer safety” includes –

- (a) the reduction of risks to consumers in the supply of goods or service;
- (b) providing information or instructions in regard to the keeping, use or consumption of goods;
- (c) the reduction of any harm or damage to the consumers by taking preventative and proactive measures.

General consumer safety requirement

132.—(1) A person shall not –

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

(2) For the purposes of this section, goods fail to comply with the general consumer safety requirement if it is not safe having regard to all the circumstances, including –

- (a) the manner in which, and purposes for which, the goods are being or would be marketed, the packaging of the goods, the use of any mark in relation to the goods and any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods;
- (b) any applicable consumer safety standards; and
- (c) the existence of any means by which it would have been reasonable for the goods to have been made safer.

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

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

(4) In any proceedings against a person for an offence under this section in respect of any goods it is a defence for him or her to show that he or she supplied the goods, offered or agreed to supply the goods or, as the case may be, exposed or possessed the goods for supply in the course of carrying on a retail business neither knowing nor having reasonable grounds for believing that the goods failed to comply with the general consumer safety requirements.

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

- (a) it is supplied in the course of carrying on a business of making a supply of consumer goods available to persons who generally acquire the goods for private use or consumption whether or not the goods are acquired for a person's private use or consumption; and
- (b) the description of the goods the supply of which is made available in the course of that business do not, to a significant extent, include manufactured or imported goods which have not previously been supplied in Saint Lucia.

(6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand

dollars or to imprisonment for a term not exceeding two years or to both.

Information on goods with inherent risk

133.—(1) A supplier shall provide consumers with the relevant information –

- (a) to assess the risks inherent in goods or where such risks are not immediately obvious without adequate warning; and
- (b) to take precautions against those risks.

(2) A supplier shall adopt measures to enable the consumer to –

- (a) be informed of the risks which the goods might pose; and
- (b) take appropriate action to avoid such risks by warning the consumer as to the risks.

(3) The measures referred to under subsection (2) include, except where it is not reasonable to do so, an indication by means of the product or its packaging of –

- (a) the name and address of the producer; and
- (b) the product reference or where applicable the batch of products to which it belongs.

(4) A supplier shall, within the limits of his or her business, monitor the safety of such goods.

Consumer safety regulations

134.—(1) The Minister may, after consultation with the Bureau, make Regulations for the purpose of ensuring that –

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

(2) Without prejudice to the generality of subsection (1), consumer safety regulations may contain provisions -

- (a) with respect to the performance, composition or contents, design, construction, finish or packaging of goods to which this section applies, and with respect to other matters relating to such goods;
- (b) with respect to the giving, refusal, alteration or cancellation of approvals of such goods, of descriptions of such goods or of standards for such goods;
- (c) with respect to the conditions that may be attached to any approval given under the regulations;
- (d) prescribing the fees to be paid on the giving or alteration of any approval under the regulations and on the making of an application for such an approval or alteration;
- (e) with respect to appeals against refusals, alterations and cancellations of approval given under the regulations and against the conditions contained in such approvals;
- (f) for requiring goods to which this section applies to be approved under the regulations or to conform to the requirements of the regulations or to descriptions or standards specified in or approved by or under the regulations;
- (g) with respect to the testing or inspection of goods to which this section applies, including provision for determining the standards to be applied in carrying out any test or inspection;
- (h) with respect to the ways of dealing with goods of which some or all do not satisfy a test required by or under the regulations or a standard connected with a procedure so required;
- (i) requiring a mark, warning or instruction or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and for securing that inappropriate information is not given in relation to goods by means of misleading marks or otherwise;

- (j) prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods and component parts and raw materials for goods;
 - (k) requiring information to be given to any such person as may be determined by or under the regulations for the purpose of enabling that person to exercise any function conferred on him or her by the regulations.
- (3) Consumer safety regulations made under this section may –
- (a) contain different provisions for different cases;
 - (b) provide for exemptions from any provisions of the regulations;
 - (c) contain such supplemental, consequential and transitional provisions as the Minister considers appropriate.

Contravention of consumer safety regulations

135.—A person who contravenes any consumer safety regulations commits an offence.

Declaration of unsafe goods

136.—(1) Where it appears to the Director that goods of a particular kind will or may cause injury, loss or damage to any person, the Director may, by notice published in the *Gazette* and at least two newspapers in circulation or any other media in Saint Lucia, declare the goods to be unsafe goods.

(2) A notice under subsection (1) remains in force until the end of eighteen months after the date of publication of the notice, unless it is revoked before the end of that period.

Imposition of permanent ban

137.—(1) Where –

- (a) a period of eighteen months has elapsed after the date of publication of a notice declaring goods to be unsafe goods; and

- (b) there is no prescribed consumer product safety standard in respect of the goods,

the Director may, by notice published in the *Gazette* and at least two newspapers in circulation in Saint Lucia, impose a permanent ban on the goods.

(2) A supplier shall not supply goods in contravention of the permanent ban imposed under subsection (1).

(3) A supplier who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.

Establishment of a regional alert system

138.—(1) The Minister may, after consultation with other Ministers responsible for consumer protection in the Member States, establish a modality to exchange information with respect to inherently dangerous goods circulating in the Member States.

(2) A regional alert system shall be designated by officials who are responsible for consumer protection in the Member States.

PART IX

RECALL OF GOODS

Voluntary recall

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

- (a) stating that the goods are subject to recall;
- (b) setting out the nature of the defect in, or dangerous characteristic of the goods; and
- (c) stating the logistical arrangements for collecting and refunds.

(2) A supplier who refuses to take action to recall goods likely to cause injury to any person commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding two years or to both.

Compulsory recall

140.—(1) Subject to section 145, the Director may, issue a notice requiring the recall of goods that is intended to be used or is of a kind likely to be used by a consumer to any supplier if -

- (a) the goods appear to the Director to be goods of a kind that will or may cause injury to any person when used for the purpose for which the goods are intended or are likely to be used;
- (b) it appears to the Director that the supplier does not comply with the consumer safety regulations under section 134;
- (c) the goods are subject to a notice declaring the goods to be unsafe under section 136 or imposing a permanent ban on the goods under section 137; and
- (d) the supplier has not taken satisfactory action to prevent the goods from causing injury to any person.

(2) A notice under subsection (1) may require the supplier to whom the notice is issued to do one or more of the following—

- (a) take action within the period specified in the notice to recall the goods identified in the notice;
- (b) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following —
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods identified in the notice,
 - (ii) the circumstances, being circumstances identified in the notice, in which the use of the goods is dangerous,

- (iii) procedures for disposing the goods specified in the notice;
- (c) inform the public, or a class of persons specified in the notice in the manner and within the period specified in the notice that the supplier undertakes to do whichever of the following is appropriate —
 - (i) except where the notice identifies a dangerous characteristic of the goods, repair the goods,
 - (ii) replace the goods,
 - (iii) refund to a person to whom the goods was supplied, whether by the supplier or by any other person, the price of the goods.

(3) A notice under subsection (1) may give directions as to the manner in which the person is to carry out a recall of goods required under the notice.

(4) A notice issued under this section must be in writing and published in the *Gazette* and at least two newspapers in circulation in Saint Lucia.

Repair and replacement of goods

141. Where the supplier, under section 140(2)(c), undertakes to—

- (a) repair the goods, the supplier shall cause the goods to be repaired so that —
 - (i) any defect in the goods identified is remedied, and
 - (ii) the goods comply with the consumer safety regulations;
- (b) replace the goods, the supplier shall replace the goods with like goods which —
 - (i) if a defect in or a dangerous characteristic of the goods was identified in the compulsory recall notice under section 140 does not contain that defect or have that characteristic, and

- (ii) if there is a prescribed consumer product safety standard in respect of goods of that kind, comply with that standard;
- (c) repair the goods or replace the goods, the cost of the repair or replacement, including any necessary transportation costs is borne by the supplier.

Refund

142. Where under the compulsory recall notice under section 141, the supplier chooses to refund the price of the goods and a period of more than twelve months has elapsed since the person, whether or not the person to whom the refund is to be made, acquired the goods from the supplier, the supplier shall pay the full amount of the refund specified in the notice.

Effect of recall notice

143.—(1) Where a compulsory recall notice under section 140 is in force in relation to a supplier, the supplier —

- (a) shall comply with the requirements and directions in the compulsory recall notice; and
- (b) shall not —
 - (i) where the compulsory recall notice identifies a defect in, or a dangerous characteristic of the goods, supply the goods of the kind to which the compulsory recall notice relates which contains that defect or has that characteristic, or
 - (ii) in any other case, supply the goods of the kind to which the compulsory recall notice relates.

(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment not exceeding two years or to both.

Loss or damage caused by contravention of recall notice

144. Where a supplier fails to comply with a compulsory recall notice under section 140 and a person suffers injury, loss or damage

by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods, that person is deemed for the purpose of this Act to have suffered the injury, loss or damage by the failure of the supplier to comply with the compulsory recall notice.

Opportunity for hearing

145.—(1) Subject to section 148, where the Director proposes to publish a notice declaring goods to be unsafe under section 136, imposing a permanent ban under section 137 or compulsorily recalling goods under section 140 in relation to goods of a particular kind, the Director shall prepare—

- (a) a draft of the notice proposed to be published; and
- (b) a summary of the reasons for the proposed publication of the notice.

(2) The Director shall by notice published in the *Gazette* and at least two newspapers of general and weekly circulation in Saint Lucia, invite any supplier, who supplied or proposes to supply goods of that kind to notify the Board within the period of ten days commencing on the day specified in the notice not being earlier than the day on which the notice is published, whether the supplier wishes the Board to hold a hearing in relation to the proposed publication of the notice.

(3) A notice published under subsection (2) must set out a copy of the draft notice declaring goods to be unsafe under section 136, imposing a permanent ban under section 137 or compulsorily recalling goods under section 140 in relation to goods and a copy of the summary of the reason for the proposed publication of the notice.

(4) Where a supplier does not notify the Board in writing within the period specified in subsection (2) or within such longer period as the Board allows, that the supplier wishes the Board to hold a hearing in relation to the proposed publication of the notice declaring the goods to be unsafe under section 136, imposing a permanent ban under section 137 or compulsorily recalling the goods under section 140 the Board shall notify the Director.

(5) Where a supplier notifies the Board in writing within the period specified in subsection (2) or within such longer period as the Board allows that the supplier wishes the Board to hold a hearing in relation to the proposed publication of a notice declaring goods to be unsafe under section 136, imposing a permanent ban under section 137 or compulsorily recalling goods under section 140, the Board shall appoint a day, being not later than fourteen days after the end of that period, time and place for the holding of the hearing, and give notice of the day, time and place so appointed to the Director and to each supplier who so notified the Board.

(6) At a hearing held pursuant to this section —

- (a) the Board is represented by a member or members nominated by the Chairperson;
- (b) each supplier who notified the Board in accordance with subsection (5) is entitled to be present or to be represented;
- (c) any other person whose presence at the hearing is considered by the Board to be appropriate is entitled to be present or to be represented;
- (d) the Director or a person nominated in writing by the Director is entitled to be present; and
- (e) the procedure to be followed is as determined by the Board.

(7) The Board shall cause a record of proceedings at a hearing held pursuant to this section to be kept.

(8) The Board shall, as far as is practicable, ensure that each person who, in accordance with subsection (6), is entitled to be present or who is representing such a person at a hearing is given a reasonable opportunity at the hearing to present his or her case and, in particular, to inspect any documents which the Board proposes to consider for the purpose of making a recommendation after the conclusion of the hearing.

(9) Notwithstanding subsection (8), there is no obligation to afford an opportunity to inspect any document that contains particulars of a secret formula or process, and to make submissions in relation to such documents.

Recommendation of the Board

146.—(1) As soon as is practicable after the conclusion of a hearing in relation to the proposed publication of a notice declaring goods to be unsafe under section 136, imposing a permanent ban under section 137 or compulsorily recalling goods under section 140, the Board shall —

- (a) by notice in writing given to the Director, recommend that —
 - (i) the Director shall publish the notice declaring the goods to be unsafe under section 136, imposing a permanent ban under section 137 or compulsorily recalling the goods under section 140 in the same terms as the draft notice referred to in section 145,
 - (ii) the Director shall publish the notice declaring the goods to be unsafe under section 136, imposing a permanent ban under section 137 or compulsorily recalling the goods under section 140 with such modification as is specified by the Board, or
 - (iii) the Director shall not publish the notice declaring the goods to be unsafe under section 136, imposing a permanent ban under section 137 or compulsorily recalling the goods under section 140; and
- (b) cause a copy of the notice in writing that is given to the Director under paragraph (a) to be given to each supplier who was present or represented at the hearing.

(2) As soon as is practicable after the conclusion of a hearing in relation to a notice declaring goods to be unsafe that has been published under section 136, the Board shall —

- (a) by notice in writing given to the Director, recommend that the notice declaring the goods to be unsafe under section 136—
 - (i) remains in force,
 - (ii) be varied, or
 - (iii) be revoked; and
- (b) cause a copy of the notice in writing that is given to the Director under paragraph (a) to be given to -

- (i) the Board member who was present at the hearing,
- (ii) each supplier who was present or represented at the hearing,
- (iii) any other person whose presence at the hearing was considered by the Board to be appropriate.

Director to have regard to recommendation of the Board

147. Where the Board under section 146 makes a recommendation to the Director in relation to the proposed publication of a notice declaring goods to be unsafe under section 136, imposing a permanent ban under section 137 or compulsorily recalling goods under section 140(1) or in relation to a notice that has been published declaring goods to be unsafe under section 136, the Director shall have regard to the recommendation.

Exception in case of danger to public

148.—(1) Where it appears to the Director that goods of a particular kind creates an imminent risk of death, serious illness or serious injury, the Director shall, without delay, publish a notice in the *Gazette* and at least two newspapers in general and at least weekly circulation in Saint Lucia or any other medium declaring the goods to be unsafe under section 136, imposing a permanent ban under section 137 or compulsorily recalling the goods under section 140(1) in relation to the goods.

- (2) Where the Director publishes a notice under subsection (1) —
 - (a) in a case where the notice is published before the Director takes any action under section 145(1) in relation to goods of a particular kind, section 145 does not apply in relation to the action that the Director may take under section 136 or 140(1) in relation to goods of that kind;
 - (b) in any other case, the Director may publish the notice under this section without regard to the action taken under section 145(1);
 - (c) the Director shall inform the Chief Medical Officer, the Director of the Bureau and the Comptroller of Customs, of the publication.

Copies of notices

149. Where the Director publishes a notice in writing under section 145 or 148(1), the Director shall, within two days after the publication of that notice, or, if it is not practicable to do so within that period, as soon as is practicable after the end of that period —

- (a) cause a copy of the notice to be given to each person who, to the knowledge of the Director supplies goods of the kind to which the notice relates;
- (b) cause a copy of the notice to be published in the *Gazette* or two newspapers in general or at least weekly circulation in Saint Lucia or any other media.

Notification of persons outside Saint Lucia

150. Where the Director publishes a notice in writing under section 145 or 148(1), the Director shall, as soon as is practicable —

- (a) cause a copy of the notice to be published on the Department's website; and
- (b) cause a copy of the notice to be submitted to any person or body responsible for consumer affairs of any other relevant country.

Right of appeal against notice

151. Where a supplier is aggrieved by any notice sent to him or her, that supplier may, at any time before the notice takes effect, appeal against the notice to the Appeals Tribunal.

Certain action not to affect insurance contracts

152. The liability of an insurer under a contract of insurance with a supplier being a contract relating to -

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

is not affected by reason only that the supplier gives to the Board, Director or authorized officer information relating to any goods supplied or proposed to be supplied by that supplier.

PART X

PRODUCT LIABILITY

Interpretation: Part X

153.—(1) In this Part –

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

“damage” means death or personal injury to any person or any loss of or damage to any property except land;

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

“producer” in relation to a product, means the person who manufactured the product;

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

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

Liability for defects

154.—(1) Subject to this Part, where damage is caused wholly or partly by a defect in a product –

(a) the following persons are liable for the damage –

(i) the producer of the product,

- (ii) a person who, by putting his or her name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself or herself out to be the producer of the product, and
 - (iii) a person who has imported the product into Saint Lucia in the course of business in order to supply the product to another;
- (b) a person who supplied the product, whether to the person who suffered the damage, to the producer of a product in which the product in question is comprised or to any other person, is liable for the damage if –
- (i) the person who suffered the damage requests the supplier to identify one or more of the persons, whether still in existence or not, to whom paragraph (a) applies in relation to the product,
 - (ii) that request is made within a reasonable time after the damage occurs, and
 - (iii) the supplier fails, within a reasonable time after receiving the request, to comply with the request or to identify the person who supplied the product to him or her.

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

(3) This section is without prejudice to any liability arising otherwise than by virtue of this Part.

Defect inferred

155.—(1) A defect in a product is inferred for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect.

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

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

(3) Notwithstanding subsections (1) and (2), a defect is not inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product in question.

(4) For the purposes of this section “safety”, in relation to a product, includes safety with respect to products comprised in that product and safety in the context of risks of damage to property and in the context of risks of death or personal injury.

Damage giving rise to liability

156.—(1) A supplier is not liable under section 157 for any damage to any property which, at the time of the damage, is not -

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

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

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

- (a) a person’s knowledge includes knowledge which he or she might reasonably have been expected to acquire -
 - (i) from facts observable or ascertainable by him or her, or

- (ii) from facts ascertainable by him or her with the help of appropriate expert advice which it is reasonable for him or her to seek;
- (b) the material facts about any damage to property are such facts about the damage as would lead a reasonable person with an interest in the property to consider the damage sufficiently serious to justify instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(4) A person is not taken by virtue of this subsection to have knowledge of a fact ascertainable by him or her only with the help of expert advice unless he or she has failed to take all reasonable steps to obtain and, where appropriate, to act on that advice.

Prohibition on exclusions from liability

157. The liability of a supplier to a person who has suffered damage caused wholly or partly by a defect in a product is not limited or excluded by any term in the consumer agreement, by any notice or by any other provision.

Defences in civil proceedings

158.—(1) In any proceedings under this Part in respect of a defect in a product it is a defence to show that –

- (a) the defect is attributable to compliance with a requirement imposed by or under any enactment;
- (b) the product was not at any time supplied by the defendant;
- (c) the following conditions are satisfied –
 - (i) that the only supply of the product to another by the supplier was otherwise than in the course of a business of the supplier,
 - (ii) that section 132(1)(a) does not apply to the supplier, or applies to him or her by virtue only of things done otherwise than with a view to profit;
- (d) the defect did not exist in the product at the time;

- (e) the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it has existed in his or her products while they were under his or her control; or
- (f) the defect constituted a defect in a product that was wholly attributable to the design of the subsequent product or to compliance by the producer to the product in question with instructions given by the producer of the subsequent product.

(2) In this section “in the course of a business” means the daily or routine peculiar to a trade involving purchase, production and sale of usual goods or service and payment and receipt of money.

PART XI

DISTANCE SELLING

Interpretation: Part XI

159.—(1) In this Part “distance contract” means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded.

(2) A distance contract between a supplier and a consumer in a Member State is effective only if the Member State enters into an Agreement or Protocol under Article 170 of the Revised Treaty with provisions relating to judicial and administrative redress, appointment of a focal point, sanctions, and other information necessary to enforce the distance contract in the Member State.

(3) A distance communication includes the use of electronic mail and electronic commerce by way of letters, catalogues, by facsimile machine, telephone and television.

Application: Part XI

160. This Part does not apply to a contract –

- (a) relating to a financial service;
- (b) concluded by means of automatic vending machines or automated commercial premises;
- (c) concluded with a telecommunications operator through the use of payphones;
- (d) concluded at an auction.

Agreement regarding distance selling contract

161.—(1) If a Member State enters into an agreement with Saint Lucia pursuant to section 159(2), the Minister may, by order published in the *Gazette*, give legal effect to the agreement.

(2) An order made under this section may contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving legal effect to an agreement made pursuant to subsection (1).

(3) If a Member State amends an agreement made pursuant to section 159(2), the Minister may amend an order published under subsection (1).

(4) Every order made under this section is subject to affirmative resolution.

Prior information requirements

162.—(1) Subject to subsection (2), prior to the conclusion of any distance contract, the supplier shall provide the consumer with the following information—

- (a) the identity of the supplier and, in the case of a contract requiring payment in advance, his or her address;
- (b) a description of the main characteristics of the goods or service;
- (c) the price of the goods or service including all taxes;
- (d) delivery costs, where appropriate;

- (e) the arrangements for payment, delivery or performance;
- (f) the existence of a right of cancellation, except in certain cases where this right does not exist;
- (g) the cost of using the means of distance communication, where it is calculated other than at the basic rate such as premium phone lines;
- (h) the period for which the offer or the price remains valid; and
- (i) where appropriate, the minimum duration of the distance contract in the case of a contract for the supply of goods or service to be performed on a one-time basis or recurrently.

(2) The information under subsection (1) must be provided in a clear and comprehensible manner and in good time before the conclusion of any distance contract.

(3) In a distance contract for the sale of goods, the consumer must receive confirmation of the information under subsection (1) in an enduring medium accessible by him or her.

Acceptance or refusal of distance contract

163. A supplier shall provide the consumer with an express authority to accept or refuse the distance contract and to correct errors immediately before entering into it.

Right of cancellation

164.—(1) A consumer who is party to a distance contract may within seven working days cancel the contract without having to give any reason.

(2) A consumer may cancel a distance contract within fourteen days after the date the distance contract is entered into, if -

- (a) the supplier did not disclose to the consumer the information required under section 162;
- (b) the supplier did not provide the consumer an express opportunity to accept or refuse the distance contract or to correct errors immediately before entering into it.

(3) Where a consumer cancels the distance contract under subsection (1), the supplier shall not impose a penalty and subject to subsection (5), provide a full refund of the direct costs of the goods payable.

(4) A supplier shall refund the consumer within thirty days of the cancellation.

(5) Subsection (3) does not apply to—

- (a) gaming or lottery services;
- (b) travel services;
- (c) audio or video recordings;
- (d) imaging or photography services;
- (e) records;
- (f) computer software;
- (g) electronic storage devices;
- (h) newspapers, periodicals and magazines;
- (i) any other goods or service which provides an immediate benefit to the consumer and was used by the consumer.

Payment by credit or debit card

165. A consumer may request cancellation of a payment to the supplier where fraudulent use is made of his or her credit or debit card by that supplier and the consumer is to be re-credited with the sums paid.

Performance

166.—(1) Unless the parties have agreed otherwise, the supplier shall execute an order made by a consumer within thirty days from the day following that on which the consumer forwarded his or her order to the supplier.

(2) Where a supplier is unable to perform the distance contract because the goods or service is not available, the supplier shall inform the consumer of the situation and refund any sums received within thirty days.

PART XII**MISCELLANEOUS****Reasonableness**

167.—(1) For the purposes of this Act, a consumer agreement satisfies the condition of reasonableness only if the term is a fair and reasonable one to be included in the consumer agreement, having regard to the circumstances which were, or ought reasonably to have been known to, or in the contemplation of the parties, when the consumer agreement was made.

(2) Without limiting the generality of subsection (1), where a person seeks to restrict liability to a specified sum of money by reference to a notice of a term of the consumer agreement, and the question arises, under this Act or any other enactment, as to whether the term or notice satisfies the requirement of reasonableness regard must be had in particular to —

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

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

Ambiguities to benefit consumer

168. In any matter brought before the Board or a court, the Board or the court, as the case may be, shall —

- (a) if a provision of this Act, read in context, can be reasonably construed to have more than one meaning, prefer the meaning that best promotes the spirit and purposes of this Act, and will best improve the realization and enjoyment of consumer rights generally; and
- (b) strictly interpret information that is required to be disclosed under this Act and any document prepared or published by or on behalf of a supplier or required to be produced by a supplier, to the benefit of the consumer, so that —

- (i) any ambiguity that allows for more than one reasonable interpretation of a part of such information or document is resolved to the benefit of the consumer, and
- (ii) any restriction, limitation, exclusion or deprivation of a consumer's legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to the content of the document, the manner and form in which it was prepared and presented, and the circumstances of the transaction or agreement.

Trade coupons and similar promotions

169.—(1) A person shall not offer any prize with the intention of not providing it, or providing it other than as offered.

(2) A document setting out an offer contemplated in subsection (1) must fully and clearly state —

- (a) the nature of the prize being offered;
- (b) the goods or services to which the offer relates;
- (c) the steps required by a prospective consumer to accept the offer or to receive the benefit of the offer;
- (d) any person from whom, any place where, and any date and time on or at which the prospective consumer may receive the benefit; and
- (e) a date after which such offer is no longer valid.

Promotional competitions

170.—(1) A person shall not directly or indirectly inform a consumer that the consumer —

- (a) has won a competition, if —
 - (i) no competition has in fact been conducted,
 - (ii) the consumer has not expressly or implicitly entered into such a competition, or has not in fact won the competition,

- (iii) the prize for that competition is subject to a previously undisclosed condition, or
 - (iv) the consumer is required to offer further consideration for the prize, after the results of the competition have been announced; or
- (b) has a right to a prize or benefit —
- (i) that the consumer has not solicited or to which the consumer does not in fact have a right,
 - (ii) if the prize or benefit was generally available or offered to all similar prospective consumers or class of prospective consumers,
 - (iii) if, before becoming eligible to receive the prize or benefit, the consumer is required to offer further consideration for the prize or to purchase any particular goods or services.
- (2) The promoter of a promotional competition shall —
- (a) not require any consideration to be paid by or on behalf of any participant in the promotional competition;
 - (b) file a copy of the competition rules in the prescribed manner and form with the Board no later than the date on which consumers are first able to participate in the competition;
 - (c) make the competition rules available on request and without cost to any participant;
 - (d) not award a prize in a competition to —
 - (i) a winner of the competition if it is absolutely unlawful to supply those goods or services to the prize winner, but this sub-paragraph does not preclude a prize to a person merely because that person's right to possess or use the prize is or may be restricted or regulated by, or otherwise subject to, any public regulation, or

(ii) any person who is a director, member, partner, employee or agent of, or consultant to the promoter, or any other person who directly or indirectly controls, or is controlled by, the promoter, or to a supplier of goods or services in connection with that competition.

(3) For greater certainty in applying subsection (2)(a), a promoter shall be regarded as having required or received consideration in respect of a promotional competition if -

- (a) the participant is required to pay any consideration, directly or indirectly for the opportunity to participate in the promotional competition, for access to the competition, or for any device by which a person may participate in the competition;
- (b) participation in the promotional competition requires the purchase of any goods or services, and the price charged for those goods or services is more than the price, excluding discounts, ordinarily charged for those or similar goods or services without the opportunity of taking part in a promotional competition.

(4) An offer to participate in a promotional competition must be in writing, and must fully and clearly state—

- (a) the benefit or competition to which the offer relates;
- (b) the steps required by a person to accept the offer or to participate in the competition;
- (c) the basis on which the results of the competition will be determined;
- (d) the maximum number of potential participants in the competition, and the odds of winning any particular prize in that competition;
- (e) the medium through or by which the results of the competition will be known, if any; and
- (f) any person from whom, any place where, and any date and time on or at which the successful participant may receive any prize.

- (5) The requirements of subsection (4) may be satisfied—
- (a) directly on any medium through which a person participates in a promotional competition;
 - (b) on a document accompanying any medium contemplated in paragraph (a); or
 - (c) in any advertisement that –
 - (i) is published during the time and throughout the area in which the promotional competition is conducted,
 - (ii) draws attention to and is clearly associated with the promotional competition.
- (6) The right to participate in a promotional competition is fully vested in a person immediately upon -
- (a) complying with any conditions that are required to earn that right; and
 - (b) acquiring possession or control of any medium through which a person may participate in that promotional competition.
- (7) The right to any benefit or right conferred on a person as a result of that person's participation in a promotional competition is fully vested immediately upon the determination of the results of the competition.
- (8) A right contemplated in subsection (6) or (7) must not be -
- (a) made subject to any further condition; or
 - (b) contingent upon a person –
 - (i) paying any consideration to the promoter for the prize, or
 - (ii) satisfying any further requirements than those stipulated in terms of subsection (4).
- (9) The Minister may, after consultation with the Board, prescribe—

- (a) a monetary threshold for the purpose of excluding competitions with low value prizes from the definition of “promotional competition”;
- (b) minimum odds for prizes or categories of prizes offered in terms of any promotional competition;
- (c) minimum standards and forms for keeping records associated with promotional competitions; and
- (d) audit and reporting requirements in respect of promotional competitions.

(10) A promoter shall not continue advertisements of the promotional competition after the promotional competition is held.

(11) A promoter who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or, to imprisonment for a term not exceeding two years or to both.

(12) In this section –

“participant” means a person who expressly or implicitly enters into a promotional competition;

“promoter” means a person who directly or indirectly promotes, sponsors, organizes or conducts a promotional competition, or for whose benefit such a competition is promoted, sponsored, organized or conducted.

Prohibition and privilege

171.—(1) A person shall not, without the consent in writing given by or on behalf of the Chairperson, publish or disclose to another person, otherwise than is necessary in the course of his or her duties, the contents of any documents, communication or information whatsoever, which relate to, and have come to his or her knowledge in the course of his or her duties under this Act.

(2) Anything said or information supplied or any document produced by any person for the purpose of, or in the course of an investigation or proceeding before the Board under this Act, is privileged in the same manner as if the investigation or proceeding were a proceeding in a court of law.

(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars and in default of payment of the fine, to imprisonment for a term not exceeding two years or to both.

Secrecy

172. The Board and every person concerned with the administration of this Act, shall regard as secret and confidential all documents, information or matters disclosed in the administration of this Act except disclosures which the Board considers necessary in the discharge of its functions and which shall not be deemed inconsistent with any duty imposed under this section.

Channel of communication

173.—(1) All communication and correspondence between the Board and the Department shall be conducted through the office of the Director.

(2) The Director shall ensure that all communication and correspondence between the Board and the Department is transmitted to the appropriate party in a speedy and efficient manner.

Offences

174. A person who –

- (a) willfully makes a false statement to mislead or misleads or attempts to mislead the Board or any person in the discharge of functions under this Act; or
- (b) without lawful justification or excuse –
 - (i) obstructs, hinders or resists the Board or any other person in the discharge of functions under this Act,
 - (ii) fails to comply with any lawful requirement of the Board or any other person under this Act; or
- (c) deals with documents, communication or information in a manner inconsistent with his or her duty under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or to both.

Offences by body corporate

175.—(1) Where an offence under this Act has been committed by a body corporate, notwithstanding and without prejudice to the liability of that body, any person who at the time of commission of the offence was a director, general manager, secretary or other like officer of that body or was purporting to act in any such capacity is –

- (a) subject to subsection (2), liable to be prosecuted as if he or she has personally committed that offence; and
- (b) if on prosecution it is proved to the satisfaction of the court that he or she consented to, or conspired in, or did not exercise all such reasonable diligence as he or she ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his or her functions in that capacity and to all the circumstances,

liable to the like conviction and punishment as if he or she had personally been guilty of that offence.

(2) A person shall not be charged under subsection (1) except upon the direction of the Attorney General.

Protection of officers of the Department

176.—(1) A civil action, suit or other proceeding shall not be brought or instituted personally against any officer of the Department in respect of any act or omission done in good faith in the due performance of his or her functions.

(2) A civil action, suit or other proceedings shall not be brought or instituted as a result of the act or omission of any officer of the Department unless –

- (a) the civil action, suit or other proceeding is filed within twelve months from the date of the act or omission complained of; and
- (b) notice of intended action has been given one month before the civil action, suit or other proceeding is brought or instituted.

- (3) The notice under subsection (2)(b) must —
- (a) be in writing;
 - (b) specify the grounds of action;
 - (c) be served on the Department and the Attorney General.

General penalty

177. A person who contravenes this Act commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or a term or imprisonment for a term not exceeding two years or to both.

Amendment of Schedules

178. The Minister may, by order published in the *Gazette*, amend the Schedules to this Act.

Regulations

179.—(1) The Minister may make Regulations for the purposes of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make Regulations to -

- (a) regulate the distribution, purchase or sale of goods or any class or description of goods;
- (b) provide for the recall of certain goods and services which are dangerous or hazardous to safety and the refund or remission by the vendor of the purchase price paid;
- (c) require persons carrying on or employed in connection with any trade or business to furnish information concerning all or any of the elements of the cost or sale price of goods or any class or description of goods bought or sold in such trade or business, whether by wholesale or retail;
- (d) require the provision and maintenance, at places at which goods are offered for sale by retail, of means whereby prospective purchasers of any of those goods may ascertain the weight or measurement;

- (e) prescribe the manner in which goods are analyzed or tested under section 38;
- (f) provide for fees, rates and other costs as may be required from time to time;
- (g) provide for various forms for notices, reporting and other purposes as required under this Act;
- (h) provide for further functions and powers of the Appeals Tribunal;
- (i) exempt a transaction or consumer agreement under section 74(4);
- (j) prescribe the time periods for a refund under section 78(9);
- (k) exempt goods or prescribe the circumstances for displaying or selling goods under section 83(3);
- (l) prescribe the manner and form for disclosure of environmental facts under section 84;
- (m) prescribe categories of agreements to which section 92 applies and the specific wording to be included in such agreements;
- (n) prescribe standards of consumer safety under section 132;
- (o) prescribe promotional competition rules under section 170;
- (p) prescribe matters required or permitted to be prescribed by this Act;
- (q) provide for such matters as may be contemplated or necessary for giving full effect to this Act and for its administration or incidental to or consequential upon any provision of this Act.

(3) Nothing in subsection (2) is deemed to authorize the Minister to make any regulations in relation to any goods if the exportation, distribution, purchase, sale or price of the goods is or may be, regulated under or by virtue of the provisions of any other enactment.

No.]

Consumer Protection Bill

[2016.

(4) Regulations made under this section may create offences and may prescribe penalties for the offences on conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding four years.

No.]

Consumer Protection Bill

[2016.

SCHEDULE 1

(Section 2)

MEMBER STATES

Antigua and Barbuda

Barbados

Belize

Commonwealth of Dominica

Cooperative Republic of Guyana

Federation of Saint Christopher and Nevis

Grenada

Haiti

Jamaica

Montserrat

Republic of Trinidad and Tobago

Saint Vincent and the Grenadines

Suriname

The Bahamas

SCHEDULE 3

(Section 136)

CONSUMER COMPLAINT FORM

The Secretary
Consumer Protection Board
c/o Consumer Affairs Department
Address
Telephone Number
Fax Number
Email

Form No.: _____
Time: _____

SECTION 1 – CONSUMER INFORMATION

Christian Name: _____ Middle Name: _____ Surname: _____

Address: _____

Occupation: _____ Phone No. Home: _____ Work: _____ Cell _____

Sex: Male Female Fax No.: _____

SECTION 3 – INFORMATION ON GOODS OR SERVICE

Good/Service: _____ Model/Serial No.: _____

Category: _____ Date of Purchase: _____ Price/Value: \$ _____

Warranty/Guarantee: _____ Brand: _____

Brand Code: _____ Invoice/Receipt/Bill No.: _____

SECTION 4 – TECHNICAL INFORMATION ON PRODUCT

Manufacturing Date: _____ Standard: _____

Electrical Frequency Rating: _____ Voltage Required: _____

SECTION 5 – THE COMPLAINT

SECTION 9 – PROCESSING OF COMPLAINT

FOR OFFICIAL USE ONLY

Supervisor: _____

Investigating Officer (s): _____

Date: _____

Exhibits: _____

Result: _____

Signature: _____ **Date:** _____

No.]

Consumer Protection Bill

[2016.

SCHEDULE 2

(Sections 9)

SUMMONS TO WITNESS

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

You are hereby summoned to appear before the Consumer Protection Board at (place) upon the day of _____ at o'clock and to give evidence respecting (state the matter). (If the person summoned is to produce any documents, add):

You are required to bring with you (specify the papers, books, records and documents required).

Therefore, fail not at your peril.

Given under the hand of (Chairperson or his delegated member of the Board) this [] day of [] 20

SCHEDULE 4

(Sections 2 and 43)

Offence	Section	Fixed Penalty
1. Loss or injury suffered by consumers due to defective goods sold or services provided	42(1)	25% of the value of the defective goods or service provided up to \$10,000
2. Failure to observe consumer rights	Part V	\$750
3. Non-compliance with suppliers duties	Part VI	\$750
4. Engaging in unfair trade practices	Part VII	\$1000
5. Failure to observe consumer safety requirements	Part VIII	\$1500
6. Non-compliance with recall of goods and services directions	Part IX	\$2000
7. Failure to observe the promotions provisions	170	\$750

Passed in the House of Assembly this day of , 2016.

Speaker of the House of Assembly.

Passed in the Senate this day of , 2016.

President of the Senate.

