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CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE FOR THE PROTECTION OF  
CONSUMER INTERESTS IN RELATION TO THE SUPPLY OF GOODS  
AND THE PROVISION OF SERVICES; THE IDENTIFICATION OF  
CONSUMER GUARANTEES, THE PROTECTION OF LIFE, HEALTH  
AND SAFETY OF CONSUMERS; THE ESTABLISHMENT OF A  
CONSUMER AFFAIRS COMMISSION; AND FOR INCIDENTAL AND  
CONNECTED PURPOSES.**

**THE CONSUMER PROTECTION AND GUARANTEES BILL, 2017**

**MEMORANDUM OF OBJECTS AND REASONS**

**TO BE FINALISED AFTER CONCLUSION OF CONSULTATIONS**

Consultation Draft

**THE CONSUMER PROTECTION AND GUARANTEES BILL, 2017**

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CAYMAN ISLANDS

**A BILL FOR A LAW TO PROVIDE FOR THE PROTECTION OF CONSUMER INTERESTS IN RELATION TO THE SUPPLY OF GOODS AND THE PROVISION OF SERVICES; THE IDENTIFICATION OF CONSUMER GUARANTEES, THE PROTECTION OF LIFE, HEALTH AND SAFETY OF CONSUMERS; THE ESTABLISHMENT OF A CONSUMER AFFAIRS COMMISSION; AND FOR INCIDENTAL AND CONNECTED PURPOSES.**

ENACTED by the Legislature of the Cayman Islands.

**PART 1 - PRELIMINARY**

1. This Law may be cited as the Consumer Protection and Guarantees Law, 2017 and shall come into force on such date as may be appointed by Order made by the Cabinet.

Short title and  
commencement

2. (1) In this Law -

Interpretation

“acquire” in relation to -

- (a) goods, includes obtaining by way of gift, purchase, exchange, lease, hire or hire purchase; and
- (b) services, includes accepting the provision of those services;

“advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting goods or services and the word “advertise” shall be construed accordingly;

“business” includes -

- (a) any undertaking, whether or not carried on for gain or reward;
- (b) any undertaking in the course of which goods are acquired; or
- (c) any undertaking in the course of which a service is acquired or supplied;

“Commission” means the Consumer Affairs Commission established under section 6;

“complainant” includes -

- (a) a consumer;
- (b) a registered non-profit organisation;
- (c) one or more consumers, where there are numerous consumers having the same interest; or
- (d) in case of the death of a consumer, the complainant’s legal representative;

who alleges that a person has acted in contravention of this Law;

“consumer” in relation to -

- (a) goods, means -
  - (i) any person who acquires or wishes to acquire goods for his own private use or consumption; or
  - (ii) a commercial undertaking that purchases consumer goods;
- (b) services or facilities, means any person who employs or wishes to be provided with the services or facilities; and
- (c) accommodation, means any person who occupies or wishes to occupy the accommodation;

“consumer agreement” means any written, oral or implied agreement between a supplier and a consumer in which the supplier agrees to supply goods or services for consideration and the word “agreement” shall be construed accordingly;

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

“court” means the Grand Court or a court of summary jurisdiction;

“Court of Appeal” means the Court of Appeal of the Cayman Islands;

“defect” 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 or contract, express or implied or as is claimed by the supplier in any manner in relation to any goods;

“document” includes -

- (a) an electronic record;
- (b) a map, plan, graph or drawing;



- (c) a photograph;
- (d) a disc, tape, sound track or other data;
- (e) a film, microfilm, negative or other device in which one or more visual images are embodied; and
- (f) a label, tag, mark or any other form of information associated with the good or service;

“express guarantee” in relation to goods and services means an assurance or undertaking which -

- (a) is given or made in connection with the supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services; and
- (b) relates to -
  - (i) the quality, quantity, performance, efficacy or characteristics of the goods or service;
  - (ii) the provision of a service that is or may at any time be required in respect of the goods;
  - (iii) the supply of parts that are or at any time may be required for the goods; or
  - (iv) the future availability of identical goods constituting or forming part of a set of which the goods in relation to which the assurance, undertaking or representation is given or made from;

“goods” includes all kinds of property other than real property, securities, money or choses in action;

“manufacturer” means a person who -

- (a) carries on the business of assembling, producing or processing goods;
- (b) holds himself out to the public as the person who assembled, produced or processed the goods;
- (c) attaches his brand or mark, or causes or permits his brand or mark to be attached to the goods; or
- (d) imports or distributes goods where those goods are manufactured outside of the Islands and the manufacturer of the goods does not have an ordinary place of business in the Islands;

“Minister” means the Minister responsible for the administration of this Law;

“negligence” includes the breach of any -

- (a) 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; or
- (b) common law duty to take reasonable care;

“ownership”, in relation to goods, means the general property in those goods;

“payment” includes consideration of any kind;

“price” includes -

- (a) any representation that may reasonably be inferred to be a representation of the value of a good or service; or
- (b) valuable consideration in any form;

“personal injury” includes any disease and any other impairment of a person’s physical or mental condition;

“security” includes a charge or encumbrance;

“services” means an activity of any description which is made available to users and includes the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, lodging, housing construction, entertainment, amusement or the purveying of news or other information;

“supplier” includes -

- (a) a seller or provider of goods or services; or
- (b) any person responsible for the provision of goods or services including a manufacturer, producer, distributor or an agent.

“supply”, in relation to -

- (a) goods, means the provision by way of gift, sale, exchange, lease, hire or hire-purchase; and
- (b) a service, means to provide, grant or confer; and

“trade” includes any business, industry, profession, occupation, activity of commerce or undertaking whether carried on seasonally, occasionally or otherwise relating to the supply or acquisition of goods or services.

Objects of the Law

3. The objects of this Law are 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, efficient and responsible;
- (b) promoting fair business practices;
- (c) protecting consumers from -
  - (i) unfair, unconscionable or otherwise improper trade practices; and
  - (ii) deceptive, misleading, unfair or fraudulent conduct;
- (d) promoting social, economic and environmental responsibility in consumer markets;

- (e) improving consumer awareness and information;
- (f) encouraging responsible and informed consumer choice and behaviour; and
- (g) providing for an accessible, effective and efficient system of redress for consumers.

4. This Law applies to all persons engaged in a trade or business.

Application of the Law

5. An organisation purporting to provide services for the protection of consumers shall register as a non-profit organisation if its includes -

Consumer Organisations

- (a) promoting and protecting consumer rights;
- (b) representing the collective interests of consumers before judicial or administrative bodies;
- (c) representing consumers' interests to government and persons engaged in the business of producing, supplying or distributing goods or providing services; and
- (d) collecting, processing and disseminating objective information for the benefit of consumers.

## **PART 2 - ESTABLISHMENT AND FUNCTIONS OF THE CONSUMER AFFAIRS COMMISSION**

6. (1) There is established for the purposes of this Law a Commission to be known as the Consumer Affairs Commission.

Establishment of  
Consumer Affairs  
Commission

(2) The provisions of Schedule 1 shall have effect as to the constitution of the Commission.

Schedule 1

(3) The Commission has the powers, duties and functions set out in this Law.

7. (1) The functions of the Commission include -

Functions of  
Commission

- (a) investigating a complaint made by a consumer in relation to the sale of goods or the provision of services;
- (b) initiating other investigations in relation to the provision of goods and services of any class or description;
- (c) representing a complainant who the Commission thinks has a justifiable claim against a supplier;
- (d) imposing appropriate orders and prescribed penalties against persons who the Commission determines have acted in contravention of this Law;
- (e) promoting the development of organisations formed for the protection of the consumer and ensuring that they fulfill the criteria listed in section 5;
- (f) providing information to consumers on their rights as consumers and any other form of consumer education;

- (g) implementing education programmes for the benefit of consumers, suppliers and service providers;
- (h) seeking, in a mediatory capacity, to resolve disagreements between consumers and suppliers;
- (i) referring a complaint to any other relevant body that may be considered appropriate to address an issue; and
- (j) carrying out such other functions as the Minister may assign to the Commission.

(2) The Commission may adopt such processes as it considers appropriate in order to facilitate the execution of its functions.

(3) The Commission may, for the purpose of exercising or discharging any of its functions, do anything and enter into any transaction which, in the opinion of the Commission, is necessary to ensure the proper exercise or discharge of its functions.

(4) The Commission shall take reasonable and practical measures, in a manner consistent with the purposes of this Law, to promote and support the development of a fair, transparent, sustainable, responsible, efficient, effective and accessible consumer market generally, and in particular to meet the needs of the following persons -

- (a) minors, the elderly, the mentally disabled and other similarly vulnerable consumers; and
- (b) consumers whose ability to read and comprehend advertisements, agreements, marks, instructions, labels, warnings or notices is limited by reason of low literacy, vision impairment or limited fluency in the language in which any such text is produced, published or presented.

### **PART 3 - CONSUMER COMPLAINTS**

Complaints made to  
Commission

8. (1) A consumer who alleges that a supplier has breached any provision of this Law may make a complaint to the Commission orally, in writing or in any other prescribed form describing the nature of the breach.

(2) Where the complainant -

- (a) is a minor, the complaint may be made by that complainant's parent or guardian; or
- (b) is unable to act by reason of infirmity, disability or subsequent death, the complaint may be made by a family member approved by the Commission or a personal representative.

(3) The Commission may, upon the request of a complainant, represent that complainant in any capacity that the Commission thinks appropriate.

(4) Where litigation is contemplated by the complainant in relation to a complaint that was not in writing, the Commission shall obtain from the complainant a written version of the complaint signed by the complainant.

9. (1) The Commission may determine whether to undertake or continue an investigation under this Law if it is of the opinion that - Discretion to conduct investigation

- (a) the subject matter of the complaint is trivial;
- (b) the complaint is frivolous, vexatious or not made in good faith;
- (c) the complainant has delayed the making of the complaint for an inordinately long period;
- (d) the complainant does not have a sufficient interest in the subject matter of the complaint;
- (e) the subject matter of the complaint should more appropriately be dealt with by another authority or another forum; or
- (f) having regard to all the circumstances of the case -
  - (i) further investigation is unnecessary; or
  - (ii) no investigation is possible or necessary.

(2) Where the Commission decides not to undertake or continue an investigation of a complaint, it shall, in writing, inform the complainant of that decision and provide reasons.

10. (1) The Commission 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 enactment. Power to investigate not precluded

(2) If any question arises as to whether the Commission has jurisdiction to investigate any case or class of case under this Law, the Commission or any supplier whose actions are under investigation may apply to the court for a declaration determining that question.

(3) An action commenced in court in connection with a matter under investigation by the Commission shall not, unless the court otherwise directs, preclude such investigation.

11. (1) The Commission has power to summon any person to attend before the Commission in relation to an investigation being conducted by it and to give evidence or to produce any document which is - Summoning persons to give evidence

- (a) in the possession or under the control of such person; and
- (b) relevant to the matter under investigation.

(2) A summons under this section -

- (a) shall be in the form set out in Schedule 2; and
- (b) served by an officer of the Commission, bailiff or police officer.

Schedule 2

Rights, privileges and  
offence

12. (1) A person who is summoned to attend and give evidence or to produce a document before the Commission is entitled, in respect of such evidence or the disclosure of any communication or the production of any such document, to the same rights and privileges as before a court.

(2) A person who -

- (a) without sufficient cause, fails or refuses to attend before the Commission in compliance with a summons or fails or refuses to produce any document which he was required by such summons to produce;
- (b) being a witness, leaves a hearing of the Commission without the permission of the Commission;
- (c) being a witness, refuses, without sufficient cause, to answer any question put to him by or with the permission of the Commission; or
- (d) willfully obstructs or interrupts the proceedings of the Commission,

commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of one year, or to both.

Paper, book, record or  
document as evidence

13. In all legal proceedings any paper, book, record or document submitted to the Commission pursuant to an investigation shall be received as prima facie evidence of the truth of the statements contained therein.

Procedure on admission  
of complaint

14. (1) If the Commission is satisfied that -

- (a) the goods which are the subject of a complaint suffer from any of the defects specified in the complaint;
- (b) any of the allegations contained in the complaint about the services are proved; or
- (c) there is irrefutable evidence to substantiate conduct in breach of this Law,

the orders that Commission may issue to the supplier include, where applicable -

- (i) providing the goods or services that were the subject of the agreement;
- (ii) removing the defect from the goods in question or the deficiency in the service;
- (iii) replacing the goods with goods of a similar or identical description and free from any defect;
- (iv) recalling unsafe goods or discontinue the provision of unsafe services;
- (v) discontinuing the unfair trade practice;
- (vi) desisting from offering the hazardous goods for sale;

- (vii) ceasing the manufacture or importation of unsafe goods;
- (viii) returning to the complainant the amount paid for the goods or service;
- (ix) payment of any penalty imposed for a breach of any provision of this Law;
- (x) paying specified amounts as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the supplier;
- (xi) paying such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable;
- (xii) providing adequate costs to the complainant in addition to the fees to pursue a claim against the supplier and to cover any incidental expenses including expert costs for analysis or testing of goods and services;
- (xiii) issuing a corrective advertisement to minimise the effect of misleading advertisement; and
- (xiv) providing such other remedies or corrective measures as the Commission deems fit or as may be prescribed.

(2) A supplier who fails to comply with an order of the Commission, commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of one year, or to both.

15. (1) The Commission may serve on any person -

- (a) a prohibition notice prohibiting that person, except with the Commission's consent, from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, any relevant goods which the Commission considers are unsafe and which are described in the notice; or
- (b) a warning notice requiring that person at his own expense to publish, in a form and manner and on occasions specified in the notice, a warning in relation to the relevant goods which the Commission considers are unsafe.

Power of Commission to  
issue prohibition and  
warning notices

(2) Regulations may make provision with respect to prohibition notices and warning notices, and may prescribe the manner in which information is to be conveyed to any person.

(3) A person who fails to comply with a prohibition or warning notice commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of one year, or to both.

Power of Commission to accept and enforce undertakings

16. (1) The Commission may accept a written undertaking given by a person for the purposes of this Law in connection with a matter in relation to which the Commission has a function under this Law.

(2) If the Commission considers that a person who gave an undertaking has breached any of its terms, the Commission may apply to the court for an order under subsection (3).

(3) If on an application the court is satisfied that a person who gave an undertaking under subsection (1) has breached a term of the undertaking, the court may make all or any of the following orders -

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

Injunctions

17. (1) The court may, on the application of the Commission, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a breach of this Law.

(2) The court may, at any time, rescind or vary an injunction granted under this section.

(3) Where an application is made to the court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the court may -

- (a) if it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in further conduct of that kind; or
- (b) if in the opinion of the court it is desirable to do so, grant an interim injunction restraining the person from engaging in further conduct of that kind.

(4) Where an application is made to the court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the court may -

- (a) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or



- (b) if in the opinion of the court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(5) A person who fails to comply with an order of the court issued under sections 16 and 17 commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of one year, or to both.

18. (1) A person aggrieved by an order of the Commission may appeal against such order to the court within thirty days from the date of the order. Appeal

(2) A person aggrieved by an order of the court made pursuant to sections 16 and 17 may appeal to the Court of Appeal against such order within thirty days from the date of the order.

#### **PART 4 - RIGHTS OF THE CONSUMER**

19. (1) A consumer is not required to pay a supplier for any goods or services supplied to the consumer under a consumer agreement unless - Unsolicited goods or services: relief from legal obligations

- (a) the consumer has implicitly requested the supplier to supply those goods or services by -
  - (i) tendering payment for them; or
  - (ii) engaging in conduct that could reasonably lead the supplier to believe that the consumer has requested the supplier to supply those goods or services;
- (b) the consumer has expressly requested the supplier to supply those particular goods or services; or
- (c) the supplier has undertaken to supply those goods or services 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 services, despite their subsequent use, receipt, misuse, loss, damage or theft.

(3) The supplier is liable to pay to the recipient of unsolicited goods, such reasonable costs as are incurred in respect of the storage of the goods.

(4) Subsections (2) and (3) do not apply to or in relation to a recipient of unsolicited goods if -

- (a) the recipient has unreasonably refused to permit the supplier or the owner of the goods to take possession of the goods; or

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

(5) A request for goods or services shall not be inferred solely on the basis of payment or the passing of time.

(6) Where a consumer is a party to an agreement referred to in subsection (1)(c) and, during the course of that agreement, there is a material change in the goods or services, the goods or services shall be 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 affirmative conduct, a supplier may rely on the consent if he proves that such consent was given.

(8) Where a supplier has received payment from or on behalf of a consumer in respect of unsolicited goods or services, 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 three days of the request for payment.

(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;
- (b) subject to subsection (4), is not liable for any -
  - (i) loss or damage to those goods while they are in transit, or at any time after they are received by the consumer, whether or not they remain in the consumer's possession; or
  - (ii) use or depletion of, or damage to those goods at any time one day after receipt by the consumer, unless during that time, the supplier has notified the consumer that the goods were delivered in error and has arranged to recover them, at the supplier's risk and expense.

(11) Goods or services are unsolicited if they are supplied to a consumer who did not request them.

(12) Goods or services will not be regarded as unsolicited if -

- (a) the goods or services were intended for another person and the recipient knew or ought to have known that the goods or services were intended for another person; or
- (b) the goods or services are supplied under a written future performance agreement that provides for the periodic supply of those goods to the recipient without further solicitation.

20. A supplier shall not require, as a condition of offering to supply, or supplying any goods or services, or as a condition of entering into a consumer agreement, that the consumer -

Consumer's right to select suppliers and products

- (a) purchase any other goods or services 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 services from a designated third party,

unless the supplier can show financial or other efficiency benefits to the consumer.

21. (1) This section applies to any transaction or consumer agreement under which a supplier provides 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.

Consumer's right to authorise services

(2) A supplier shall not charge a consumer for the supply of any goods or services contemplated in subsection (1) unless -

- (a) the supplier has given the consumer a detailed estimate that informs the consumer and the consumer has subsequently authorised the work; or
- (b) the consumer has, in writing -
  - (i) declined the offer of an estimate, and authorised the work; or
  - (ii) pre-authorised any charges up to a specified amount and the amount charged does not exceed that maximum.

(3) A supplier shall not 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 its preparation; 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).

Consumer's right to choose and examine goods

22. (1) A consumer has the right to select or reject any particular item where goods are displayed in, or sold from, open stock.

(2) 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 delivered to the consumer -

- (a) correspond 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, the bulk of the goods shall correspond with the sample and the description.

(4) Where the supplier delivers goods to a consumer under a consumer agreement, the supplier shall, at the request of the consumer, 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 not regarded as having accepted them until he has had a reasonable opportunity to examine those goods for the purpose of ascertaining whether they are in conformity with the consumer agreement.

Consumer's rights with respect to delivery of goods or supply of services

23. (1) Unless otherwise expressly provided or anticipated by reason of a course of dealing or trade practice in a consumer agreement, it is an implied condition of every transaction for the supply of goods or services that -

- (a) the supplier is responsible for the delivery of the goods or service to the consumer -
  - (i) within a reasonable time;
  - (ii) subject to subsection (2)(a), at the consumer's place of business, if the consumer has one or the consumer's place of residence; and
  - (iii) at the cost and risk of the supplier; and
- (b) the goods remain at the supplier's risk until the consumer has accepted delivery.

(2) Unless otherwise expressly provided, a 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; 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 supply of a service, the supplier shall not require that the consumer accept delivery or performance of the services at an unreasonable time.

24. (1) A consumer is deemed to have accepted goods when -

Consumer's acceptance  
of goods or services

- (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 required for examining the goods to ascertain their conformity with the transaction, the consumer retains the goods without indicating to 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 purchase, the consumer may -

- (a) accept the goods and pay for the agreed quantity at the agreed rate; or
- (b) treat the excess quantity as unsolicited goods in accordance with section 19.

(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 agreement and reject the remainder; or
- (b) reject the whole.

25. (1) Subject to subsections (2) and (3), a consumer has the right to cancel any advance booking or reservation for a good or service to be supplied.

Consumer's right to  
cancel reservation

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

- (a) require payment of a deposit in advance; and
- (b) impose a reasonable charge for cancellation of the order or reservation.

(3) For the purposes of this section, a cancellation charge is unreasonable if it exceeds a fair amount 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

Consumer's right to  
rescind or cancel  
agreement

- (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) If a consumer is unable to fulfil a reservation or advance booking by reason of the verifiable death or illness of the consumer, the supplier -
    - (a) shall not impose any cancellation fee in respect of the reservation or booking; and
    - (b) shall, where applicable, refund to the administrator of the consumer's estate or the consumer any deposit paid by the consumer in respect of the reservation or booking.
26. (1) The provisions of this section are in addition to and not in substitution of any right to return goods and receive a refund that may otherwise exist in law between a supplier and consumer.
- (2) Subject to subsection (3), a consumer may rescind a consumer agreement within fifteen business days after delivery of goods or provision of the service to be supplied in terms of the agreement, if the agreement arises as a result of -
- (a) direct, distance or electronic marketing by the supplier and contemplates the delivery of goods or a service to the consumer; or
  - (b) any other marketing in circumstances in which the consumer is unable to choose or examine goods.
- (3) A consumer may rescind a consumer agreement referred to in subsection (2) within three months after the agreement, if the supplier -
- (a) was required to be licensed or registered under any law and was not so licensed or registered; or
  - (b) contravened any provision of this Law in respect of the transaction.
- (4) At any time, by giving three weeks notice to the supplier, a consumer may cancel without penalty, a consumer agreement -
- (a) for the supply of a continuous service;
  - (b) to purchase goods or services on a periodic recurring basis by subscription; or
  - (c) to make a donation on a periodic recurring basis.
- (5) A supplier shall bear the expense and risk of returned goods that are unacceptable within the context this Law.
- (6) A supplier -

- (a) is obliged to return any payment received from a consumer within three 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.

(7) This section does not apply to a consumer agreement where goods have been delivered to the consumer, if they are partially or entirely-

- (a) 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 them; or
- (b) disassembled, physically altered, or affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

27. (1) A document or information regarding a product or service that is required to be delivered to a consumer under this Law, shall be provided in plain language and the official language of the Islands.

Right to information in plain and understandable language

(2) 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 or information is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance, and import of the document without undue effort, having regard to -

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

(3) The Commission may publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (1).

28. (1) Where a consumer who enters into a consumer agreement for the supply of any goods or services dies before the supply of those goods or services-

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

- (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 services, in accordance with the agreement; or
  - (ii) terminating the agreement as from the death of the consumer; and
- (b) any deposit paid by the consumer remains in trust for the benefit of the consumer's estate.

(2) Where a consumer agreement which has been terminated pursuant to 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 to be made;
- (b) is entitled to reimbursement for any costs for such procurement or work, on the terms contemplated in the agreement; and
- (c) upon acquisition or completion of those special-order goods, holds them in trust for the benefit of the consumer's estate, subject to further direction by the administrator of that estate.

Penalty for contravening consumer rights

29. A supplier who, without reasonable excuse, acts in contravention of the rights of a consumer under this Part is liable to such penalties as may be prescribed.

## **PART 5 - CONSUMER GUARANTEES IN RELATION TO THE SUPPLY OF GOODS**

Guarantee as to title

30. (1) Where goods are supplied to a consumer it is guaranteed that the -

- (a) supplier has a right to sell the goods;
- (b) goods are free from any undisclosed security; and
- (c) consumer has the right to undisturbed possession of the goods.

Guarantee as to acceptable quality

31. (1) Where goods are supplied to a consumer, there is guarantee that the goods are of acceptable quality.

(2) Goods are of an acceptable quality for the purposes of this section if they are -

- (a) fit for all the purposes for which goods of the type in question are commonly supplied;
- (b) acceptable in appearance and finish;
- (c) free from defects;
- (d) safe; and
- (e) durable,

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

- (i) the nature of the goods;
- (ii) the price, where relevant;
- (iii) any statements made about the goods on any packaging or label on the goods;
- (iv) any representation made about the goods by the supplier or the manufacturer; and



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

(3) Where any defects in goods have been specifically drawn to the consumer's attention before the consumer agreed to the supply, then, notwithstanding that a reasonable consumer may not have regarded the goods as acceptable with those defects, the goods will not fail to comply with any guarantee in this section by reason only of those defects.

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

(5) Goods will not fail to comply with the guarantee set out in this section if -

- (a) the goods have been used by the consumer in a manner, or to an extent, which is inconsistent with the manner or extent of use that a reasonable consumer would expect to obtain from the goods; and
- (b) the goods would have complied with that guarantee if they had not been used by the consumer in that manner or to that extent.

32. (1) Where goods are supplied to a consumer there is a guarantee that -

Guarantee as to fitness

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

(2) The guarantees set out in subsection (1) do not apply where the circumstances show that -

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

(3) This section applies whether or not the purpose is a purpose for which the goods are commonly supplied.

33. Where goods are supplied by description to a consumer, there is a guarantee that the goods correspond with the description.

Guarantee as to  
correspondence with  
description

34. Where a consumer makes a decision to acquire goods based on a sample or demonstration model, there is a guarantee that -

Guarantee as to  
compliance with sample

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

	(b) the consumer will have a reasonable opportunity to compare the goods with the sample or demonstration model.
Guarantee as to prior use	<p>35. Where goods are supplied to a consumer there is a guarantee that the goods are unused, unless before the consumer agrees to the supply -</p> <p>(a) the supplier discloses to the consumer that the goods are not unused; or</p> <p>(b) the consumer knows or ought to know that the goods are not unused or are likely not to be unused.</p> <p>(2) For the purposes of this section, goods are unused notwithstanding that they have been used by the supplier or any other person to test, prepare or deliver them, if they have not been so used to an unreasonable extent.</p>
Guarantee as to price	<p>36. Where goods are supplied to a consumer there is a guarantee that the consumer is not liable to pay to the supplier more than a reasonable price for the goods in any case where the price for the goods is not -</p> <p>(a) determined by the contract;</p> <p>(b) left to be determined in a manner agreed by the contract; or</p> <p>(c) left to be determined by the course of dealing between the parties.</p>
Guarantee as to repairs and spare parts	<p>37. (1) Where goods are supplied to a consumer in the Islands there is a guarantee that the supplier will take reasonable action to ensure that facilities for repair of the goods and supply of parts for the goods are available for a reasonable period after the goods are so supplied.</p>
Express guarantees- liability of supplier	<p>38. (1) Where an express guarantee is stated on a label or packaging attached to or accompanying goods supplied by a supplier to a customer, the supplier is bound by the express guarantee unless he made clear to the consumer before the supply that he does not accept the guarantee.</p> <p>(2) Subject to subsection (3), a supplier of goods is bound by an express guarantee contained in an advertisement originating from or carried out by the manufacturer of the goods if the supplier expressly or impliedly adopts the express guarantee.</p> <p>(3) Notwithstanding that a supplier may not be bound by an express guarantee by virtue of subsection (1) or (2), any descriptive statement that appears on a label or on packaging attached to or accompanying goods or in an advertisement mentioned in subsection (2) shall form part of the description of the goods.</p>
Express guarantees- liability of manufacturer	<p>39. (1) An express guarantee made by a manufacturer in a document relating to goods binds the manufacturer if, in connection with the supply of the goods to</p>

a consumer, the document is given by the supplier to the consumer with the actual or apparent authority of the manufacturer.

- (2) An express guarantee which -
- (a) is included in a document relating to goods;
  - (b) purports to have been made by the manufacturer of the goods; and
  - (c) is given to a consumer by a supplier of the goods in connection with the supply of the goods,

shall be presumed to have been made by the manufacturer, unless that presumption is rebutted by evidence to the contrary.

(3) Where there is evidence that a document containing an express guarantee by a manufacturer in respect of goods was given to a consumer by a supplier in connection with the supply of the goods to the consumer, it shall be presumed that the document was given to the consumer with the authority of the manufacturer, unless that presumption is rebutted by evidence to the contrary.

40. A supplier who, without reasonable excuse, acts in contravention of the guarantees under this Part is liable to such penalties as may be prescribed.

Penalty for contravening consumer guarantees

#### **PART 6 - CONSUMER REMEDIES WHEN SUPPLIER GUARANTEE IS BREACHED**

41. This Part provides a consumer with a right of redress against a supplier of goods where the goods fail to comply with any guarantee that is binding on a supplier by under Part 5.

Right of redress against supplier where goods do not comply with guarantees

42. (1) Where a consumer has a right of redress against the supplier in accordance with this Part in respect of the failure of any goods to comply with a guarantee provided under Part 5, the consumer may exercise the following remedies -

Remedies against supplier where goods do not comply with guarantees

- (a) require the supplier to remedy the failure within a reasonable time;
- (b) where a supplier who has been required to remedy a failure refuses or neglects to do so, or does not succeed in doing so within a reasonable time the consumer may -
  - (i) have the failure remedied elsewhere and obtain from the supplier all reasonable costs incurred in having the failure remedied; or
  - (ii) reject the goods.

(2) Where the failure cannot be remedied or is of a substantial character the consumer may -

- (a) reject the goods; or

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

(3) A consumer may, in addition to the remedies set out in subsections (2) and (3), obtain from the supplier damages for any loss or damage to the consumer resulting from the failure which was reasonably foreseeable as being likely to result from the failure.

(4) The damages referred to in subsection (3) may include a sum in respect of any personal injury, distress, inconvenience, disappointment or vexation suffered as a direct result of the failure.

Options of supplier who has been required to provide remedy

43. (1) A supplier shall comply with a requirement to remedy a failure of any goods to comply with a guarantee by -

- (a) repairing the goods, in a case where the failure does not relate to title;
- (b) curing any defect in title, in a case where the failure relates to title;
- (c) by replacing the goods with goods of an identical type; or
- (d) where the supplier cannot reasonably be expected to repair the goods, providing a refund of any money paid or other consideration provided by the consumer in respect of the goods.

(2) Where a consumer obtains goods to replace defective goods pursuant to subsection (1), the replacement goods shall, for the purposes of this Law, be deemed to be supplied by the supplier and the guarantees and obligations arising under this Law consequent upon a supply of goods to a consumer shall apply to the replacement goods.

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

Loss of right to reject goods

44. (1) The right to reject goods conferred by this Law shall not apply if -

- (a) the right is not exercised within a reasonable time within the meaning of subsection (2);
- (b) the goods have been disposed of by the consumer, or have been lost or destroyed while in the possession of a person other than the supplier or an agent of the supplier;
- (c) the goods were substantially damaged after delivery to the consumer for reasons not related to their state or condition at the time of supply; or
- (d) the goods have been attached to or incorporated in any real or personal property and they cannot be detached or isolated without damaging them.

(2) In subsection (1)(a) the term “reasonable time” means a period from the time of supply of the goods in which it would be reasonable to expect the defect to become apparent having regard to -

- (a) the type of goods;
- (b) the use to which a consumer is likely to put the goods;
- (c) the length of time for which it is reasonable for the goods to be used; and
- (d) the amount of use to which it is reasonable for the goods to be put before the defect becomes apparent.

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

Manner of rejecting goods

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

(3) Where the ownership in the goods has passed to the consumer before the consumer exercises the right of rejection, the ownership in the goods reverts in the supplier when the supplier receives the notification mentioned in subsection (1).

46. (1) Where the consumer exercises the right to reject goods, he may choose to have either -

Options of consumer who rejects goods

- (a) a refund of any money paid or other consideration provided by him in respect of the rejected goods; or
- (b) goods of the same type and of similar value to replace the rejected goods, where such goods are reasonably available to the supplier as part of the stock of the supplier.

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

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

(4) Where a consumer obtains goods to replace rejected goods pursuant to subsection (1)(b), the replacement goods shall, for the purposes of this Law, be deemed to be supplied by the supplier, and the guarantees and obligations arising under this Law consequent upon a supply of goods to a consumer shall apply in relation to the replacement goods.

47. Where a consumer acquires goods from a supplier and gives them to another person as a gift, that other person may, subject to any defence which would be available to the supplier against the consumer, exercise any rights or remedies under this Part which would be available to that other person if he had acquired

Rights of recipients of gifts of goods from consumers

the goods from the supplier; and any reference in this Part to a consumer shall include a reference to that other person accordingly.

Penalty for failure to  
remedy breach of  
guarantee

48. A supplier who, without reasonable excuse, fails to provide a consumer with the remedies required under this Part for breach of a guarantee is liable to such penalties as may be prescribed.

#### **PART 7 - CONSUMER REMEDIES WHEN MANUFACTURER GUARANTEE IS BREACHED**

Right of redress against  
manufacturers

49. This Part gives a consumer a right of redress against a manufacturer of goods where the goods fail to comply with -

- (a) the guarantee as to acceptable quality;
- (b) the guarantee as to correspondence with description;
- (c) the guarantee as to repairs and spare parts; or
- (d) an express guarantee of the manufacturer.

Remedies against  
manufacturer where  
goods do not comply  
with guarantees

50. (1) Where a consumer has a right of redress against a manufacturer under this Part, the consumer, or any person who acquires the goods from or through the consumer, may obtain damages from the manufacturer -

- (a) subject to subsection (2)(b), for a reduction in the value of the goods -
  - (i) below the price paid or payable by the consumer for the goods; or
  - (ii) below the average retail price of the goods at the time of supply, whichever price is lower;
- (b) for any loss or damage including personal injury, distress, inconvenience, disappointment or vexation to the consumer or that other person resulting from the failure which was reasonably foreseeable as being liable to result from the failure.

(2) Where the consumer, or any person who acquires the goods from or through the consumer, is entitled by an express guarantee given by the manufacturer to require the manufacturer to remedy the failure by -

- (a) repairing the goods; or
- (b) replacing the goods with goods of an identical type,

no action shall be commenced under subsection (1)(a) unless the consumer or that other person has required the manufacturer to remedy the failure and the manufacturer has -

- (i) refused or neglected to remedy the failure; or
- (ii) not succeeded in remedying the failure within a reasonable time.

51. A manufacturer who, without reasonable excuse, fails to provide a consumer with the remedies required under this Part is liable to such penalties as may be prescribed.

Penalty for failure to remedy breach of guarantee

## **PART 8 - CONSUMER GUARANTEES IN RESPECT OF SERVICES**

52. Where a service is supplied to a consumer there is a guarantee that the service will be carried out with reasonable care and skill.

Guarantee as to reasonable care and skill

53. (1) Where a service is supplied to a consumer there is a guarantee that the service, and any product resulting from the service, will be -

Guarantee as to fitness

- (a) reasonably fit for the purpose for which it was intended; and
- (b) of such a nature and quality that it can reasonably be expected to achieve the expressed or implied purpose.

(2) The Guarantee referred to in subsection (1) does not apply where -

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

54. (1) Where a service is supplied to a consumer there is a guarantee that the service will be completed within a reasonable time in any case where the time for the service to be carried out is not -

Guarantee as to time of completion

- (a) determined by the contract;
- (b) left to be determined in a manner agreed by the contract; or
- (c) left to be determined by the course of dealing between the parties.

55. Where a service is supplied to a consumer there is a guarantee that the consumer is not liable to pay to the supplier more than a reasonable price for the service in any case where the price for the service is not -

Guarantee as to price

- (a) determined by the contract;
- (b) left to be determined in a manner agreed by the contract; or
- (c) left to be determined by the course of dealing between the parties.

56. A supplier who, without reasonable excuse, acts in contravention of the service guarantees under this Part is liable to such penalties as may be prescribed.

Penalty for contravening service guarantee

## **PART 9 - CONSUMER REMEDIES FOR BREACH OF SERVICE GUARANTEE**

57. Where a service supplied to a consumer fails to comply with a guarantee set out in this Part the consumer may -

Right of redress where service does not comply with guarantees

- (a) refuse to pay more than a reasonable price;

- (b) claim a rebate for the period during which he was without the agreed service;
- (c) where the failure can be remedied -
  - (i) require the supplier to remedy the service provision within a reasonable time; or
  - (ii) where a supplier who has been required to remedy the failure refuses or neglects to do so, or does not succeed in doing so within a reasonable time -
    - (A) have the failure remedied elsewhere and recover from the supplier all reasonable costs incurred in having the failure remedied; or
    - (B) cancel the contract for the supply of the service without incurring a penalty;
- (d) where the failure cannot be remedied or is of a substantial character -
  - (i) cancel the contract for the supply of the service without incurring a penalty;
  - (ii) obtain from the supplier damages in compensation for any reduction in value of the product of the service below the charge paid or payable by the consumer for the service; or
- (e) obtain from the supplier damages for any loss or damage (including personal injury, distress, inconvenience, disappointment or vexation to the consumer resulting from the failure but excluding loss or damage through reduction in value of the product of the service) which was reasonably foreseeable as being liable to result from the failure.

Meaning of failure of a substantial character

58. Pursuant to section 57 a failure to comply with a guarantee is of a substantial character in any case where -

- (a) the service would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure;
- (b) the product of the service is substantially unfit for a purpose for which services of the type in question are commonly supplied and the product cannot easily and within a reasonable time be remedied to make it fit for the purpose;
- (c) the product of the service is unfit for a particular purpose, or is of such a nature and quality that the product of the service cannot be expected to achieve any particular result, made known to the supplier, and the product cannot easily and within a reasonable time be remedied to make it fit for the particular purpose or to achieve the particular result; or
- (d) the product of the service is unsafe.



59. (1) The cancellation by a consumer of a contract for the supply of a service does not take effect -
- Rules relating to cancellation
- (a) before the time at which the cancellation is made known to the supplier; or
  - (b) where it is not reasonably practicable to communicate with the supplier, before the time at which the consumer indicates, by means which are reasonable in the circumstances, his intention to cancel the contract.
- (2) Subject to subsection (3), the cancellation may be made known orally, or by conduct indicating an intention to cancel, or both.
- (3) Where it is reasonably practicable to communicate with the supplier, subsection (2) has effect subject to any provision in the contract for the supply of a service requiring notice of cancellation in writing.
60. (1) Where a consumer cancels a contract for the supply of a service under this Law -
- Effect of cancellation
- (a) the consumer is entitled to recover from the supplier a refund of any money paid or other consideration provided in respect of the service unless the Commission or the court orders that the supplier may retain the whole or part of the money paid or other consideration provided by the consumer;
  - (b) to the extent that the contract has been performed at the time of the cancellation, no party is, by reason of the cancellation, divested of any property transferred or money paid pursuant to the contract, except as otherwise provided in paragraph (a); and
  - (c) so far as the contract remains unperformed at the time of the cancellation, no party is obliged or entitled to perform it further.
61. A supplier who, without reasonable excuse, fails to provide a consumer with the remedies required under this Part is liable to such penalties as may be prescribed.
- Penalty for failure to remedy breach of service guarantee

## **PART 10 - DUTIES OF A SUPPLIER**

62. (1) At any time before payment is made for any goods, whether sold as new or used, a supplier shall, in addition to the requirements of any other law provide the consumer, with information relating to packaging, labelling, description of goods, the origin, care, terms, components, hazards, proper use, weight, size and instructions for assembly and installation of the goods.
- Information to consumer
- (2) Where a supplier fails to comply with subsection (1) he shall, notwithstanding anything to the contrary in the warranty document, be responsible for any damage done to the goods by the consumer that can be directly attributed to the consumer's lack of information.

Disclosure of price of  
goods or services

63. (1) A supplier shall not display goods for sale, or offer to supply any services without displaying a price in relation to those goods or services, unless the display is -

- (a) designed and intended predominantly as a form of advertisement of the supplier, goods or services; or
- (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 price is displayed in relation to particular goods if it is -

- (a) appended, annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf, or other things used in connection with the goods or on which the goods are mounted for display or exposed for sale;
- (b) published in a catalogue available to the public if a time is specified in the catalogue as the time after which the goods may not be sold at that price; or
- (c) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services.

(3) Where a supplier has provided an estimate for any service or goods the price for that service or goods shall not exceed the estimate unless -

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

Product labeling and  
trade descriptions

64. (1) A supplier of goods shall not display, offer to supply or supply any goods, unless a trade description of those 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, 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 -

- (a) shall 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 those 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 those goods has been altered; and
  - (b) with respect to any goods within that person's control, shall take reasonable steps to prevent any other person from committing any act referred to in paragraph (a).
- (3) For the purposes of this section trade description means -
- (a) any description, standard, statement or other direct or indirect indication as to -
    - (i) the size, number, quantity, measurement or weight of any goods;
    - (ii) the name of the producer of any goods;
    - (iii) the ingredients of any goods, or material of which any goods are made;
    - (iv) the place or country of origin of any goods;
    - (v) the mode of manufacturing or producing any goods; and
    - (vi) any goods being the subject of any patent, privilege or copyright; or
  - (b) any figure, work or mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a).
65. (1) A supplier who packages any goods or imports any such goods, for supply to a consumer shall display on or in association with that packaging or those goods, a notice in a manner and form that discloses -
- (a) the presence, nature and extent of any -
    - (i) genetically modified ingredients or components of those goods; or
    - (ii) ingredients or components that have been determined to present a chemical or biological hazard to humans, relative to their concentration in those goods;
  - (b) the estimated energy requirements per hour of use, if the operation of the goods requires the utilisation 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

Disclosure of  
environmental facts  
affecting goods

- (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 under any law; or
  - (ii) is advisable in the interests of personal or public health or safety.

(2) A supplier of goods -

- (a) shall not offer to supply, display, or supply any goods if the supplier knows, reasonably could determine, or has reason to suspect that an notice applied to those goods -
  - (i) is likely to mislead the consumer as to any matter implied or expressed in that notice; or
  - (ii) has been altered as contemplated in subsection (5); and
- (b) with respect to any goods within his control, shall take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a).

Disclosure of re-conditioned goods

66. A person who offers or agrees to supply, or supplies, any goods that -

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

shall apply a conspicuous notice to those goods stating clearly that they have been reconditioned, re-built or re-made.

Sales records

67. (1) A supplier of goods or services shall provide a written durable record of each transaction to the consumer to whom the goods or services are 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 services were supplied;
- (c) the date on which the transaction occurred;
- (d) a name or description of the goods or services supplied or to be supplied;
- (e) the unit price for each of the goods or services supplied or to be supplied;
- (f) the quantity of each of the goods or services supplied or to be supplied;
- (g) the total price of the transaction, before any applicable fees ;
- (h) the amount of any applicable fees;
- (i) the total price of the transaction, including any applicable fees; and
- (j) such other information as may be prescribed under this or any other law.

68. The sales record provided by a supplier -

Utility of sales record

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

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

Measurement of goods

(2) For the purposes of subsection (1), a supplier of any goods that are 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 Weights and Measures Law (1997 Revision).

(1997 Revision).

70. (1) A supplier shall issue explicit warranties in relation to his goods or services, whether the goods are new or used.

Warranties

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

- (a) be deemed to have issued to the customer, the manufacturer's warranty as an explicit warranty by the supplier; and
- (b) notwithstanding any geographical limitations in the warranty, be 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 there is implied a warranty that the repair or replacement shall be carried out within a reasonable time.

(4) 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.

(5) Implied warranties in the absence of expressed warranties, shall apply to the supply and repair of all goods.

(6) In the absence of an expressed warranty, and, subject to the standard conditions of warranties, an implied warranty of six months on parts and labour shall attach to the transaction.

(7) Penalties for breach of warranty include repairs, replacement, partial or full refund and the award of damages.

Supply of damaged  
goods to consumer

71. (1) A supplier shall be responsible for the replacement or repair of the goods, at no additional cost to the consumer where -

- (a) within the warranty period, goods supplied to a consumer fail to provide the benefit and uninterrupted enjoyment for which they were intended; and
- (b) the failure is not due to negligence or abuse by the consumer.

(2) The supplier shall, in the event of repair of the goods referred to in subsection (1) return the goods to the consumer in a fully repaired and functional state within a reasonable period, after receipt of the goods.

(3) The supplier shall provide the consumer with a temporary substitute of comparative value for the consumer's uninterrupted use and enjoyment until the replacement or repair and return of the goods if the goods cannot be returned in a reasonable time.

Returns, refunds, repairs  
and exchange policy

72. A supplier shall formulate a policy which meets prescribed requirements with respect to returns, refunds and exchange of, where applicable, goods and services.

Return of materially  
defective or different  
goods

73. (1) 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, subject to subsections (2) and (3) -

- (a) the consumer may return the goods acquired to the supplier;
- (b) the supplier shall 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; and
- (d) the supplier shall not charge the consumer a restocking fee for goods returned or any other fee.

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

Approved and  
unapproved services

74. (1) A supplier shall -

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

(2) A consumer shall not be liable to pay for any service not unapproved by him.

75. (1) A supplier who offers repair services to a consumer shall keep a record stating -

Businesses offering repair services

- (a) the name, address, email 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) an estimate of the replacement value of the goods in its present state as agreed with or as declared by 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; and
- (e) the date on which the goods -
  - (i) are received for repair; and
  - (ii) will be ready for delivery.

(2) A copy of the record shall be given to the consumer before the commencement of repairs.

(3) A supplier who offers a repair service shall -

- (a) disclose to the consumer any additional related repairs that he deems necessary for the consumer to enjoy reasonably long and uninterrupted use of the repaired goods; and
- (b) obtain a written indemnity from the consumer if the consumer chooses not to require the supplier to effect the recommended repairs.

76. (1) Where a supplier has advertised a date or period for delivery of any goods, whether new, used or repaired and a consumer has entered into a consumer agreement with, and given a deposit to the supplier to deliver the goods, that date or period shall form part of the contract between the supplier and the consumer.

Advertised delivery date

(2) If the goods are not delivered to the consumer by the date agreed or within that period, the supplier shall, at the election of the consumer -

- (a) refund the deposit, plus interest for the period beginning with the date of the deposit and ending on the date of its refund, at prevailing market interest rates; or
- (b) deliver those goods by another date or within another period on terms to be agreed with the consumer.

(3) A supplier who has advertised a completion or delivery date, and has obtained from the consumer a deposit 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.

Conditions of  
demanding and  
accepting payment

77. A supplier shall not demand or accept payment or other consideration for the supply of goods or services, if at the time of the demand or acceptance he -

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

General standards for  
the promotion of goods  
or services

78. A supplier shall not promote goods or services -

- (a) in a manner that is misleading, fraudulent or deceptive in relation to -
  - (i) the nature, properties, advantages or uses of the goods or services;
  - (ii) the manner in or conditions on which those goods or services 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 services;
  - (iv) the sponsoring of any event; or
  - (v) any other material aspect of the goods or services;
- (b) in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services;
- (c) if the supply, purchase, sale or possession of them 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 those goods or services that is inconsistent with any law; or
  - (iii) implies or expresses a preference for any particular group of prospective consumers distinguishable from the general population on the basis of a ground of discrimination except to the extent that particular goods or services are reasonably intended or designed to satisfy specific needs or interests that are common to or uniquely characteristic of the particular group of prospective consumers.



79. A supplier who, without reasonable excuse, acts in contravention of his duties under this Part is liable to such penalties as may be prescribed. Penalty for contravening supplier's duty

### **PART 11 - UNFAIR TRADE PRACTICES**

80. A supplier shall not, in trade or business - False representations

- (a) falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or a particular previous use;
- (b) falsely represent that services are of a particular standard, quality, value or grade;
- (c) falsely represent that goods are new;
- (d) falsely represent that a particular person has agreed to acquire goods or services;
- (e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits that they do not have;
- (f) represent that he has a sponsorship, approval or affiliation that he does not have;
- (g) make false or misleading representations concerning the price of any goods or services;
- (h) make false or misleading representations concerning the need for any goods, services, replacements or repairs, the availability of facilities for the repair of goods or the availability of spare parts for goods;
- (i) make false or misleading representations concerning the place of origin of goods;
- (j) make false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy relating to goods or services.
- (k) in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply of goods or services, offer a gift, prize or other free item with the intention of not providing the gift, prize or other free item as offered;
- (l) engage in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity, of goods; or
- (m) engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity, of services.

81. (1) A supplier shall not supply goods to which more than one price is appended at a price that is greater than the lower, or lowest, of the prices in question. Dual pricing

(2) In subsection (1), a reference to a price appended to goods includes a reference to a price -

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

(3) Where a price appended to goods is written, stamped or located wholly or partly over another price, or other prices, appended to the goods, all the prices are, for the purposes of subsection (1), prices appended to the goods.

Bait advertising

82. (1) A supplier shall not, in trade or business, advertise for supply at a special price goods or services that he does not intend to offer for supply, or that he has no reasonable grounds for believing that he can supply, at that price, for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the supplier carries on the trade or business and the nature of the advertisement.

(2) A supplier who has a limited stock of goods, or whose capacity to supply services is limited, does not contravene subsection (1) if he states in the advertisement mentioned in that subsection that his stock of the goods, or, as the case may be, his capacity to supply the services, is limited.

Referral selling

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

Falsely accepting payment

84. A supplier shall not accept payment or other consideration for goods or services where at the time of the acceptance -

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

85. A supplier who, without reasonable excuse, engages in any unfair trade practice in contravention of this Part is liable to such penalties as may be prescribed.

Penalty for engaging in an unfair trade practice

## **PART 12 - UNFAIR CONTRACT TERMS**

86. (1) A term in a consumer agreement is unfair if, to the detriment of the consumer, it causes an imbalance in the rights of the supplier and the consumer.

Unfair contract terms

(2) In determining whether a term is unfair the following circumstances shall be taken into consideration -

- (a) the bargaining strengths of the parties to the agreement relative to each other, taking into account -
  - (i) the availability of equivalent goods or services; 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 services or equivalent goods or services, 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 services for which the agreement was concluded;
- (f) the interests of the supplier;
- (g) the other terms of the agreement or of another agreement on which it is dependent;
- (h) the interests of the particular class of consumers who are likely to adhere to the agreement; and
- (i) the circumstances attending the conclusion of the agreement at the time of its conclusion.

(3) An unfair term in a consumer agreement is unenforceable against the consumer.

(4) Where it is asserted that a term in a consumer agreement is unfair, it is for the supplier to show that the term is not unfair.

(5) If the Commission or court, after having considered all the circumstances contemplated in subsection (2), is of the opinion that a term is unfair, it may -

- (a) rescind or amend the agreement or a term of the agreement; or
- (b) make any other order as may be necessary to prevent the effect of the 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.

Schedule 3

(6) Without prejudice to the generality of subsection (1), a term in a consumer agreement which is described in the Schedule 3 is unfair, if not individually negotiated.

Written terms to be plain and intelligible

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

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

Exclusion terms

88. A term of a consumer agreement, including a term that is incorporated in the agreement by reference to another 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 Part; or
- (b) the exercise of a right conferred by this Part.

Indemnity subject to reasonableness

89. 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.

Reasonableness

90. (1) For the purposes of this Part, a term of a consumer agreement satisfies the condition of reasonableness only if the term is a fair and reasonable one to be included in the 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 contract was made.

(2) Where a person seeks to restrict liability to a specified sum of money by reference to a notice of a term of the agreement, and the question arises under this or any other law as to whether the term or notice satisfies the requirement of reasonableness, without limiting the generality of subsection (1) regard shall be had to -

- (a) the resources which the person could expect to have available to him 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 by insurance.

### **PART 13 - RECALL OF GOODS**

91. Where a supplier becomes aware that goods will or may cause injury, loss or damage to any person the supplier shall - Voluntary recall of goods by supplier

- (a) take action to immediately recall the goods by removing them from public distribution and issuing, in the prescribed manner, a notice to the public informing of the recall; and
- (b) at the option of the consumer -
  - (i) refund all money and other consideration provided for the goods;
  - (ii) replace the goods with goods of equal value and the same properties; or
  - (ii) repair the goods to a degree acceptable by the consumer.

92. (1) Where the Commission becomes aware that specified goods are of a kind which will or may cause injury, loss or damage to any person and that the supplier has not taken satisfactory action to prevent the goods from causing injury loss or damage to any person, the Commission shall, by notice in writing order the supplier to do one or more of the following - Compulsory recall of goods

- (a) take action within the period specified in the notice to recall the goods;
- (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 the defect in, or a dangerous characteristic of, the goods specified in the notice;
  - (ii) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous;
  - (iii) refund to a person to whom the goods were supplied, whether by the supplier or by another person, the price of the goods, within the period specified in the notice.

93. Where a supplier undertakes to -

Supplier's action in recall circumstances

- (a) repair goods, the supplier shall cause the goods to be repaired so that any defect in the goods is remedied;
- (b) replace goods, the supplier shall replace the goods with like goods; and
- (c) repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

Contravention of recall notice 94. A supplier who contravenes this Part commits an offence and is liable on summary conviction to a fine of three thousand dollars, imprisonment for a term of one year, or to both.

#### **PART 14 - DISTANCE SELLING**

Meaning of distance contract 95. (1) In this Part “distance contract” means any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service 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 contract involving distance communication includes electronic mail, video conferencing, letters, catalogues, facsimile machine, telephone and television.

Prior information requirements 96. (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 and address of the supplier in the case of a consumer agreement requiring payment in advance;
- (b) a description of the main characteristics of the good or service;
- (c) the price of the good 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 consumer agreement in the case of a consumer agreement for the supply of a good or service to be performed permanently or recurrently.

(2) The information in subsection (1) is to 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 a good or service, the consumer is to receive from the supplier confirmation of the information in subsection (1) in a durable and accessible medium.

Acceptance or decline of internet consumer agreement 97. A supplier shall provide the consumer with an express authority to accept or decline the distance contract and to correct errors immediately before entering into it.

98. A consumer may request cancellation of a payment where fraudulent use is made of his method of payment and the consumer is to be re-credited with the sums paid. Payment by credit card
99. (1) Unless the parties have agreed otherwise, the supplier shall execute a consumer's order within three days from the day following that on which the consumer forwarded his order to the supplier. Performance
- (2) Where a supplier is unable to perform the contract because the good or service is not available, the supplier shall inform the consumer of the situation and refund any sums received within two days.
100. In the case of a dispute, the burden of proof concerning information, confirmation and time limits is on the supplier. Burden of proof
101. A supplier who, without reasonable excuse, acts in contravention of this Part is liable to such penalties as may be prescribed. Penalty for breaching distance contract requirements

## **PART 15 - MISCELLANEOUS**

102. (1) A supplier who contracts to provide a consumer with goods or services over an extended period of time, and to receive periodic payments from the consumer for the goods or services shall - Goods or services acquired by installment
- (a) present a claim for the exact amount of, or the exact percentage of, the total value of the goods or services actually received to date by the consumer; and
  - (b) upon presentation of such 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 pre-determined payment date which forms part of the consumer agreement.
- (2) If the supplier is unable to present a claim under in subsection (1), he may -
- (a) present the consumer with an estimated claim; and
  - (b) if the estimated claim is reasonably accurate, request that the consumer pay the estimated amount on the conditions specified in subsection (3).
- (3) The conditions referred to in subsection (2) are that the -
- (a) amount paid will be credited to the amount owing at the next time that an accurate claim is presented; and
  - (b) supplier shall under no circumstances, be able to terminate the agreement or impose any penalty therein contained 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.

(4) A supplier who presents an estimated claim for goods or service shall present an accurate claim within seven days after presentation of the estimate.

(5) Subsection (4) shall apply notwithstanding that the consumer of the goods or service does not pay the estimated amount claimed or pays it in full or in part.

Trade coupons and similar promotions

103. (1) A supplier 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) shall 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; and
- (d) any person from whom, any place where, and any date and time on or at which the prize may be claimed.

Over-selling and over-booking

104. (1) A supplier shall not accept payment for any goods or services if the supplier -

- (a) has no reasonable basis to assert an intention to supply those goods or provide those services; or
- (b) intends to supply goods or services that are materially different from the goods or services in respect of which the payment or consideration was accepted.

(2) If a supplier makes a commitment or accepts a reservation to supply goods or services on a specified date or at a specified time, and on the date and at the time contemplated in the commitment or reservation, fails due to insufficient stock or capacity to supply those goods or services, or similar or comparable goods or services 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 prevailing market rates from the date on which the amount was paid until the date of re-imbursement; and
- (b) compensate the consumer for -
  - (i) breach of contract in an amount equal to the full contemplated price of the goods or services that were committed or reserved; and
  - (ii) consequential damages in an amount equal to the total of any economic loss, and loss of anticipated use or



enjoyment, sustained by the consumer as a consequence of the supplier's breach of the contract.

105. (1) If a supplier agrees to sell particular goods to a consumer, to accept payment for those goods in periodic installments, and to hold those goods until the consumer has paid the full price for the goods - Lay-aways

- (a) each amount paid by the consumer is held by the supplier in trust for the benefit of the consumer; and
- (b) the particular goods remain at the risk of the supplier until the consumer takes possession of them.

(2) If a supplier is unable to deliver possession of any of the goods contemplated in subsection (1) when the consumer has paid the full price for the goods, the supplier shall, at the option of the consumer -

- (a) supply the consumer with an equivalent quantity of goods that are comparable or superior in description, design and quality; or
- (b) refund to the consumer -
  - (i) the money paid by the consumer, with interest at prevailing market rates, if the inability to supply the goods is due to circumstances beyond the supplier's control; or
  - (ii) double the amount paid by the consumer, as compensation for breach of contract.

(3) If a consumer -

- (a) terminates or rescinds the agreement before fully paying for the goods, the supplier may charge a cancellation penalty before refunding the amount paid by the consumer towards the full price; or
- (b) fails to complete the payment for the goods within thirty days after the anticipated date of completion, the supplier may -
  - (i) regard the consumer as having rescinded the agreement; and
  - (ii) charge a cancellation penalty in respect of the goods before refunding the amount paid by the consumer towards the full price.

(4) A cancellation penalty under this section may not be charged unless the supplier informed the consumer of the fact and extent of the penalty before the consumer entered into the lay-away agreement.

106. (1) In any prosecution under this Law before the court it is a defence if the defendant proves - Defence where offence committed

- (a) that the contravention in respect of which the proceeding was instituted was due to a mistake, to reliance on information supplied by another person, to the act or default of another

person, to an accident or to some other cause beyond his control;  
and

- (b) that he took reasonable precautions and exercised due diligence to avoid the contravention.

(2) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless he 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 that would identify or assist in the identification of the other person.

Penalties and fines part  
of general revenue

107. All penalties and fines paid under this Law shall form part of the general revenue of the Islands.

Regulations

108. The Cabinet may make regulations in relation to -

- (a) the functions and powers of the Commission;
- (b) all matters that are necessary to be prescribed for giving effect to the penalty system under the Law and the penalties for acting in contravention of this Law; and
- (c) any matter generally for the better carrying out of the objects and purposes of this Law.

## **SCHEDULE 1**

(Section 6(2) )

### **THE CONSUMER AFFAIRS COMMISSION**

#### *Constitution*

1. The Commission shall be comprised of five members appointed by the Cabinet including a person who has professional experience or qualifications in consumer affairs, law or business.

#### *Tenure of Office*

2. (1) The members of the Commission shall be appointed by instrument in writing and shall hold office for a term of not more than three years.

(2) An appointed member shall be eligible for re-appointment.

(3) The office of an appointed member shall be a public office.

#### *Chairman*

3. There shall be a Chairman of the Commission who shall be appointed by the Cabinet from among the members of the Commission.

*Acting appointments*

4. If any member is absent or unable to act the Cabinet may appoint any person to Law in the place of that member and in the case of the appointed members such appointment shall be made in the same manner and from among any of the categories of persons as would be required in the case of the substantive appointment.

*Resignation*

5. An appointed member may at any time resign his office by instrument in writing addressed to the Cabinet and transmitted through the Chairman and from the date of receipt by the Cabinet of such instrument, that person shall cease to be a member.

*Revocation of appointment*

6. The Cabinet may at any time revoke the membership of an appointed member.

*Filling of vacancies*

7. If a vacancy occurs in the membership of the appointed members such vacancy shall be filled by the appointment of another appointed member and such appointment shall be made in the same manner and from any of the categories of persons as would be required in the case of the original appointment.

*Gazetting of membership*

8. The names of all members of the Commission as first constituted and every change therein shall be published in the Gazette.

*Officers and servants*

9. (1) The Minister may, after Consultation with the Chairman, recommend to the Governor that the following persons be appointed on such terms and conditions as the Governor thinks fit -

- (a) a Director of the Commission, who shall be its legal and administrative head; and
- (b) such other officers, servants and agents as he thinks necessary for the proper performance of the functions of the Commission.

*Remuneration and Expenses*

10. The expenses of the Commission, including the allowances and remuneration of the members and staff shall be defrayed out of moneys voted for the purpose by the Legislative Assembly.

*Seal and execution of documents*

11. (1) The seal of the Commission shall be authenticated by the chairman and one other member of the Commission authorised to act in that behalf.

(2) The Commission may, by resolution, appoint an officer of the Commission either generally or in a particular case to execute or sign on behalf of the Commission any agreement or other instrument not under seal in relation to any matter coming within the powers of the Commission.

*Proceedings and meetings*

12. (1) The Commission shall meet at such times or frequency as the Chairman may determine for the carrying out of its functions.

(2) A quorum of the Commission shall be three.

(3) The decision of the Commission shall be by a majority of votes.

(4) Minutes in proper form of each meeting shall be kept by the Commission and shall be confirmed by the Chairman as soon as practicable at a subsequent meeting.

(5) Minutes of a meeting shall include any electronic record or transcript of votes or decisions made during a meeting that takes place by means of conference telephone, computer or similar equipment.

(6) Members of the Commission may participate in a meeting of the Commission by means of a conference telephone, computer or similar equipment providing real time communication and allowing the participants in the meeting to communicate with each another at the same time, and participation by such means shall constitute presence in person at the meeting of the Commission.

(7) The validity of the proceedings of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of any member thereof.

(8) Any written notice or other document required to be served upon the Commission may be served by leaving the notice or document at the Secretariat or by sending it to the Secretariat through the post in a prepaid letter addressed to the Commission.

*Immunity*

13. A member or officer of the Commission shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law unless it is shown that the Law or omission was in bad faith.

*Indemnity*

14. The Commission shall indemnify a member against all claims, damages, costs, charges or expenses incurred by that member in the discharge or purported discharge of his functions under this Law, except claims, damages, costs, charges or expenses caused by the bad faith of that member.

*Disclosure of member's interests*

15. (1) If a member has any pecuniary interest, direct or indirect, in any matter to be considered by the Commission and is present at a meeting of the Commission at which the matter is to be considered, he shall at or before the meeting or before the matter is considered, disclose the fact and shall leave the meeting for the duration of and not take part in the consideration or discussion of or vote on the matter.

(2) If a member fails to comply with subparagraph (1) he commits an offence and is liable -

- (a) on summary conviction to a fine of one thousand dollars or to imprisonment for a term of three months, or to both; or
- (b) on conviction on indictment to a fine of three thousand dollars or to imprisonment for a term of six months, or to both,

unless he proves that he did not know that the matter in which he had a pecuniary interest was the subject of consideration at that meeting.

(3) A disclosure under subparagraph (1) shall be recorded in the minutes of the Commission's meetings.

(4) This paragraph does not apply to an interest in a matter which a member has as a member of the public or to an interest in any matter in which the right to participate in any service is offered to the public.

*Member's pecuniary interests*

16. (1) For the purposes of paragraph 15, a member shall be treated as having an indirect pecuniary interest in a matter if -

- (a) he or any nominee of his is a member of a company or other body which has a direct or indirect pecuniary interest in the matter under consideration;
- (b) he is a partner, or in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct or indirect pecuniary interest in the matter under consideration; or
- (c) he or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in a matter under consideration.

(2) Subparagraph (1) does not apply to membership of, or employment by, any public body.

(3) In the case of married persons, the interest of one spouse shall be deemed for the purpose of paragraph 15 to be also the interest of the other.

(4) The Cabinet may, subject to such conditions as it may think fit, appoint persons to act as members for any specified period, in any case in which the number of members disabled by paragraph 15 at any one time would be so great a proportion of the whole as to impede the transaction of business by the Commission.

## **SCHEDULE 2**

(Section 11(2)(a) )

### **SUMMONS TO WITNESS**

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

You are hereby summoned to appear before the Consumer Affairs Commission at (place) upon the                      day of                      at                      0' clock and to give evidence respecting (state the matter). (If the person summoned is to produce any documents, add):

And you are required to bring with you (specify the papers, books, records and documents required).

**IF YOU FAIL TO APPEAR** in response to this Summons, a warrant for your arrest may be issued.

Given under hand of (Chairman or other member of the Commission)

this                      day of                      20                      .

## **SCHEDULE 3**

(Section 86(6) )

### **TERMS WHICH ARE UNFAIR IF NOT INDIVIDULLY NEGOTIATED**

1. A term of a consumer agreement which has the object or effect of -
  - (a) excluding or limiting the legal liability of a supplier in the event of the death of or personal injury to the consumer resulting from an act or omission of that supplier;
  - (b) excluding or limiting the legal rights of the consumer where the supplier or another party partially or inadequately performs the contractual obligations of the supplier, including the off-setting a

- debt owed to the supplier against any claim which the consumer may have against him;
- (c) making an agreement binding on the consumer whereas provision of services by the supplier is subject to a condition whose realisation depends on his own will alone;
  - (d) permitting the supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the supplier where the latter is the party cancelling the contract;
  - (e) requiring the consumer to pay a disproportionately high sum in compensation if he fails to fulfill his obligation;
  - (f) authorising the supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the supplier to retain the sums paid for services not yet supplied by him where it is the supplier himself who dissolves the contract;
  - (g) enabling the supplier to terminate a contract of indeterminate duration without reasonable notice except where there are good grounds for doing so;
  - (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his desire not to extend the contract is unreasonably early;
  - (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the agreement;
  - (j) enabling the supplier to unilaterally alter the terms of the agreement without a valid reason which is specified in the agreement;
  - (k) enabling the supplier to unilaterally alter without a valid reason, any characteristics of the product or service to be provided;
  - (l) providing for the price of goods to be determined at the time of delivery or allowing a supplier to increase their price without in both cases giving the consumer the corresponding right to cancel the agreement if the final price is too high in relation to the price agreed when the agreement was concluded;
  - (m) giving the supplier the right to determine whether the goods or services supplied by the supplier are in conformity with the agreement;
  - (n) giving the supplier the exclusive right to interpret any term of the agreement;

- (o) limiting the supplier's obligation to respect commitments undertaken by his agents, or making his commitments subject to compliance with a particular formality;
- (p) obliging the consumer to fulfill all his obligations where the supplier does not perform his;
- (q) giving the supplier the possibility of transferring his rights and obligations under the agreement, where this may serve to reduce the guarantees for the consumer, without the latter's consent;
- (r) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by -
  - (i) requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions;
  - (ii) unduly restricting the evidence available to him; or
  - (iii) imposing on him a burden of proof which, according to the applicable law, should lie with another party to the agreement.

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

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

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

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

- (a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the supplier does not control; or
- (b) agreements for the purchase or sale of foreign currency, traveler's cheques or international money orders denominated in foreign currency.



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

Passed by the Legislative Assembly the      day of      , 2017.

Speaker.

Clerk of the Legislative Assembly.