

FAIR TRADING ACT, 2022

(Act 12 of 2022)

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FAIR TRADING ACT, 2022

(Act 12 of 2022)



I assent

A handwritten signature in black ink, appearing to read "Wavel".

Wavel Ramkalawan
President

13th June, 2022

AN ACT TO CONSOLIDATE AND REVISE THE LAW RELATING TO FAIR TRADING, COMPETITION AND CONSUMER PROTECTION AND TO REPEAL THE FAIR TRADING COMMISSION ACT (CAP 267), THE FAIR COMPETITION ACT (CAP 266) AND THE CONSUMER PROTECTION ACT (CAP 257) AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the President and the National Assembly.

Short title and commencement

1. This Act may be cited as the Fair Trading Act, 2022 and shall come into operation on such date as the President may, by notice in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“acquire”, in relation to —

- (a) goods, includes to obtain by way of gift, purchase or exchange, lease, hire or hire purchase; and
- (b) services, includes to accept the rendering or performance of those services;

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

- (a) bring to the attention of all or part of the public —
 - (i) the existence or identity of a supplier; or
 - (ii) the existence, nature, availability, properties or advantages of any goods or services that are available for supply;
- (b) promote the supply of any goods or service, or promote any cause, and the term “advertise” shall be construed accordingly;

“agent” means a person who acts on behalf of, or operates under the authority of, a corporation, enterprise, business or individual;

“agreement” includes any arrangement or understanding, whether oral or in writing, or whether or not, it is or is intended to be legally enforceable;

“assets”, in relation to an enterprise, includes physical assets, businesses, shares and other financial securities, brands and

other intangible assets including goodwill, intellectual property rights and know how;

“business” means the carrying on of any commercial activity for gain or reward; and includes —

- (a) a trade or profession and the activities of a professional or trade association or of a public body;
- (b) manufacturing, producing, transporting, acquiring, supplying, storing or otherwise dealing in goods for gain or reward; and
- (c) acquiring, supplying or otherwise dealing in services for gain or reward;

“Chief Executive Officer” means the Chief Executive Officer appointed under section 7(1);

“Commission” means the Fair Trading Commission established by section 5(1);

“complainant” means —

- (a) a person, who has filed a complaint with the Commission under section 33(2);
- (b) the Commission, in respect of a complaint that it has initiated under section 33(1);

“confidential information” means trade, business, commercial or industrial information that belongs to an enterprise and has a particular economic value, and is not generally available to or known by others;

“consumer”, in relation to any particular goods or service, means a person who has entered into a transaction with a supplier within the ordinary course of supplier's business;

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

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

and the term “defective” shall be construed accordingly;

“Deputy Chief Executive Officer” means the Deputy Chief Executive Officer appointed under section 7(1);

“document” includes —

- (a) anything on which there is writing;
- (b) a map, plan, drawing or photograph;
- (c) anything from which sounds or visual images are capable of being reproduced; and
- (d) any record created, stored, generated, received or communicated by electronic or electromagnetic means;

“enterprise” means a person, firm, partnership, corporation, company, association or other juridical person, engaged in commercial activities for gain or reward, and includes its branches, subsidiaries, affiliates or other entities directly or indirectly controlled by it;

“facility” means any premises, space or equipment set up to fulfil a particular function, or at, in, or on which a particular service is available;

“goods” includes substances, growing crops and things

comprised in land by virtue of being attached to land, and any ship, aircraft or vehicle;

“hazard” or “hazardous” means a characteristic —

- (a) that has been identified as, or declared to be a hazard under any written law; or
- (b) that presents a significant risk of personal injury to any person, or damage to property, when the goods are utilised;

“importer”, in relation to any particular goods, means a person who brings the goods, or causes the goods to be brought, into Seychelles from outside, with the intention of making the goods available for supply in the ordinary course of business;

“inequitable” means not fair or just and contrary to the principles of equity;

“manufacturer” means any person who —

- (a) makes any goods;
- (b) assembles or joins goods; or
- (c) adapts for sale or repairs any goods;

“market” means an actual or nominal place where forces of demand and supply operate, and where buyers and sellers interact (directly or through intermediaries) to trade goods, services, or contracts or instruments, for money;

“member of the Tribunal” means the Chairperson and the other members appointed under section 14(7);

“Minister” means the Minister responsible for trade;

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

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

“prescribed” means prescribed by regulations made under this Act;

“producer”, in relation to particular goods, means —

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

“prohibited conduct” means an act or omission in contravention of any of the provisions of Part IV or V;

“price” includes any charge or fee, by whatever name called, payable in connection with the provision of goods or a service;

“publish”, in relation to an advertisement means a publication intended for sale or public distribution (whether to the public generally or to a restricted class or number of persons) or for public display (including in an electronic form);

“respondent” means a person, whether natural or juristic, against whom a complaint is filed or investigation has been initiated under this Act;

“regulatory authority” means a public authority or a public body that exercises any functions of prudential, technical or economic regulation on the basis of statutory powers;

“repair”, in relation to goods that do not conform to a contract, means making them to conform;

“safe”, in relation to any goods, means that there is no risk, apart from one reduced to a minimum, that any of the following —

- (a) goods;
- (b) keeping, use or consumption of the goods;
- (c) assembly of any of the goods which are, or are to be, supplied unassembled;
- (d) emission or leakage from the goods or, from anything else as a result of the keeping, use or consumption of the goods;
- (e) reliance on the accuracy of any measurements, calculation or other reading made by or by means of the goods,

will, whether immediately or after a definite or indefinite period not cause the death of, or any personal injury to, any person;

“service” means any work or undertaking performed by a person for the direct or indirect benefit of another, in the business or occupation of the supplier, whether or not the service is together with or separate from goods, but does not include the rendering of any service free of charge or under a contract of personal service;

“settlement” means an agreement or decision that ends a dispute;

“share” means a share in the share capital of a company or other body corporate, whether or not it carries the right to vote at general meetings, and includes —

- (a) a beneficial interest in such share:
- (b) a power to exercise, or control the exercise of, a right to

vote attaching to such share that carries the right to vote at meetings of the company;

- (c) a power to acquire or dispose of, or control the acquisition or disposition of, such share; or
- (d) a perpetual debenture and perpetual debenture stock;

“shelf-life”, in relation to any goods, means the length of time for which an item remains usable, fit for consumption, or saleable and includes the expiry date, sell-by date, best-before date or similar other date, stated in relation to goods, being the date after which the goods are considered unsuitable for sale, use or consumption;

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

“supply” —

- (a) in relation to goods, includes —
 - (i) to supply or re-supply by way of sale, rent, exchange, lease, hire or hire-purchase or disposal of goods by any other means or an interest therein or a right thereto; or
 - (ii) to offer to sell, rent, exchange, lease, hire or otherwise dispose of such goods, right or interest;
- (b) in relation to a service, includes to provide, grant or confer the service or to offer to provide, grant or confer such service otherwise than under a contract of employment,

and the term “supplier” shall be construed accordingly.

Explanation. — In this definition, “contract of employment” means a contract of service or apprenticeship, whether expressed

or implied, and, if it is express, whether it is oral or in writing as set out in section 21 of the Employment Act (Cap 69);

“trade” means the carrying on of business, industry, profession, occupation or an act relating to the supply or acquisition of goods or services in Seychelles;

“trade description” means —

- (a) any description, statement or other direct or indirect indication, other than a trademark, as to —
 - (i) the number, quantity, measure, weight or gauge of any goods;
 - (ii) the ingredients of which any goods consist, composition, contents of any goods, or material of which any goods are made;
 - (iii) the mode of manufacturing, processing or producing any goods;
 - (iv) the name of the producer of any goods;
 - (v) the place or country of origin of any goods;
 - (vi) the design, construction, finish or packaging of the goods;
 - (vii) the shelf-life of the goods;
 - (viii) any goods being the subject of any patent privilege or copyright; or
- (b) any figure, work or mark other than a trademark, that, according to the custom of the trade, is commonly understood to be an indication or any matter referred to in paragraph (a);

“Tribunal” means the Fair Trading Tribunal established under section 14(1);

“undertaking” means a commitment, promise or other future conduct that a person or enterprise provides to the Commission in order to address any concern raised by the Commission that has arisen or is likely to arise;

“unit price” means the price of a standard amount of any goods, as to weight or volume.

Application of this Act

3.(1) This Act, in relation to competition, shall apply to all economic activity in, or having an effect in Seychelles.

(2) This Act, in relation to consumer protection, shall apply to the marketing and supply of all goods and services otherwise than for the purposes of resale and use in the production or manufacture of any other goods or articles for sale, irrespective of whether any of those goods or services are offered or supplied in conjunction with or separate from any other goods or services.

(3) This Act shall bind the Republic to the extent that the Republic engages in trade or business for the production or supply of goods and services in a market in Seychelles which is open to participation by other enterprises.

(4) This Act does not apply to —

- (a) services to be supplied under a contract of employment;
- (b) concerted conduct designed to achieve a non-commercial socio-economic objective or similar purpose;
- (c) the exercise of any rights by virtue of any copyright, patent, registered design, trademark and other related intellectual property rights, except where the Commission is satisfied that the exercise of those rights —

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- (i) has the effect of preventing, restricting or distorting competition in a market; and
 - (ii) impedes the transfer and dissemination of technology;
 - (d) any practice or agreement approved or required under an international agreement to which Seychelles is a party.
- (5) Part IV and sections 131 to 137 (both inclusive) shall not apply to —
- (a) a financial institution, as defined under the Financial Institutions Act (Cap 79); and
 - (b) a financial services business, as defined under section 2 of the Financial Services Authority Act, 2013 (Act 19 of 2013).
- (6) This Act applies to a matter, irrespective of whether the supplier —
- (a) resides or has its principal office in or outside Seychelles;
 - (b) operates on a for-profit basis or otherwise;
 - (c) is an individual, juristic person, partnership, trust, the Republic, a public authority or a public body, a person contracted or licensed by the Republic or a public body to offer or supply any goods or services, or is a public-private partnership; or
 - (d) holds a licence or is required to hold a licence under any written law to supply the particular goods or services available to all or part of the Republic.
- (7) Except as specifically provided or implied, this Act, shall not be construed as —
- (a) overriding any provision of any other law;

- (b) exempting any person from any duty or obligation imposed by or under any other law; or
- (c) prohibiting any person from complying with any provision of any other Act.

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

Exemption from application of this Act

4.(1) The Minister may, by order, on the application of a regulatory authority, exempt any sector or industry or any class of suppliers or any class of goods or services or transactions from the application of this Act or any provisions of this Act relating to consumer protection and imposing conditions for that exemption, on the grounds that those provisions overlap or duplicate a regulatory scheme administered by that regulatory authority under —

- (a) any other written law; or
- (b) any treaty, international law, convention or protocol to which Seychelles is a party.

(2) The Minister, in consultation with the Commission, may, by notice published in the Gazette, grant the exemption —

- (a) to the extent that the relevant regulatory scheme meets the requirement of the relevant provisions of this Act; and
- (b) subject to such limits or conditions as may be considered necessary to meet the requirement of the relevant provisions of this Act.

(3) If any goods are supplied in Seychelles to any person under a transaction that is exempt from the application of the provisions of consumer protection under this Act, those goods, and the supplier of those goods, shall be exempted.

PART II
ADMINISTRATION OF THE ACT

Chapter I
Fair Trading Commission

Establishment of Fair Trading Commission

5.(1) There is hereby established a Commission known as the Fair Trading Commission, which shall be a body corporate.

(2) The Commission shall independently perform its functions under this Act.

(3) In the performance of its functions, the Commission —

- (a) shall have regard to international developments in the field of consumer protection and competition; or
- (b) may consult any person, organisation or institution with regard to any matter under this Act.

Functions of the Commission

6.(1) The Commission shall administer and enforce this Act.

(2) Without prejudice to subsection (1), the Commission may —

- (a) establish compliance programs with providers of goods and services;
- (b) carry out such market inquiry, inspection, monitoring or investigations into the conduct of enterprises as it may consider necessary to detect and prevent prohibited conduct;
- (c) negotiate and recommend undertakings and settlements before the Tribunal;
- (d) promote alternative methods of dispute resolution under this Act;

- (e) investigate any complaint of alleged contravention of this Act or refer any such complaint to another regulatory body;
- (f) co-operate with other regulatory bodies, consumer interest groups and other entities for the purpose of enforcing consumer protection and fair competition;
- (g) conduct education and advocacy programs;
- (h) undertake research and publish reports and information on matters affecting the interests of consumers and enterprises;
- (i) assist in developing and promoting the standards of conduct for ensuring good business practices;
- (j) provide information for the guidance of consumers regarding their rights and the responsibilities of enterprises under this Act;
- (k) issue and enforce compliance notices, warning notices, notices for information submission and prohibition notices;
- (l) make recommendations to the Government on the actual or likely anti-competitive effects or consumer protection issues that arise out of policies and, where appropriate, how to avoid those effects;
- (m) advise the Government on laws affecting competition and consumer protection;
- (n) liaise with and exchange information, knowledge and expertise with authorities of other countries entrusted with functions similar to those of the Commission;
- (o) deal with any matter referred to it by the Tribunal, Minister, and any other regulator;

- (p) impose such fees as may be required under this Act.
- (3) While performing its functions, the Commission shall —
- (a) promote and maintain effective competition in the economy;
 - (b) promote the provision of a wide variety of quality goods and services in Seychelles;
 - (c) promote the improvement of standards and quality of goods and services supplied by service providers and business enterprises;
 - (d) ensure the safeguarding of the interests of consumers;
 - (e) promote consumer confidence, empowerment and the development of a culture of consumer responsibility;
 - (f) take such actions as it considers necessary to prevent —
 - (i) the abuse of a dominant position by an enterprise
 - (ii) anti-competitive practices and agreements; or
 - (iii) control anti-competitive mergers.

Chief Executive Officer and Deputy Chief Executive Officer

7.(1) The President in consultation with the Minister shall appoint a Chief Executive Officer and Deputy Chief Executive Officer for a term of 5 years, on such terms and conditions as may be determined by the President.

(2) The Chief Executive Officer and Deputy Chief Executive Officer shall be persons of integrity having qualifications and experience in law, economics, accountancy, commerce, management, governance, competition, consumer protection or public finance.

(3) The Chief Executive Officer and Deputy Chief Executive Officer are eligible for re-appointment.

(4) The Chief Executive Officer and Deputy Chief Executive Officer may resign from office at any time by giving not less than 3 months' notice in writing to the President.

(5) The President may terminate the appointment of the Chief Executive Officer or Deputy Chief Executive Officer, if the Chief Executive Officer or Deputy Chief Executive Officer —

- (a) is convicted of an offence and is sentenced to a term of imprisonment of 3 months or more;
- (b) is an undischarged insolvent or has been declared bankrupt whether in Seychelles or elsewhere or enters into an arrangement or composition with the person's creditors;
- (c) is mentally or physically incapable of performing the functions under this Act;
- (d) engages in any activity that may undermine the integrity of the Commission or may amount to serious misconduct or has engaged in dishonourable conduct.

Functions of Chief Executive Officer

8.(1) The Chief Executive Officer shall be responsible for the general administration of the Commission and for carrying out any functions assigned to the Chief Executive Officer under this Act.

(2) In the absence of the Chief Executive Officer, the Deputy Chief Executive Officer shall perform the functions of the Chief Executive Officer.

Seal and presumption of documents of Commission

9.(1) The Seal of the Commission shall be such devices as may be determined by the Chief Executive Officer and shall be kept by the Chief Executive Officer.

(2) The affixing of the seal shall be authenticated by the Chief Executive Officer, Deputy Chief Executive Officer or any other person authorised in that behalf by the Chief Executive Officer.

(3) A document purported to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and deemed to have been executed or issued by the Commission, without any further proof, unless the contrary is proved.

Staff of Commission

10. The Chief Executive Officer may appoint, on such terms and conditions as the Chief Executive Officer may determine, such members of staff as may be considered necessary for the performance of the functions of the Commission under this Act.

Investigators

11.(1) The Chief Executive Officer may, on such terms and conditions, appoint such number of suitably qualified person as may be considered necessary to act as investigators for the purposes of ensuring compliance with this Act.

(2) The Chief Executive Officer shall provide an investigator with a document of appointment that shall be *prima facie* proof of the appointment of the investigator.

(3) An investigator shall, in performing any function under this Act —

- (a) be in possession of the document of appointment referred to in subsection (2); and
- (b) show the document of appointment to any person who —
 - (i) is affected by the discharge of the functions of the investigator under this Act; and
 - (ii) requests to see the document of appointment.

(4) The document of appointment shall be in such form and substance as the Chief Executive Officer shall determine.

Relations with other regulatory authorities

12.(1) The Commission may —

-
- (a) liaise with any regulatory authority, require necessary information from, exchange information with, and receive information from any such authority relating to any specific complaint or investigation;
 - (b) negotiate and enter into agreements with any regulatory authority which exercises jurisdiction over consumer protection or fair competition matters within a particular industry or sector, so as to —
 - (i) co-ordinate and harmonise the exercise of jurisdiction over such matters within that industry or sector; and
 - (ii) ensure the compliance with this Act;
 - (c) engage with any regulatory authority in cooperative activities of research, publication, education, staff development and training;
 - (d) provide technical assistance or expertise to any regulatory authority;
 - (e) engage with any regulatory authority in cooperative activities to detect commission of any prohibited conduct and take appropriate action under this Act;
 - (f) participate in the proceedings of any regulatory authority; and
 - (g) advise, or receive advice from, any regulatory authority.
- (2) The agreement referred to in subsections (1) (b) shall —
- (a) identify and establish procedures for the management of areas of concurrent jurisdiction;
 - (b) promote co-operation between the regulatory authority and the Commission; and

- (c) provide for the exchange of information and the protection of confidential information.

Guidelines by Commission

13.(1) For the purpose of the exercise of powers in relation to an investigation into any complaint of alleged prohibited conduct under this Act, the Commission shall issue guidelines on the economic and legal analysis that can be used in such investigation.

(2) The Commission may review and issue revised versions of its guidelines.

Chapter II ***Fair Trading Tribunal***

Establishment of Fair Trading Tribunal

14.(1) There is hereby established a tribunal known as the Fair Trading Tribunal.

(2) The Tribunal shall, in the performance of its functions under this Act, be independent and shall not be subject to the direction or control of any person or authority.

(3) The Tribunal shall consist of —

(a) a Chairperson; and

(b) seven other members.

(4) The Chairperson shall be a Magistrate nominated by the Chief Justice who shall serve as Chairperson on a full time basis.

(5) The Minister shall, in consultation with the Chief Justice, appoint the other members who shall serve on a part time basis.

(6) The members of the Tribunal referred to in subsection (3)(b) and appointed under subsection (5) shall be persons from the public or private sector having qualifications and experience in law, economics, accountancy,

commerce, engineering, finance, governance, competition and consumer regulation.

(7) A member of the Tribunal shall hold office for a term of 5 years and shall be eligible for re-appointment.

(8) A member of the Tribunal appointed under subsection (5) may hold that office concurrently with any other office in the public service or private sector.

(9) The Registrar of the Supreme Court shall publish the names of the persons appointed as Chairperson and members of the Tribunal in the *Gazette*.

(10) Where the Chairperson is absent or unable to discharge the function of Chairperson, the Chief Justice may appoint another Magistrate to hear and determine matters before the Tribunal.

(11) The Tribunal shall be under the administrative and financial control of the Judiciary and the Chief Justice shall provide the Tribunal with suitable accommodation and facilities for the purpose of performing its functions.

Composition of the Tribunal for adjudication of any matter

15.(1) Subject to subsections (2), (4) and (5), the jurisdiction and functions of the Tribunal shall be exercised by the Chairperson.

(2) The Chairperson may select any number of members to sit together with the Chairperson at any sitting of the Tribunal or in any proceedings on a complaint or matter and where the Chairperson so selects the Chairperson shall select such number of members as shall ensure that the tribunal is composed of an odd number.

(3) A sitting of the Tribunal under subsection (2) shall be presided over by the Chairperson.

(4) At any sitting of the Tribunal, the Chairperson may co-opt any person who, in the opinion of the Chairperson possesses such technical

knowledge or expertise as the Tribunal may require during the hearing and its deliberations.

Functions of Chairperson of Tribunal

16.(1) The Chairperson of the Tribunal shall be responsible —

- (a) for the management of the caseload of the Tribunal under this Act or any other law; and
- (b) for the performance of the Tribunal and the members of the Tribunal.

(2) The Chairperson of the Tribunal shall, not later than the 31st day of March in any year, submit to the Chief Justice a report on the performance of the Tribunal during the preceding year.

Salaries, allowances, etc., of members of Tribunal

17.(1) The salary, allowances and other benefits of the Chairperson shall be in accordance with that of a Magistrate under the Courts Act (Cap. 52).

(2) The salary, allowance, benefits and other terms and conditions of employment of the other members of the tribunal shall be determined by the Chief Justice.

(3) The salary, allowances or other benefit of a member, other than the Chairperson, may be on the basis of a fee for each sitting of the Tribunal that the member attends as a member.

Resignation or removal of members of Tribunal

18.(1) A member of the Tribunal may resign from office by giving not less than 2 months' notice in writing to the Chief Justice.

(2) The Chief Justice may, in consultation with the Minister, remove a member of the Tribunal from office, if the member —

- (a) has been found guilty of any misconduct, default or breach of trust in the discharge of any duties;
- (b) is an undischarged insolvent or bankrupt;
- (c) is convicted of an offence and sentenced to a term of imprisonment of 3 months or more; or
- (d) is mentally or physically incapable of carrying out the functions of the Tribunal under this Act.

Appointment of acting member due to temporary absence of a member of Tribunal

19.(1) Where the Chief Justice is satisfied that —

- (a) a member is absent or temporarily incapable of performing his or her duties ; or
- (b) the office of a member is vacant,

the Chief Justice shall direct the Minister in consultation with him or her to appoint a person to act in the place of that member of the Tribunal during the period of absence or incapacity or until the vacancy is filled.

(2) An acting member appointed under subsection (1) has the powers, duties and entitlements of a member of the Tribunal.

(3) An appointment under this section and an act done while a person is acting as a member of the Tribunal shall not be questioned in any proceedings on the grounds that the occasion for the appointment had not arisen or had ceased.

(4) The Chief Justice may terminate the appointment of an acting member appointed under subsection (1) at any time.

(5) The acting member appointed under subsection (1) may resign at any time from office by notice in writing delivered to the Chief Justice.

(6) The acting member appointed under subsection (1), while so acting as a member, may exercise and discharge all the powers and functions of that member of the Tribunal.

(7) In this section “member” does not mean the Chairperson.

Incomplete proceedings on resignation or removal of members of Tribunal

20.(1) If, due to resignation, removal or for any other reason, a member of the Tribunal is unable to complete the proceedings in a matter, the Chairperson, may —

- (a) direct that the hearing of that matter proceeds before the remaining members; or
- (b) terminate the proceedings, and direct that a new hearing be conducted.

(2) If, on the expiry of the term of office of a member of the Tribunal, that member is still considering a matter before the Tribunal, that member may continue to act as a member in respect of that matter only.

(3) A member who has resigned as member may continue to sit as a member or to act as such for the purpose of giving judgment or otherwise in relation to any proceedings commenced before the Tribunal comprising of that member.

Secretary and staff of Tribunal

21. The Chief Justice may appoint, on such terms and conditions as the Chief Justice may determine —

- (a) a Secretary who, in addition to any other duties conferred on the Secretary shall be responsible for convening all sittings of the members of the Tribunal;
- (b) such other staff as the Chief Justice considers necessary for the performance of the functions of the Tribunal under this Act.

Functions of Tribunal

22.(1) The function of the Tribunal shall be to —

(a) adjudicate in relation to —

- (i) any complaint of alleged prohibited conduct referred to it by the Commission under section 35(3);
- (ii) any appeal under section 35(4) against any decision of the Commission;
- (iii) any application under this Act;
- (iv) an application made to it under section 124 for the review of the decision of the Commission;
- (v) a grant of authorisation under section 136(5), or permission of a proposed merger under section 133, recommended by the Commission; and

(b) exercise any other powers conferred on it by this Act or any other written law.

(2) The Tribunal while adjudicating any matter under subsection (1), may make an order for grant of interim relief under section 52 or for loss of, or physical damage to, property under section 56.

Seal of the Tribunal

23. The Tribunal shall have a seal bearing on it the armorial bearings under the National Symbols Act (Cap 146), surrounded by the words “Seal of the Fair Trading Tribunal of Seychelles”.

Tribunal may refer any question of law to Supreme Court

24.(1) The Tribunal may, on its own motion or on an application of a party, refer a question of law arising in proceedings before it for determination by the Supreme Court.

(2) If a question of law arising in proceedings is referred to the Supreme Court, under subsection (1), the Tribunal shall not —

- (a) make a decision to which the question is relevant until the question is determined by the Supreme Court; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the determination of the question by the Supreme Court.

Indemnity of members of Tribunal

25. A Member of the Tribunal —

- (a) shall not be liable for anything done by him or her in good faith in the performance of his or her functions under this Act;
- (b) shall be deemed to be public officers for the purposes of the Penal Code.

Guidelines and practice notes for members of Tribunal

26. The Tribunal may, for the efficient discharge of its functions under this Act, issue such guidelines and practice notes relating to the functions and procedures of the Tribunal as it may consider necessary.

Chapter III

Appointment of Experts, Disclosure of Information and Fund, etc.

Appointment of experts to assist Commission

27.(1) The Commission may appoint or engage persons having special or technical knowledge to assist the Commission in the performance of its functions.

(2) A person appointed or engaged under subsection (1) shall receive such remuneration or allowances as the Commission may determine.

Disclosure of interests

28.(1) The Chief Executive Officer, Deputy Chief Executive Officer, a member of the Tribunal, staff and any other official of the Commission and

the Tribunal or an expert appointed by the Commission or the Tribunal who is present at any meeting of the Commission, investigation by the Commission or hearing before the Tribunal in which he or she is directly or indirectly interested, shall, as soon as is practicable after the commencement of the meeting, investigation or hearing, disclose that interest and shall not, unless the Chief Executive Officer or the Chairperson of the Tribunal directs otherwise, take part in any consideration or discussion of, or vote on any question relating to that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded.

Confidential information

29.(1) The Chief Executive Officer or Deputy Chief Executive Officer or a member of the Tribunal or staff or other official or an expert appointed by the Commission or the Tribunal shall not, otherwise than in the discharge of their functions under this Act, without the consent in writing given by the Chairperson of the Tribunal or the Chief Executive Officer, publish or disclose to any person, the contents of any document, communication or information whatsoever, which relates to any person, enterprise or any investigation, prosecution by the Commission or proceedings before the Tribunal.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of level 6 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

Funds of Commission

30.(1) The funds of the Commission shall consist of —

- (a) moneys as may be appropriated by the National Assembly under an Appropriation Act for the purposes of the Commission and paid to the Commission;
- (b) fees, costs, and charges payable to the Commission under this Act or any other written law;

- (c) moneys received by the Commission by way of grants in accordance with the provisions of the Public Finance Management Act.
- (2) The funds of the Commission may be applied to —
- (a) the expenses incurred by the Commission in the performance of its functions; and
 - (b) the payment of salaries, remuneration and allowances to the Chief Executive Officer, Deputy Chief Executive Officer, staff of the Commission and experts appointed by the Commission;
 - (c) any other expenses as may be authorised by the Chief Executive Officer.

Accounts and audit

31.(1) The financial year of the Commission shall be the calendar year.

(2) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in the form and manner approved by the Auditor General.

(3) The accounts of the Commission shall be audited by the Auditor-General in accordance with article 158 of the Constitution.

(4) The Commission may additionally appoint a private auditor to audit the accounts of the Commission as required under this Act or any other law.

(5) The Commission shall prepare, in each financial year, an annual financial statement for the next financial year showing separately —

- (a) the expenditure which is proposed to be met from the internal sources of the Commission; and
- (b) the sum required from the Government to meet other

expenses distinguishing revenue expenditure from other expenditure.

Annual reports

32.(1) The Commission shall, not later than 6 months after the end of each financial year, submit to the Minister —

- (a) a report of the activities and operations of the Commission throughout the preceding financial year in such detail as may be directed; and
- (b) a statement of the audited accounts of the Commission for the preceding financial year.

(2) A copy of the report and a statement of the audited accounts of the Commission referred to in subsection (1) shall be printed and submitted to the National Assembly not later than 6 months from the date of receipt thereof by the Minister.

PART III ENFORCEMENT PROVISIONS

Chapter I Complaints and Investigations

Initiation of complaints

33.(1) The Commission may initiate an investigation into a complaint on its own motion, or on a reference made to it by the Minister, the Tribunal, or any regulatory authority, concerning an alleged prohibited conduct of an enterprise.

(2) Any person may make a complaint concerning an alleged prohibited conduct of an enterprise to the Commission.

(3) Subject to the other provisions of this Act, the Commission shall have no jurisdiction to entertain a complaint where the value of the subject matter from which the complaint arose exceeds SCR 5,000,000, Provided that the Minister in consultation with the Commission may prescribe such other value.

(4) For the purposes of assessing the value of the matter in subsection (3), the value of any interest accrued is excluded.

(5) The person referred to in subsection (2) includes —

- (a) a person acting on his or her own behalf;
- (b) a person authorised and acting on behalf of another person who cannot act in his or her own name;
- (c) a parent, custodian or guardian of a minor;
- (d) a guardian to a person who is interdicted or subject to a supervision order.

(6) A complaint under subsection (2) may be made —

- (a) in writing; or
- (b) orally before a member of the staff of the Commission designated by the Chief Executive Officer.

(7) Where a person makes the complaint orally under subsection (6)(b), the complaint shall be recorded in writing by the officer of the Commission and —

- (a) shall be read and signed by the person; or
- (b) where the person is incapable of reading or writing or suffers from an incapacity to sign, the officer of the Commission shall read the complaint to the person and the person shall make his or her mark or affix his or her thumb print thereon in the presence of the officer of the Commission; or
- (c) in case of physical incapacity or disability to make a mark, the person shall declare or acknowledge in the presence of the officer of the Commission his or her assent to such complaint after the complaint has been read over to the

person by the officer of the Commission and such assent and the fact of such physical disability or incapacity is attested by a second officer of the Commission.

(8) A complaint made under this section shall set out any action undertaken by an enterprise which is in breach of any written law that the Commission has jurisdiction to administer.

(9) Any person may provide information concerning an alleged prohibited conduct in any manner and form to the Commission.

Determination of complaints

34.(1) The Commission may determine whether to conduct an investigation of a complaint made under section 33(1).

(2) Without prejudice to subsection (1), the Commission may refuse to conduct any investigation, if it is satisfied that —

- (a) the complaint is the subject of a matter pending before a court or another regulatory authority;
- (b) the complaint has been dealt with by the Commission or a court or another regulatory authority;
- (c) the complaint is trivial, frivolous or vexatious;
- (d) the complainant does not have an interest in the matter; or
- (e) the complaint was not made within the period specified in this Act.

(3) In subsection (2) (c) —

- (a) “frivolous” means not having any serious purpose or value, meritless or lacking in purpose;
- (b) “trivial” means of little value or importance, minor to merit consideration, especially in law, where the consumer has

not suffered a significant loss financially, and wherein the manpower and resources for investigation and litigation is not justified based on the “*de minimis*” value of the complaint;

- (c) “vexatious” means causing or tending to cause annoyance, frustration or worry, or malicious, or done as a means of revenge or spite to cause irritation.

(4) A complaint shall lapse if the complainant fails to provide any information and documents to the Commission within one month, or such other period as may be allowed by the Commission, from the date of the request by the Commission.

(5) The Commission may —

- (a) refer the complaint to another regulatory authority; or
- (b) decide not to investigate a complaint against a person where in response to a complaint, the complainant, in the opinion of the Commission, has obtained reasonable redress directly from the person against whom the complaint was made.

(6) Where the Commission refers a complaint to another regulatory authority, the regulatory authority shall provide the Commission with a report on the findings of its assessment on the complaint after investigation.

Determination of complaints whether to refer to Tribunal for adjudication

35.(1) The Commission may, at any stage of an investigation, terminate an investigation where the Commission is of the opinion that the matter being investigated does not justify further investigation.

(2) Where an investigation is terminated under subsection (1), the Commission shall, by a written notice, inform the complainant of its findings and reasons thereof.

(3) On the completion of an investigation into a complaint, the Commission may —

- (a) where the Commission determines that the alleged prohibited conduct has been committed by the person under this Act, refer the matter, in the prescribed form, to the Tribunal for adjudication; or
- (b) where the Commission determines that the complaint does not allege any facts which would constitute commission of alleged prohibited conduct under this Act, inform the complainant, by a written notice, of its findings and reasons thereof.

(4) On receipt of a notice under subsection (2) or subsection (3) (b), the complainant may appeal to the Tribunal in the prescribed form and manner, within 30 days of the receipt of the notice, unless the Tribunal permits a longer period on good cause shown to it.

(5) The Commission shall have exclusive right to refer a complaint or matter arising out of a complaint under this Act to the Tribunal for determination.

Limitation of bringing complaint

36.(1) A complaint shall not be referred or made under section 33 after a period of 2 years has lapsed, after —

- (a) the act or omission that is the cause of the complaint has been done or omitted to be done; or
- (b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.

(2) A complaint shall not be referred or made under section 33, if the goods or service being procured by the complainant —

- (a) is contrary to any public policy of Seychelles; or
- (b) contravenes any other written laws of Seychelles.

(3) The limitation under subsection (1) shall not apply to Part V.

(4) Nothing in this section shall be deemed to prohibit or restrict the right of a person to initiate an action before a competent court within the prescription period or time limitation period within which the action may be initiated or commenced by a person before such Court in respect of an act or omission that could have been the subject of a complaint under this Act.

Powers of Commission in relation to investigation of complaints

37.(1) For the purpose of the investigation of any complaint under this Act or any written law, the Commission has jurisdiction and power to —

- (a) summon any person to appear before an officer of the Commission, when in its opinion such person;
 - (i) will be able to furnish any information relevant to the complaint; or
 - (ii) will be affected by an investigation or outcome of an investigation or hearing of the complaint;
- (b) compel the production of such books, records, papers and documents as it may consider necessary or proper for any proceedings, investigation or inquiry by it;
- (c) examine any documents produced;
- (d) require that any document submitted to the Commission be verified by affidavit if necessary;
- (e) seize documents;
- (f) adjourn investigations;
- (g) make test purchases;
- (h) inspect goods;
- (i) grant corporate immunity;

- (j) impose fixed penalties; and
- (k) to do all the necessary acts in the lawful exercise of its powers or, the performance of its functions under this Act.

(2) The Commission shall hear a person, who makes a written request for a hearing at an investigation under this Act upon such person showing that he or she —

- (a) is an interested party;
- (b) is likely to be affected by the outcome of the investigation or hearing into the complaint; or
- (c) has put forward particular reasons why he or she should be heard.

(3) A summons for the attendance of a witness or other person at an investigation or for the production of documents for the purpose of an investigation shall be made in the prescribed form.

(4) A summons shall be signed by the Chief Executive Officer and shall be served in the prescribed manner.

(5) A person who, without lawful or reasonable excuse, fails to attend any proceedings or to produce a document or other material when required to do so under this section, commits an offence and is liable on conviction, in the case of —

- (a) an individual, to a fine of level 6 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment; or
- (b) a person other than an individual, to a fine of level 7 on the standard scale.

Power to search and seize on warrant

38.(1) Where during an investigation, the Commission has reasonable cause to suspect that —

- (a) the alleged prohibited conduct has been committed under this Act or any other written law which it has jurisdiction to administer; and
- (b) any book, document, electronic device or article relating to the prohibited conduct is being kept or concealed in a building or place,

the Chief Executive Officer, the Deputy Chief Executive Officer or such authorised officer of the Commission shall apply to a Magistrate for a search warrant to search and seize that book, document, electronic device or article.

(2) Where the Magistrate is satisfied that —

- (a) there is reasonable ground for suspecting that a prohibited conduct has been committed; and
- (b) evidence of the commission of that prohibited conduct is to be found in any book, document, electronic device or article that is likely to be found in a building or place,

the Magistrate may, at any time, issue a search warrant authorising an officer of the Commission named in the warrant to enter and search such building or place specified in the warrant for such book, document, electronic device or article and to seize and take away such book, document, electronic device or article.

(3) Where the Magistrate is satisfied that the officer of the Commission referred to in subsection (2) has reasonable grounds to believe that a person, in executing the warrant, has been or will be refused access to any premises or document, the Magistrate may direct a police officer to take such steps as are reasonably necessary to enter the premises and to enable the warrant to be executed.

(4) The owner, occupier or person in charge of any premises in respect of which an authorised officer of the Commission referred to in subsection (2), enters pursuant to a warrant issued under this section shall provide the officer with all reasonable facilities and assistance in the exercise of the authorised officer's powers.

(5) A person who alters or interferes with any book, document or article seized under this section, commits an offence and is liable on conviction to a fine of level 6 of the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

(6) The officer of the Commission referred to in subsection (2) is not personally liable for any loss or damage arising from the execution of a search warrant under this section.

(7) Where the officer of the Commission referred to in subsection (2), seizes any book, document, electronic device or article under subsection (2), the officer shall take it to the Commission, which may retain it, taking reasonable care to ensure that it is preserved until the conclusion of the investigation.

(8) Upon completing the search authorised by a warrant, the officer of the Commission referred to in subsection (2) shall leave a receipt listing the documents or extracts therefrom removed in terms of the warrant.

(9) Where a book, document, electronic device or article is seized under subsection (2), the Tribunal may on the application of an interested party order that the book, document, electronic device or article be returned to the person from whom it was seized, or the person who is otherwise legally entitled thereto, if the Tribunal is satisfied that the book, document, electronic device or article will not be required for the purposes of the investigation.

(10) The person from whom any book, document, electronic device or article is seized under subsection (2) is entitled at all reasonable times, and subject to such reasonable conditions as may be imposed by the Commission, to inspect the book, document or article and, in the case of a book, document or electronic device, to obtain a copy of it.

(11) The Commission shall be given at least 7 days' notice of an order made under subsection (9).

(12) Where a book, document, electronic device or article has been seized, inspected or examined by an officer of the Commission under subsection (7), the officer may make or cause to be made one or more copies

of it, and a document purporting to be certified by the officer to be a copy made pursuant to this section is admissible in evidence and has the same probative value as the original document.

Power to enter any premises to prevent injury

39.(1) Where an officer authorised by the Commission, in this section referred to as the “authorised officer”, has reason to believe that goods will or may cause injury to a person, the authorised officer may, for the purposes of ascertaining whether goods of that kind will or may cause injury to any person, enter into any premises in or from which the authorised officer has reason to believe that a person supplies goods of that kind in trade or commerce, and —

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

(2) The authorised officer shall exercise the power under subsection (1) —

- (a) with an authorisation in the prescribed form given by the Chief Executive Officer; and
- (b) where it is necessary to prevent the injury to any person or to protect life or ensure public safety.

(3) The Chief Executive Officer may authorise such assistance as an authorised officer considers necessary to enter the premises specified in the authorisation, and to exercise the powers specified in subsection (2) in relation to those premises.

Power to inspect premises to ascertain compliance with this Act

40.(1) An officer authorised by the Chief Executive Officer, in this section referred to as the “authorised officer”, to conduct an inspection may,

at any time, in daylight enter any land or premises and inspect it to ascertain the compliance of this Act or any order or notice made under this Act.

(2) When private or enclosed premises are to be inspected under this section, the authorised officer shall, if practicable, obtain the consent of the owner or occupier of the premises.

(3) Where access to any enclosed premises or part thereof is necessary for an inspection under this section and —

(a) the person having charge of such premises refuses or unreasonably delays granting access, or

(b) if no such person can be found within a reasonable time,

an application may be made to a Magistrate and the Magistrate, if satisfied with the application, shall issue a warrant directing the police officer to assist the authorised officer in conducting the inspection under this section.

(4) A warrant issued by a Magistrate shall be sufficient warrant for any police officer to break open any outer or inner door or other means of entry, doing no more damage than is necessary for the purposes of such inspection, provided that such officer shall take all practicable measures to safe-guard the premises and any property therein, after the inspection.

(5) The authorised officer may require any person to give information regarding the land or premises to be inspected, or regarding the identity and whereabouts of the owner and occupier and such person shall give such information as he or she possesses and shall give such aid as it is reasonable and practicable for him or her to give in furtherance of the inspection or intended inspection.

(6) Any person who refuses to give such information or aid or gives any information which he or she knows or believes to be false or does not believe to be true, commits an offence and is liable on conviction to a fine of level 6 on the standard scale.

Imposition of fixed penalties in certain cases

41.(1) Where the Commission, during investigation of a complaint or on search or inspection of any premises of an enterprise, has reason to believe that the enterprise or any person is committing or has committed a prohibited conduct in respect of sections 72, 73, 74, 76 or 77, the Commission may issue that enterprise or person a fixed penalty notice offering the enterprise or person an opportunity to discharge their liability to pay the financial penalty under this Act on payment of a fixed penalty of such sum as may be prescribed.

(2) The fixed penalty prescribed under subsection (1) shall be not less than SCR1,500 and shall not exceed SCR20,000 for each such prohibited conduct committed.

(3) The fixed penalty notice shall be issued by the Chief Executive Officer in such form and delivered or served in such manner as maybe prescribed.

(4) A fixed penalty notice shall —

- (a) give a brief description of the circumstances alleged to constitute the prohibited conduct;
- (b) specify the amount of the fixed penalty;
- (c) state the time within which the fixed penalty is to be paid.

(5) The fixed penalty shall be paid within 30 days of the receipt of the notice to the Commission and a sum paid by way of fixed penalty shall be treated as if it were a financial penalty imposed for commission of the prohibited conduct in respect of which the fixed penalty notice was issued.

(6) If the fixed penalty is paid within the period specified in subsection (5), no proceedings shall be taken against the enterprise or person for the commission of such prohibited conduct.

(7) Where the enterprise or person to whom a notice under this section is issued does not comply with the fixed penalty notice within the

period specified under subsection (5), proceedings may be instituted against the enterprise or person for the prohibited conduct in respect of which the notice was issued.

(8) In any proceedings, a certificate in the form as may be prescribed by the Minister —

- (a) that purports to be signed by or on behalf of the Chief Executive Officer; and
- (b) states that the payment was, or was not received by the date specified in the certificate, is evidence of the facts stated.

(9) The fixed penalties collected under this section shall be paid into the Consolidated Fund.

Compounding of offences

42.(1) Where the Chief Executive Officer is satisfied that an offence under this Act has been committed by any person and the person admits to committing the offence, accepts liability for the commission of the offence and agrees in writing to the matter being dealt with under this section, the Chief Executive Officer, in consultation with the Attorney General, may compound the offence *in lieu* of instituting legal proceedings by accepting a sum of not more than the maximum fine specified for the offence;

(2) Where a minimum fine is provided, no sum of money less than the minimum shall be accepted.

(3) A sum of money received under this section shall be dealt with as though it were a fine imposed by a Court.

(4) The Chief Executive Officer shall determine the sum of money to be paid by the offender having due regard to the provisions of this Act, the nature, the circumstances, extent and gravity of the offence, the past behaviour of the offender and the financial benefit accrued to the offender from the violation.

(5) An *ad-hoc* compounding committee may be established to advise the Chief Executive Officer in the determination of the sum of money to be paid by the offender in accordance with subsection (1).

(6) Upon determination of the sum of money to be paid by the offender by way of fine in accordance with subsection (4), the Chief Executive Officer shall sign the compounding agreement and serve it on the offender who shall pay the sum of money within 14 days from the date of service of the compounding agreement.

(7) In the event that the offender fails to pay the sum of money within the period set out in subsection (6), the compounding agreement shall be null and void and the judicial proceedings shall be instituted or continued, as the case may be.

(8) On payment of the sums mentioned in this section, the compounding of any offence under subsection (1) shall be filed in court and thereupon any proceedings in connection with the commission of the offence which are pending shall be noted as compounded and the offender absolutely discharged.

(9) The compounding of an offence under this section shall be conclusive and final and no court proceedings shall be instituted for that offence.

(10) In any proceedings brought against any person for an offence under this Act, it shall be a defence if the person proves that the offence has been compounded under this section.

Order of Supreme Court preventing any person from leaving Seychelles

43.(1) Where the Commission has reasons to believe that a person may leave Seychelles during an investigation by the Commission or hearing before the Tribunal, the Commission may, *ex parte*, or without notice to the person, apply to the Supreme Court for an order preventing the person from leaving Seychelles.

(2) An application under subsection (1) may be made to a Judge in chambers and shall be accompanied by an affidavit in support sworn by the

Chief Executive Officer, Deputy Chief Executive Officer or such authorised officer of the Commission disclosing sufficient material to satisfy the Judge that it is necessary to make an order preventing the person named in the application from leaving Seychelles.

(3) The Commissioner of Police or the Director General of Immigration, or both, shall, on receipt of an order of the Judge under subsection (1), take or cause to be taken by any police officer or immigration officer, such measures as may be necessary to comply with the order, including the use of such force as may be necessary and the seizure, removal, or retention of any passport, certificate of identification, or other travel document relating to the person named in the order or any other document authorising the person to leave Seychelles.

(4) The Chief Executive Officer shall as soon as practicable serve on the person named in the order a notice of the issue of the order, however the non-service or non-receipt of the notice does not invalidate any proceedings under this Act.

(5) The production to an immigration officer or police officer in charge of a police station of a certificate signed by the Chief Executive Officer stating that the presence of the person in Seychelles is no longer required in relation to any matter being investigated by the Commission or determination by the Tribunal shall be *prima facie* evidence of the fact stated therein.

(6) It shall be lawful for the Commission, for the purpose of making an application under subsection (1), to require by written notice to any carrier or its agent to furnish the Commission with such information as may be specified in the notice in respect of any travel arrangement made by any person and it shall be the duty of such carrier or its agent to comply with the requirements of such notice.

(7) No civil or criminal proceedings may be instituted or maintained against the Government, the Commissioner of Police, and the Director General of Immigration or any other police officer or immigration officer in respect of anything lawfully done under this section.

(8) Nothing in this section shall prevent a Judge from ordering the person to furnish sufficient and good security to meet any of his or her obligations under this Act in place of the grant of an order preventing the person from leaving Seychelles.

(9) The Chief Justice may make rules of the Supreme Court for the purposes of an application under subsection (1).

Right of any person to claim confidentiality

44.(1) A person, when submitting information to the Commission, may identify information that the person claims to be confidential information.

(2) Any claim under subsection (1) shall be supported by a written statement explaining why the information is confidential.

(3) The Commission is bound by a claim made under subsection (1) but may at any time during its proceedings refer the claim to the Tribunal to determine whether or not the information is confidential information.

(4) On receipt of a reference under subsection (3), the Tribunal —

- (a) shall determine whether or not the information is confidential; and
- (b) may make any appropriate order concerning access to that information if it finds that the information is confidential.

Chapter II ***Adjudication by Tribunal***

Hearings before Tribunal

45.(1) The Tribunal shall fix a time and place for a hearing in respect of a matter.

(2) A hearing of the Tribunal shall take place in public.

(3) The Tribunal may —

- (a) on application by the Commission, an applicant, appellant or respondent;
- (b) whenever the circumstances so warrant; or
- (c) whenever it considers it appropriate,

conduct a hearing in private.

(4) The Tribunal —

- (a) shall sit at such times and in such places as the Chairperson may direct;
- (b) may, subject to this Act, regulate its own procedures, except in so far as the procedures are prescribed by regulations;
- (c) shall conduct its proceedings with procedural formality;
- (d) shall observe the principles of natural justice;
- (e) shall receive evidence of witnesses appearing virtually before the Tribunal; and
- (f) may permit and regulate the use in any proceedings of any telecommunication facility that the Tribunal considers will assist it in the determination of a matter.

Right to participate in hearing before Tribunal

46.(1) In any matter before the Tribunal, —

- (a) the Commission in respect of a matter arising out of a complaint or any other matter under this Act;
- (b) an applicant;
- (c) an appellant;

- (d) the respondent; and
- (e) any other person who has a material interest in the hearing, unless, in the opinion of the Chairperson or presiding member of the Tribunal, that interest is adequately represented by another participant,

may participate in a hearing before the Tribunal in person or through a representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing.

(2) The Tribunal shall provide the participants and members of the public reasonable access to the record of each hearing, subject to any ruling to protect confidential information made under section 44.

(3) A person may be represented before the Tribunal by an attorney-at-law or such other person duly appointed by the person.

Power of Tribunal to summon or direct any person to appear or produce documents, etc.

47.(1) The Tribunal may —

- (a) direct or summon any person to appear at any specified date, time and place;
- (b) examine any person under oath or affirmation;
- (c) summon or order any person —
 - (i) to produce any book, document or other item necessary for the purposes of the hearing; or
 - (ii) to perform any other act in relation to this Act; or
- (d) give directions prohibiting or restricting the publication of any evidence given to the Tribunal.

(2) In any proceedings before the Tribunal under this Act, the Tribunal may, of its own motion, call as a witness any person whose evidence may, in its opinion, be of assistance to the Tribunal.

(3) The power conferred by subsection (2) includes, without limitation, power to call as a witness the complainant or the respondent.

(4) If the Tribunal calls a witness under subsection (2), the witness may be examined and re-examined —

(a) by the Tribunal;

(b) by or on behalf of any party to the proceedings;

(c) by any party to the proceedings or the party's legal representative.

Rules of procedure of Tribunal

48.(1) The Chief Justice may make rules for the purpose of regulating the practice and procedure of the Tribunal in proceedings under this Act, prescribing fees payable by any party in relation to any process or proceedings under this Act before the Tribunal and providing for such matters as are necessary for giving full effect to this Act and for its administration.

(2) Subject to this Act and the rules of procedure prescribed under subsection (1), the Tribunal may apply at a hearing such procedure for that hearing as it may consider necessary, having regard to the circumstances of the case and the requirements of the relevant provisions of this Act.

Obligation of witnesses

49.(1) Every person giving evidence at a hearing of the Tribunal shall answer any relevant question.

(2) The privilege under section 9 of the Evidence Act (Cap 74) applies to a person who gives evidence or provides information during a hearing before the Tribunal.

(3) Every person giving evidence shall do so on oath or affirmation.

(4) The Tribunal may order a person to answer any question or to produce any article or document.

Costs

50.(1) Each party participating in proceedings before the Tribunal shall bear its own costs.

(2) Notwithstanding subsection (1), the Tribunal may at the conclusion of the proceedings award a party to the proceedings such costs and expenses incurred in relation to those proceedings as it may deem proper.

Standard of proof

51. In any proceedings before the Tribunal under this Act, the standard of proof is on a balance of probabilities.

Grant of interim relief

52.(1) At any time, whether or not a hearing has commenced into a complaint, the Commission may apply to the Tribunal for an interim order in respect of the complaint, and the Tribunal may grant such order, if —

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

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

- (a) the conclusion of the hearing into the complaint; or
- (b) the period of 6 months from the date of the interim order.

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

(4) Where there is evidence that a respondent is making efforts to dissipate assets which may have the effect of rendering the decision of the Tribunal against him or her nugatory or unenforceable by execution, the Supreme Court may, on an application made by the Commission, order the provisional seizure of the assets of the respondent or the provisional attachment of any money or movable property due to or belonging to the respondent, which is in the hands of any third person, for such period as the Supreme Court may consider appropriate.

(5) Sections 280 to 287 of the Seychelles Code of Civil Procedure (Cap 213) shall apply *mutatis mutandis* to an application made under subsection (4).

Decision of Tribunal

53.(1) At the conclusion of a hearing, the Tribunal shall take such decision and make such orders as it may consider appropriate and, where necessary, a time within which the order is to be complied with.

(2) A decision of the Tribunal shall be by majority and signed by the Chairperson who decided the matter and, where the decision was taken with any other member, by the member.

(3) A decision of the Tribunal may be pronounced notwithstanding the absence of a member or members who composed the Tribunal.

(4) The decision of the Tribunal shall be in writing and include the reasons for the decision.

(5) The Secretary shall maintain a copy of every decision of the Tribunal.

(6) The Secretary shall, upon the request of any of the parties to a matter for a copy of the decision of the Tribunal, provide the requestor with a certified true copy of the decision within a period of 7 working days of the date of request.

Order for financial penalty by Tribunal

54.(1) Where the Tribunal determines after a hearing that a respondent has committed a prohibited conduct under this Act, the respondent shall be liable to pay a financial penalty of such sums, not exceeding —

- (a) SCR500,000 in relation to the alleged prohibited conduct; or
- (b) 10 percent of the turnover of the enterprise in Seychelles during the period of the alleged prohibited conduct up to a maximum period of 5 years.

(2) In determining the financial penalty under subsection (1), the Tribunal shall have regard to the following —

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

(3) The financial penalties realised under this section shall be paid into the Consolidated Fund.

(4) In addition to the financial penalty under subsection (1), the Tribunal —

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

Immunity against financial penalty for prohibited conduct relating to competition

55.(1) The Tribunal shall, while imposing the financial penalty for committing a prohibited conduct relating to any provision under section 126, have regard to any corporate immunity afforded to an enterprise by the Commission, and where the Commission considers it reasonable, just and equitable and has recommended to do so, the Tribunal may grant an enterprise such immunity from the liability for the payment of a financial penalty in respect of a prohibited conduct relating to this Part.

(2) The Commission shall publish, in the *Gazette* and on its website, a corporate immunity policy setting out the purpose of the policy and the conditions subject to fulfilment of which an enterprise may be afforded the corporate immunity under subsection (1).

Orders for loss or damage by Tribunal

56.(1) Where, in any proceedings under this Act, the Tribunal finds that a person, has suffered, or is likely to suffer, loss or damage by the conduct of any other person that constitutes or would constitute —

- (a) a contravention of any provision of this Act;
- (b) aiding, abetting, counselling, or procuring such contravention;
- (c) inducing by threats, promises or otherwise such contravention;
- (d) being in any way, directly or indirectly, knowingly concerned in, or party to a contravention by any other person; or
- (e) conspiring with any other person to commit a contravention of any provision of this Act,

the Tribunal may make an order —

- (i) declaring the conduct to be a prohibited conduct under this Act;

- (ii) interdicting any prohibited conduct;
- (iii) for interim relief;
- (iv) imposing a financial penalty under section 54, with or without any other direction;
- (v) confirming a settlement agreement under this Act;
- (vi) confirming, varying or setting aside a compliance notice, prohibition notice, notice to submit information, or compulsory recall notice;
- (vii) declaring the whole or any part of a contract to be void and, if the Tribunal thinks fit, to have been void *ab initio* or at all times on and after such date before the date on which the order is made, as is specified in the order;
- (viii) directing a person —
 - (A) to refund money or return goods to a person;
 - (B) who engaged in the prohibited conduct, at that person's own expense, to repair, or provide parts for, goods supplied to the person who suffered, or is likely to suffer, the loss or damage; or
 - (C) who engaged in the prohibited conduct, at that person's own expense, to supply specified service to the person who suffered, or is likely to suffer, the loss or damage; or
- (ix) granting any other relief which may be required to give effect to a right under this Act.

Publication of decision of Tribunal

57.(1) The Tribunal shall provide a copy of its decision to the

Commission and other relevant regulatory authority within a period of 7 working days from the date of the decision.

(2) The Secretary may publish decisions of the Tribunal or a summary of its decisions in such manner and within such time as the Secretary thinks fit, for the general information of the public.

(3) The Chief Executive Officer may make reference to, circulate and publish the decisions of the Tribunal or a summary of them for information to the public.

Rectification of errors

58. The Tribunal, on its own motion or on an application made to it, may by order correct grammatical, typographical and similar errors occurred in an order or decision of the Tribunal.

Appeal to Supreme Court

59.(1) Subject to this section and the rules of the Supreme Court, a participant in a hearing before the Tribunal, dissatisfied with an order or decision of the Tribunal, may appeal to the Supreme Court against the decision of the Tribunal in that matter.

(2) The Supreme Court may affirm, reverse, amend or alter the decision appealed from, or remit the matter to the Tribunal with the directions of the Supreme Court thereon, and may make any order as to costs.

(3) The procedure on appeal shall be by written notice delivered to the Secretary within 30 days from the date of, the decision complained of unless extended by a Judge.

(4) The notice shall set forth the substance of such decision and the grounds of appeal.

(5) On receipt of such notice, the Secretary shall file the notice in the Registry of the Supreme Court with the original record, if any, and a brief statement of the grounds of the Tribunal's decision.

(6) The Registrar of the Supreme Court shall fix a date for the hearing of the appeal and his or her order together with a copy of the notice of appeal shall be served upon the respondent.

(7) After the decision of the Supreme Court, the Registrar of the Supreme Court shall transmit a certified copy of the decision to the Secretary and such decision may be enforced in the same way as if it were a decision of the Tribunal.

(8) The fees payable in an appeal to the Supreme Court from a decision of the Magistrates' Court shall *mutatis mutandis* apply to an appeal under subsection (1).

(9) The Chief Justice may make rules prescribing matters of procedure on appeal not otherwise provided for in this Act.

Enforcement of orders of Tribunal

60.(1) A decision or an order of the Tribunal may be served, executed and enforced in the same manner as a judgment or order of the Supreme Court under the Seychelles Code of Civil Procedure (Cap 213).

(2) An order of provisional seizure or provisional attachment may be validated and enforced in the same manner as an order of the Supreme Court under the Seychelles Code of Civil Procedure (Cap 213).

(3) Notwithstanding anything to the contrary —

- (a) the Commission may apply for the enforcement of a decision or order of the Tribunal by means of execution or the validation of an order of provisional attachment or provisional seizure;
- (b) where a monetary award is made by the Tribunal in favour of a complainant, the complainant may in place of, and with notice to, or with the concurrence or consent of, the Commission, apply for the enforcement of the decision or order of the Tribunal by means of execution or the validation of an order of provisional attachment or provisional seizure;

- (c) the Commission may receive any sum of money in satisfaction of a decision or order of the Tribunal by reason of execution or otherwise.

(4) Any sum of money paid to and received by the Commission for a complainant in consequence of execution of a decision or order of the Tribunal under this section shall be paid to the complainant subject to such charge payable to the Commission as may be prescribed.

Chapter III ***Settlement and Undertaking***

Undertaking by enterprise

61.(1) The Commission may, at any time, during or after an investigation under this Part, accept an undertaking from an enterprise, subject to confirmation by the Tribunal.

(2) The Commission may seek costs incurred for the assistance of experts in relation to a case in which an undertaking is accepted.

(3) The Commission may seek an appropriate penalty which will reflect the breach when considering the undertaking.

(4) An undertaking under this section that is confirmed by the Tribunal shall be deemed a decision or an order of the Tribunal and shall be served, executed and enforced in the same manner as a decision or an order of the Tribunal.

(5) The Tribunal may, upon an application made to it, make any variation in an undertaking accepted by the Commission under this section.

Confirmation of settlements by Tribunal

62.(1) If a matter has been investigated by the Commission, and the Commission and the respondent agree to the proposed terms of an appropriate order, the Tribunal shall, without hearing any evidence and with the consent of the complainant, confirm that agreement as a consent order.

(2) A consent order under subsection (1) may include an award of damages and costs to the complainant.

(3) A consent order shall be deemed a decision or an order of the Tribunal and shall be served, executed and enforced in the same manner as a decision or an order of the Tribunal.

(4) The Tribunal may, upon an application made to it, make any variation in an agreement confirmed by it under this section.

PART IV CONSUMER PROTECTION

Chapter I

Right to Fair, Just and Reasonable Terms and Conditions

Unfair, unreasonable or unjust contract terms

63.(1) A supplier shall not —

- (a) supply or offer to supply, or enter into an agreement to supply, any goods or service on terms that are unfair, unreasonable or unjust;
- (b) market any goods or service, or negotiate, enter into or administer a transaction or an agreement for the supply of any goods or service, in a manner that is unfair, unreasonable or unjust; or
- (c) require a consumer, or other person to whom any goods or service is supplied at the direction of the consumer —
 - (i) to waive any rights;
 - (ii) assume any obligation; or
 - (iii) waive any liability of the supplier,

on terms that are unfair, unreasonable or unjust, or impose any such terms as a condition of entering into a transaction.

(2) Without limiting the generality of subsection (1), a transaction or agreement, a term or condition of a transaction or agreement, or a notice to

which a term or condition is purportedly subject to, is unfair, unreasonable or unjust if —

- (a) it is excessively one-sided in favour of any person other than the consumer or other person to whom goods or service is to be supplied;
- (b) the terms of the transaction or agreement are so adverse to the consumer as to be inequitable;
- (c) the consumer relied upon a false, misleading or deceptive representation or a statement of opinion provided by or on behalf of the supplier, to the detriment of the consumer; or
- (d) the transaction or agreement was subject to a term or condition, or a notice to a consumer, and —
 - (i) the term, condition or notice is unfair, unreasonable, unjust or unconscionable; or
 - (ii) the fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer.

(3) In subsection (2)(d)(i), “unconscionable”, in relation to any conduct, means unethical or improper to the extent that would shock the conscience of a reasonable person.

Assessment of unfairness of transaction or agreement

64.(1) In determining whether a term of transaction or agreement referred to in section 66 is unfair, consideration shall be given to the following —

- (a) the nature of the goods or service for which the transaction or agreement is concluded;
- (b) the time of conclusion of the transaction or agreement;
- (c) all the circumstances attending the conclusion of the transaction or agreement and all the other terms of the

transaction or agreement or of another transaction or agreement on which it is dependent, including the following circumstances —

- (i) the bargaining power of the parties;
 - (ii) whether a consumer was subjected to undue pressure; and
 - (iii) whether the lack of knowledge or skill of a consumer was improperly taken advantage of; and
- (d) whether they would be deemed unfair if not individually negotiated as set out in the Schedule.

(2) Insofar as a term of transaction or agreement is in plain, intelligible language, the assessment of its fairness shall not relate —

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

(3) Where it is asserted in any proceedings that a term of transaction or agreement is unfair, it is for the supplier to show that the term of transaction or agreement is not unfair.

(4) Without prejudice to subsection (1), the terms described in the Schedule are unfair.

Unfair terms of transaction or agreement not enforceable

65. An unfair term of transaction or agreement is not enforceable against the consumer.

Terms not individually negotiated

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

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

(3) It is for the supplier that claims that a term of agreement was individually negotiated to show that it was so negotiated.

Void terms

67.(1) A term of a consumer contract, including a term that is not set out in the contract but is incorporated into the contract by another term in the contract 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 to the contract;
or
- (b) the exercising of a right conferred by any provision of this Part.

(2) In this section and section 69, “consumer contract” means a contract between a supplier and a consumer where the contract is one —

- (a) governed by the laws of Seychelles or to which Part IV applies; and
- (b) in which the subject-matter is any goods or service.

Written terms to be plain and intelligible

68.(1) A supplier of goods or services shall provide the original written contract at no cost to the consumer to whom any goods or services are supplied.

(2) A supplier of goods or services shall ensure that a written contract term is expressed in plain, intelligible language.

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

Governing law

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

Chapter II ***Right to Disclosure of Information***

Information to be in plain and understandable language

70.(1) Where a person is required under this Act or any other written law to produce, provide or display a notice, document or other visual representation to a consumer, such notice, document or visual representation shall be —

- (a) in plain language; and
- (b) in English, French or Creole.

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

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

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

(4) In this section, “visual representation” means any representation or illustration capable of being reproduced upon a surface, whether by printing or otherwise, but does not include a trade mark.

Warning concerning fact and nature of risks

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

- (a) of an unusual character or nature;
- (b) of which a consumer could not reasonably be expected to be aware of or have notice, or of which an ordinarily alert consumer could not reasonably be expected to have notice or contemplate in the circumstances; or
- (c) that could result in serious injury or death,

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

(2) A condition, provision or notice referred to in subsection (1) shall be written in plain and understandable language.

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

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

- (b) before the time at which the consumer —
 - (i) enters into the transaction or agreement begins to engage into the activity, or enters or gains access to the facility; or
 - (ii) is required or expected to offer consideration for the transaction or agreement.

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

(5) A person who packages any hazardous or unsafe goods for supply to consumers shall display on or within that packaging a notice that complies with the requirements of section 74, and any other applicable standards, providing the consumer with adequate instructions for the safe handling and use of such goods.

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

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

- (a) any document required under that subsection; or
- (b) any similar document that applies to such goods under any other written law.

Disclosure of prices of goods or services

72.(1) A supplier shall display the price of all goods and services offered for sale.

(2) Subsection (1) shall not apply where goods or services are displayed predominantly as a form of advertisement of the supplier.

(3) A price of goods or service is adequately displayed to a consumer, if a written indication of the price expressed in the currency of Seychelles is —

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

(4) In this section, “price”, in respect of goods, includes a unit price.

Selling above displayed price and multiple pricing

73.(1) Subject to subsections (2) to (4), a supplier in trade or commerce shall not require of a customer to pay a price for any goods or service —

- (a) higher than the displayed price in respect of such goods or service;
- (b) that is the higher of any of the displayed prices in respect of the goods or service.

(2) Where a displayed price has been fully covered and obscured by a second or further displayed price, the second or further displayed price shall be regarded as the displayed price.

(3) In subsection (1), a reference to the displayed price in respect of the goods or service includes, in addition to prices displayed in the manner described in section 72(3), a reference to the price —

- (a) that is used in connection with the goods or service; or
- (b) that is determined on the basis of anything encoded on or in relation to the goods or service.

(4) Where a price displayed in respect of particular goods or a service is written, stamped or located wholly or partly over another price, or other prices, displayed in respect of the goods or service, all the prices are, for the purposes of subsection (1), prices displayed in respect of the goods or services.

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

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

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

- (a) the goods in respect of which the price is displayed are duty-free goods and the price is expressed in a currency other than Seychelles currency; or
- (b) the price was displayed in respect of goods outside Seychelles for supply of the goods outside Seychelles and the supplier has taken all reasonable precautions to cover and obscure that price.

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

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

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

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

(9) Subsection (1) does not apply in respect of the price of any goods or service if the price of the goods or service is determined by any other written law.

Product labelling and trade description

74.(1) Any goods sold in Seychelles shall have a label applied to clearly indicate the trade description, in English, French or Creole, unless otherwise stated by any other written law.

(2) A trade description is applied to the goods that are packaged or attached to the goods if it is —

- (a) woven in, impressed on, worked into or annexed or affixed to the goods;
- (b) applied to any covering, label, or reel or thing in, on or with which the goods are packaged, or attached to the goods;
- (c) displayed together with, or in proximity to, the goods in a

manner likely to lead to the belief that the goods are designated or described by that description; or

- (d) contained in any sign, manual, advertisement, catalogue, brochure, circular, wine list, invoice, business letter, business paper or other commercial communication on the basis of which a consumer may request or order the goods.
- (3) In subsection (2)(b), a reference to —
- (a) a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper; and
 - (b) a label includes a paper, fabric, plastic, ticket or similar material attached to the goods or affixed on the goods providing information about the goods.
- (4) A person shall not —
- (a) knowingly apply a trade description to any goods, that is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (b) alter, deface, cover, remove or obscure a trade description to any goods in a manner to mislead consumers.
- (5) A supplier of goods shall —
- (a) not offer to supply, display or supply any particular goods if the supplier knows or reasonably could determine or has reason to suspect that —
 - (i) a trade description applied to the goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (ii) a trade description applied to the goods has been altered as contemplated in subsection (4)(b);
 - (b) with respect to any goods within supplier's control take

reasonable steps to prevent any other person from doing anything contemplated in paragraph (a).

(6) The Minister in consultation with the Commission may prescribe —

- (a) categories of goods that are required to have a trade description applied to them under subsection (7);
- (b) the information that is required to be included in any trade description;
- (c) the form and manner in which the information is to be included in any trade description applied to the goods;
- (d) the rules to be used, in accordance with any international agreement, for the purpose of determining the country of origin of goods or of components of any goods;
- (e) the exemptions from the application of this section for categories of goods.

(7) The producer or importer of any goods prescribed under subsection (6), shall apply a trade description to the goods in any one of the Seychellois official languages —

- (a) disclosing the country of origin of the goods; and
- (b) disclosing any other prescribed information.

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

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

- (a) a statement that the goods are for export only; or
- (b) a statement indicating by the use of words authorised by the regulations to be used for the purposes of this section that the

goods are intended to be used outside Seychelles, it shall be presumed for the purposes of this subsection, unless the contrary is established, that the goods are used in the intended manner that they are produced for.

(10) Any goods which are technically complex, contain hazardous substances or require special skills for use shall be accompanied by an instruction manual in one of the national languages.

(11) The instruction manual shall contain the information necessary for the consumer to use the goods safely, economically and for their intended purpose and to assemble, install, connect, maintain or store and, if necessary, destroy the goods in the correct manner and if the goods consist of several parts, the instruction manual shall contain a list of the parts constituting the goods, being the components of the set.

(12) Subsections (10) and (11) apply to goods offered as movables.

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

(14) A person shall not supply any goods with a trade description that indicates that the goods are intended for sale only in a country or jurisdiction, other than Seychelles.

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

75. Where a supplier supplies goods in contravention of section 74 by reason that no trade description is applied to the goods, or the trade description applied to the goods do not comply with prescribed information, and —

- (a) another person suffers loss or damage by reason of not having particular information in relation to the goods; and
- (b) that other person would not have suffered the loss or damage if the trade description had been applied to the goods or the

trade description applied to the goods had complied with the prescribed information,

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

Prohibition of supply without displaying shelf-life

76.(1) A person shall not offer to supply, display or supply any goods endowed with a shelf life —

- (a) without displaying their shelf-life;
- (b) at a date later than the date of shelf-life of the goods.

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

(3) The Minister may, by order published in the *Gazette* exempt any category of goods from the application of this section, subject to such conditions that the Minister may deem fit to impose.

(4) Notice of an order under subsection (3) shall be published in the *Gazette*.

Receipt of each transaction to be provided to consumer

77.(1) A supplier of goods and service shall, at no cost to that consumer, provide a receipt to a consumer to whom any goods or services are supplied.

(2) At any time, subsequent to the purchase, the receipt issued by the supplier shall be adequate proof of the purchase of the goods or services and may be used for the purposes of refund in any of the circumstances specified in this Act.

- (3) A receipt under subsection (1) shall include —
 - (a) the supplier's full name or registered business name;

- (b) the address of the premises at which, or from which the goods or services were supplied;
- (c) the date on which the transaction occurred;
- (d) the name or description of any goods or service supplied;
- (e) the unit price of any particular goods;
- (f) the quantity of any particular goods;
- (g) the total price of the transaction, before any applicable taxes;
- (h) the amount of any applicable taxes;
- (i) the total price of the transaction, including any applicable taxes.

(4) The Minister may, by order published in the *Gazette*, exempt any category of goods and services, or amount or circumstances of trade from the application of this section subject to such conditions that the Minister may deem fit to impose.

(5) Notice of an order under subsection (4) shall be published in the *Gazette*.

Full cost to be stated in certain cases

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

- (a) where the transaction is not a credit transaction, it also specifies the cash price of the goods or service;
- (b) where the transaction is a credit transaction, it also specifies —

- (i) the total sum to be paid for the goods or service;
- (ii) the number of instalments by which payment is to be made;
- (iii) the rate and amount of interest that will be charged and be payable; and
- (iv) the deposit, if any, that must be made prior to the supply of goods or service.

Identification of deliverers, installers and others

79. Where a person is engaged in direct marketing in person at the premises of a consumer, or performing any service for a consumer or delivering any goods to, or installing any goods for, a consumer, at any such premises, that person shall —

- (a) visibly wear or display a badge or similar identification device that satisfies the prescribed standards; or
- (b) provide suitable identification on request by the consumer.

Chapter III

Right to Fair and Responsible Marketing

General standards for advertisement of goods and services

80. A person shall not advertise any goods or service in a manner that is —

- (a) reasonably likely to imply a false or, misleading representation concerning the goods or services, or
- (b) misleading, fraudulent or deceptive, including in respect of —
 - (i) the nature, properties, advantages or uses of the goods or service;
 - (ii) the manner in or conditions on which the goods or service may be supplied;

- (iii) the price at which the goods or service may be supplied, or the existence of, or relationship of the price to, any previous price or competitor's price for comparable or similar goods or service;
- (iv) the sponsoring of any event; or
- (v) any other material aspect of the goods or service.

Prohibition of bait advertising

81.(1) No person shall advertise for supply at a specified price goods or service which that person —

- (a) does not intend to supply; or
- (b) does not have reasonable grounds for believing that the person can supply,

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

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

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

the offer is accepted by the consumer, that the person has so supplied or procured another person to supply, such equivalent goods or services.

Regulation of distance selling

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

(2) The regulations made under subsection (1) may include any one or all of the following provisions —

- (a) regulating advertising and marketing of distance selling;
- (b) with respect to the information that must be supplied to consumers of distance selling;
- (c) with respect to the transparency, clarity and fairness of distance selling;
- (d) requiring information to be given to consumers enabling them to exercise their choice.

(3) In this section, “distance selling” means a contract concerning any goods or service concluded between a supplier and a consumer under a scheme operated by the supplier, which, for the purposes of the contract, makes exclusive use of one or more means of distance communication up to and including the point at which the contract is concluded and includes electronic commerce, online selling or mail selling.

Prohibition of referral selling

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

Restrictions on promotion of sales

84.(1) A person in trade or commerce shall not, by any means in connection with the promotion or intended supply of goods or services on sale, offer such goods and services at a discounted price, unless the price of the goods or services stated as the price from which the discount is deducted is accurate.

(2) A person shall be deemed to have contravened subsection (1) if, in the course of any business, the person gives a price indication that is misleading.

(3) A price indication is misleading if it suggests —

- (a) that it is less than the actual price;
- (b) that the applicability of the price does not depend on facts or circumstances on which its applicability does in fact depend;
- (c) that the price is all the consumer has to pay when in fact there are hidden charges;
- (d) that the price will be increased, reduced or maintained when the person giving the price indication has no such expectation;
- (e) that the facts or circumstances by reference to which consumers might reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what in fact they are.

Chapter IV

Right to Fair and Honest Dealing

Misleading or deceptive conduct in relation to goods and services

85.(1) A person shall not, in trade or commerce in connection with the supply or possible supply of goods or service or in connection with the promotion by any means of the supply or use of goods or services, engage in conduct that is, or is likely to mislead or deceive the public.

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

Prohibition of false representation

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

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

Inequitable conduct in consumer transactions

87.(1) A person shall not, in trade or commerce, as a supplier, in connection with —

- (a) the supply or possible supply of goods or services to another person; or
- (b) the acquisition or possible acquisition of goods or services from another person,

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

(2) Without limiting the matters with regard to which a determination may be made whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to the consumer or business consumer, regard may be had to —

- (a) the relative strengths of the bargaining positions of the person and the consumer;
- (b) whether, as a result of conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the person;
- (c) whether the consumer was able to substantially protect his or her interests in view of a physical or mental disability, illiteracy, ignorance or inability to understand the language of an agreement;
- (d) whether the consumer was able to understand any documents relating to the supply or possible supply of goods or services;
- (e) whether any undue influence or pressure was exerted on, or any physical force, coercion, duress, harassment or unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the supplier or other

person acting on behalf of the supplier, in relation to the supply or possible supply of the goods or services;

- (f) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from another supplier;
- (g) the extent to which the supplier's conduct towards the consumer was consistent with the supplier's conduct in similar transactions between the supplier and other like consumers;
- (h) the requirements of any applicable industry code;
- (i) the requirements of any other industry code, if the consumer acted on the reasonable belief that the supplier would comply with the code;
- (j) the extent to which the supplier unreasonably failed to disclose to the consumer —
 - (i) any intended conduct of the supplier that might affect the interests of the consumer;
 - (ii) any risks to the consumer arising from the supplier's intended conduct, being risks that the supplier should have foreseen would not be apparent to the consumer;
- (k) the extent to which the supplier was willing to negotiate the terms and conditions of any contract for supply of the goods and services with the consumer; and
- (l) the extent to which the supplier and the consumer acted in good faith.

(3) In subsection (2), “business consumer” means a consumer where transaction or business is conducted between one enterprise and another.

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

- (a) shall not be had to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
- (b) may be had to conduct engaged in or circumstances existing before the commencement of this Act.

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

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

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

Offering gifts, prizes and free offers

88.(1) No supplier shall offer any gift, prize or other free item —

- (a) with the intention of not providing it; or
- (b) with the intention of not providing it as offered.

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

- (a) charge more than the regular price for the goods or services to be purchased; or
 - (b) reduce the quantity or quality of the goods or services to be purchased.
- (3) A supplier who offers a gift, prize or other free item may impose any reasonable condition on the offer.
- (4) Where a supplier imposes a condition on the offer, he or she shall —
- (a) describe the condition clearly;
 - (b) ensure that the description of the condition is conspicuously placed near the expression “free” or “free offer”, as the case may be; and
 - (c) ensure that the print of the description of the condition is at least half as large as the print used for the expression “free” or “free offer”.
- (5) For the purposes of this section, “free” or “free offer” includes any expression of similar meaning; and “regular price” means the price at which similar goods or service are regularly sold on the market.

Dishonestly accepting payment

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

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

Prohibition of pyramid selling scheme

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

- (2) In this section, “pyramid selling scheme” means a scheme —
- (a) that provides for the supply of any goods or service or both for reward;
 - (b) that, to participants in the scheme, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity just to supply any goods or service; and
 - (c) that is unfair, or is likely to be unfair, to the participants in that —
 - (i) the financial rewards of the participants is dependent on the recruitment of additional participants;
 - (ii) the number of additional participants that must be recruited to produce a reasonable reward to participants is either not attainable, or is not likely to be attained, by the participants;

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

Prohibition of over-selling and over-booking

91.(1) This section does not apply to a consumer agreement pertaining to the supply of any special-order goods.

(2) A supplier shall not accept payment or other consideration for any goods or service if the supplier —

- (a) has no reasonable basis to assert an intention to supply the goods or provide the service; or
- (b) intends to supply goods or a service that are materially

different from the goods or service in respect of which the payment or consideration was accepted.

(3) If a supplier makes a commitment or accepts a reservation to supply goods or a service on a specified date or at a specified time and, on the date and at the time contemplated in the commitment or reservation, fails to do so due to insufficient stock or capacity to supply the goods or service, the supplier shall —

- (a) refund the amount, if any, paid in respect of those goods or that service together with interest at the prescribed rate from the date on which the amount was paid until the date of refund of the amount to the consumer; and
- (b) in addition, compensate the consumer for costs directly incidental to the supplier's breach of the contract, except to the extent that subsection (5) provides otherwise.

(4) It is a defence to an alleged failure to supply any goods or service under subsection (3), if —

- (a) the supplier offered to supply or procure another person to supply a consumer with comparable goods or service of the relevant kind to satisfy the consumer's request; and
- (b) the consumer —
 - (i) accepted the offer, and the supplier has supplied or procured another person to supply the goods or service so offered and accepted; or
 - (ii) unreasonably refused that offer.

(5) Subsection (3)(b) does not apply if —

- (a) the shortage of stock or capacity is due to circumstances beyond the supplier's control, subject to subsection (6); and

- (b) the supplier took reasonable steps to inform the consumer of the shortage of stock or capacity as soon as it was practicable to do so in the circumstances.

(6) Without prejudice to subsection (5)(a), a shortage of stock or capacity is not regarded due to circumstances beyond the supplier's control if the shortage results partially or completely, directly or indirectly from a failure on the part of the supplier to carry out any ordinary or routine matter pertaining to the supplier's business.

(7) In this section and in section 92, “special-order goods” means goods that a supplier expressly or implicitly was required or expected to procure, create or alter specifically to satisfy the consumer's requirements.

Consumer's right to cancel advance reservation, booking or order

92.(1) This section does not apply in respect of any special-order goods.

(2) Subject to subsections (3) and (4), a consumer has the right to cancel any advance booking, reservation or order for any goods or service to be supplied.

(3) A supplier who makes a commitment or accepts a reservation to supply goods or a service on a later date may —

- (a) require payment of a reasonable deposit in advance; and
- (b) impose a reasonable charge for cancellation of the order or reservation, subject to subsection (5).

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

- (a) the nature of the goods or service that were reserved or booked;
- (b) the length of notice of cancellation provided by the consumer;

- (c) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and
- (d) the general practice of the relevant industry.

(5) A supplier shall not impose any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of the death or unforeseen admission to a hospital for treatment of an illness of the person for whom, or for whose benefit the booking, reservation or order was made.

Chapter V *Supplier's Accountability to Consumers*

Consumer's right to assume supplier is entitled to sell goods

- 93.(1) It shall be implied in every transaction or agreement, that —
- (a) in the case of a supply of goods, the supplier has the legal right, or the authority of the legal owner, to supply the goods;
 - (b) in the case of an agreement to supply goods, the supplier will have a legal right, or the authority of the legal owner, to —
 - (i) sell the goods at the time the title to the goods is to pass to the consumer; or
 - (ii) lease the goods at the time the lessee is to take possession of the leased goods;
 - (c) as between the supplier and the consumer, the supplier is fully liable for any charge or encumbrance pertaining to the goods in favour of any third party, unless —
 - (i) such charge or encumbrance is disclosed in writing to the consumer before the transaction or agreement is concluded; or

- (ii) the supplier and consumer have colluded to defraud the third party; and
- (d) the supplier guarantees that the consumer is to have and enjoy quiet possession of the goods, subject to any charge or encumbrance disclosed under paragraph (c)(i).

(2) If, as a result of any transaction or agreement in which goods are supplied to a consumer, a right or claim of a third party pertaining to the goods is infringed or compromised, the supplier is liable to the third party to the extent of the infringement or compromise of that person's rights pertaining to the goods, except to the extent of a charge or encumbrance disclosed under subsection (1)(c) (i).

Availability of spare parts

94.(1) If the goods purchased by the consumer are of a nature that may require maintenance, or replacement of parts, then, the maintenance of goods or replacement of parts shall be made available within a reasonable time from the date of the delivery of the goods to the consumer.

(2) The supplier may release himself or herself from this obligation by specifically and expressly warning the consumer in writing, before the purchase is concluded, that he or she does not supply replacement parts or offer a repair service.

Return of parts and materials

95.(1) When a supplier is authorised to perform any repair or maintenance to any goods or property belonging to or ordinarily under the control of the consumer, the supplier may —

- (a) retain any parts or components removed from any goods or property in the course of any repair or maintenance;
- (b) keep the parts or components separate from parts removed from other goods or property; and
- (c) return the parts or components to the consumer in a reasonably clean container, unless the consumer declines the return of any such parts or materials.

(2) This section does not apply to any substance, parts or components that are required —

- (a) in terms of any warranty under which the work was carried out, to be returned to, or disposed of at the direction of, the producer or distributor;
- (b) in terms of any insurance claim under which the work was carried out, to be returned to, or disposed of at the direction of, the insurer; or
- (c) under any written law, to be recovered or disposed of in a safe manner in the interests of environmental safety or public health and safety.

Products as parts of other goods

96. A person who supplies any goods of which other products form part, whether being component parts or raw materials or otherwise, shall not be treated by reason only of the supply of the goods as supplying any of the other products that form part of the goods so supplied.

Lay-bys

97.(1) Notwithstanding any other written laws, if a supplier agrees to sell particular goods to a consumer, to accept payment for the goods in periodic instalments, and to hold the goods until the consumer has paid the full price of the goods —

- (a) each amount paid by the consumer to the supplier remains the property of the consumer, until the goods have been delivered to the consumer; and
- (b) the particular goods remain at the risk of the supplier until the goods have been delivered to the consumer.

(2) If a supplier is unable to deliver any goods under subsection (1) when the consumer has paid the full price for the goods, the supplier shall, at the direction of the consumer —

- (a) supply an equivalent quantity of goods that are comparable or superior in description, design and quality to the consumer; or
- (b) refund to the consumer the money paid by the consumer, if the inability to supply the goods is due to circumstances beyond the supplier's control.

(3) Without prejudice to subsection (2)(b), the failure to supply the goods is not regarded due to circumstances beyond the supplier's control, if the shortage results partially or completely, directly or indirectly, from a failure on the part of the supplier to carry out any ordinary or routine matter pertaining to the supplier's business.

(4) If a consumer terminates the agreement referred to in subsection (1) before fully paying for the goods, or fails to complete the payment for the goods within 60 days after the anticipated date of completion, the supplier —

- (a) may charge a termination penalty in respect of the goods, subject to subsection (5); and
- (b) after deducting such termination penalty, shall refund to the consumer any amount paid by the consumer under the agreement.

(5) A cancellation penalty under subsection (4) shall not be charged —

- (a) if the consumer's failure to complete payment was due to the death of the consumer or to his or her unforeseen admission to a hospital for treatment of an illness; or
- (b) in any other case, unless the supplier informed the consumer of the fact and extent of the penalty before the consumer entered into the lay-by agreement.

Chapter VI *Right to Choose*

Unsolicited goods or services

98.(1) Subject to subsection (2), goods and services are unsolicited in any of the following circumstances —

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- (a) if, during any direct marketing of goods or a service, a supplier or a person acting on behalf of a supplier has left any goods with, or performed any service for, a consumer without requiring or arranging payment for them, the goods or service is unsolicited;
 - (b) if, a consumer is a party to an agreement contemplating the periodic delivery of goods during the life of the agreement, and —
 - (i) during the course of that agreement, the supplier introduces goods or a service that is materially different from the goods or service previously supplied to an extent not reasonably contemplated in the agreement, the new goods or service are unsolicited, unless the consumer expressly consented to the material change; or
 - (ii) after the termination of that agreement, the supplier delivers any further goods to the consumer, other than under any different agreement or transaction, the further goods are unsolicited goods;
 - (c) if a supplier delivers goods or performs service at a location, date or time other than as agreed, and the consumer has rejected that delivery or performance, the goods or service are unsolicited; or
 - (d) if any goods have been delivered to, or any service performed for, a consumer by or on behalf of a supplier without the consumer having expressly or implicitly requested that delivery or performance, the goods or service are unsolicited.
- (2) Notwithstanding subsection (1) and, if —
- (a) within 10 days after delivery of any goods to a consumer, the supplier informs the consumer that the goods were delivered in error, the goods become unsolicited only if the

supplier fails to recover them within 20 days after so informing the consumer; or

- (b) any goods are delivered to a consumer and —
 - (i) the goods are clearly addressed to another person, and have obviously been wrongly delivered; or
 - (ii) having regard to the circumstances of the delivery, it would be apparent to the ordinarily alert consumer that the goods were intended to be delivered to another person,

the goods become unsolicited goods only if the recipient gives a notice under subsection (13) to the apparent supplier or the deliverer that the goods were wrongly delivered and the goods are not recovered within the following 20 days.

- (3) A person in possession of goods under this section —
 - (a) shall not frustrate or impede any reasonable action of the supplier or deliverer to recover the goods within the time allowed under subsection (2);
 - (b) is not liable to make any payment for the goods or service;
 - (c) is not responsible for any cost pertaining to the storage or recovery of the goods or further delivery of them to another person;
 - (d) is not liable for any loss of or damage to the goods during the time they are in the person's control or possession, other than loss or damage resulting from the doing by the first mentioned person of a willful and unlawful act in relation to the goods.

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

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- (5) A person in possession of unsolicited goods may —
- (a) retain the goods; or
 - (b) return the goods to the apparent supplier or deliverer at the risk and expense of the supplier or deliverer.
- (6) Where a person retains any unsolicited goods under subsection (5)(a) —
- (a) the property in the goods passes unconditionally to the person, subject to any right or valid claim that an uninvolved third-party may have with respect to the goods;
 - (b) the person who supplied or delivered the goods is liable to any other person in respect of any right or valid claim relating to such goods.
- (7) A person has no obligation to pay the supplier for unsolicited goods or service, or a deliverer for the costs of delivery of any unsolicited goods.
- (8) If a consumer has made any payment to a supplier or deliverer in respect of any charge relating to unsolicited goods or service, or the delivery of any such goods, the consumer is entitled to recover that amount with interest from the date on which it was paid to the supplier or deliverer.
- (9) A supplier is liable to pay the recipient of the unsolicited goods such reasonable costs as are incurred in respect of the storage of the goods.
- (10) A person shall not, in trade or commerce, as a supplier, assert demand or right to, or attempt to collect, any payment from another person in respect of —
- (a) any charge relating to unsolicited goods left in the possession of that person or the delivery of any such goods; or
 - (b) any unsolicited service supplied to or for the benefit of that person, except as provided under subsection (4).

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

- (a) makes a demand for the payment, or asserts a present or prospective right to the payment;
- (b) threatens to bring any legal proceedings with a view to obtaining the payment;
- (c) places or causes to be placed the name of the other person on the list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment;
- (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
- (e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services and not stating as prominently, or more prominently, that no claim is made to the payment or to payment of the price.

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

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

- (a) state the name and address of the person who received the goods;
- (b) state the address at which possession may be taken of the goods if it is an address other than that stated under paragraph (a); and
- (c) contain a statement to the effect that the goods are unsolicited goods.

(14) In this section, “unsolicited goods or service” means any goods or service supplied to the consumer without an agreement and payment arrangement between the consumer and the provider or supplier of the goods or service.

Rules applying to cancellation of contract

99.(1) A cancellation of a contract for the supply of a service shall not take effect —

- (a) before the time at which the cancellation is communicated to the supplier; or
- (b) where it is not reasonably practicable to communicate with the supplier, before the time at which the consumer indicates to the supplier, by means which are reasonable in the circumstances, his or her intention to cancel the contract.

(2) Subject to subsection (3), a cancellation of the contract may be communicated by words or conduct, or both, which indicate the intention of the consumer to cancel the contract, and it shall not be necessary to use any particular form of words, if the intention to cancel is clear.

(3) Where it is reasonably practicable to communicate with the supplier, subsection (2) shall take effect subject to any express provision in the contract requiring notice of cancellation to be in writing.

Chapter VII ***Right to Safety***

General safety requirements

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

- (a) supply any goods which fail to comply with general safety requirements;
- (b) offer or agree to supply any goods referred to in paragraph (a); or

- (c) expose or possess any goods referred to in paragraph (a).

(2) For the purposes of this section, goods fail to comply with the general safety requirements if the goods are not safe having regard to all the circumstances, including —

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

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

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

- (ii) any written law imposing such requirements with respect to that matter as are designated by any such law.

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

- (a) that the person reasonably believed that the goods would not be used or consumed in Seychelles; or
- (b) that both of the following conditions are satisfied —
 - (i) that the person supplied the goods, offered or agreed to supply them or exposed or possessed them for supply in the course of carrying on a retail business;
 - (ii) that, at the time the person supplied the goods or offered to supply them, the person neither knew nor had reasonable grounds for believing that the goods failed to comply with the general safety requirements.

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

- (a) whether or not they are acquired for a person's private use or consumption, they are supplied in the course of carrying on business of supplying goods to persons who generally acquired them for private use or consumption; and
- (b) the descriptions of goods that are supplied in the course of their business do not, to a significant extent, include manufactured or imported goods that have not previously been supplied in Seychelles.

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

101. Where a person supplies goods in contravention of section 100 by reason that the goods do not comply with the general safety requirements

and another person suffers loss or damage by reason of a defect in, or a dangerous characteristic of the goods, or by reason of not having particular information in relation to the goods and that other person would not have suffered loss or damage if the goods had complied with the general safety requirements, the first mentioned person shall be liable for the loss or damage caused to the other person.

Recovery and safe disposal of designated products or components

102.(1) If any written law prohibits the disposal or deposit of any particular goods, or any components, remnants, containers or packaging of any goods, into a common waste collection system —

- (a) any person who in the ordinary course of business supplies goods of that kind to consumers, shall accept the return of any such goods, components, remnants, containers or packaging from the consumer, without charge to the consumer, irrespective of whether that person supplied the particular object to that particular consumer; and
- (b) any person who in the ordinary course of business produces, imports or distributes any such goods as part of the supply chain by which the goods reach the consumer, shall in turn accept the return of any such goods, components, remnants, containers or packaging from any supplier contemplated in paragraph (a).

(2) If any regulation or industry waste management plan for the management of a specific waste type under any written law applies, the consumer may dispose of or deposit the goods at a collection facility provided for in the regulation or industry waste management plan.

Prohibition on the exclusion of liability

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

Chapter VIII
**Right to Fair Value, Good Quality and Safety for Performance of
Services and Supply of Goods**

Standards for performance of services

104.(1) Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall, having regard to the circumstances of the supply and any specific criteria or condition agreed between the supplier and the consumer before or during the performance of the service —

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

(2) Where a supplier fails to perform a service to the standard specified in subsection (1), the supplier shall —

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

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

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

(4) In subsection (1) (a), “timely manner” includes any express or implied time frame agreed upon or any reasonable time which can be imposed in the specific circumstances.

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

105.(1) Where a consumer or other person suffers any damage wholly or partly as a result of the failure of the supplier to perform a service to the standard specified in section 104(1), the supplier is liable to the consumer or other person for the damage.

(2) The liability of supplier under subsection (1) does not arise in the circumstances referred to in section 104(3).

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

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

Warranties

106.(1) Every consumer who acquires goods, otherwise than by way of sale by auction, has a right to receive goods that are of merchantable quality.

(2) For the purposes of subsection (1), goods shall be of merchantable quality, if such goods are —

- (a) safe;
- (b) reasonably suitable for the purpose for which they are generally intended;
- (c) reasonably suitable for the purpose the consumer made it known to the supplier the goods were required for;
- (d) of good quality, in good working order and free of any defects;
- (e) usable or durable for a reasonable period, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
- (f) if sold by sample, description or model match the sample, description or model.

(3) In determining whether the matters referred to in subsection (2) are applicable in respect of any particular goods, all the circumstances of the supply of the goods shall be taken into account, including —

- (a) the price and nature of the goods;
- (b) the manner in which and purposes for which the goods were marketed, packaged and displayed, their composition or structure, the use of any trade description or mark in relation to the goods and any instructions for, all warnings with respect to, doing or refraining from doing anything with or in relation to the goods;
- (c) what might reasonably be expected to be done with or in relation to the goods; and
- (d) the time when the goods were supplied.

(4) Notwithstanding any other laws, for greater certainty in applying subsection (3) —

- (a) it is irrelevant whether a product failure or defect was latent or apparent, or whether it could have been detected by a consumer before taking delivery of the goods; and
- (b) a product failure or defect may not be inferred in respect of particular goods solely on the grounds that better goods have subsequently become available from the same or any other producer or supplier.

(5) Warranties under this part shall not apply to a transaction if the consumer —

- (a) has been expressly informed that particular goods were offered in a specific condition; and
- (b) has expressly agreed to accept the goods in that condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

(6) Subsection (1) does not apply where the goods have been altered or tampered with contrary to any instructions after leaving the control of the supplier.

Warranty for unsuitable, defective and unsafe products

107.(1) In any transaction or agreement pertaining to the supply of goods to a consumer, there is an implied provision that the supplier warrants that the goods are in conformity with the requirements and standards specified under section 106(2), except to the extent that the goods have been altered or tampered with after leaving the control of the supplier.

(2) Where the goods are not in conformity with specified standards, the consumer may, within six months after delivery of the goods, return the goods to the supplier, without penalty and at the supplier's risk and expense, and the supplier shall refund to the consumer any costs associated with the use, installation or delivery of the goods, and at the direction of the consumer, —

- (a) unless it is impossible or disproportionate, the consumer may, in the first instance, require the supplier to repair the goods or else to replace them, in either case free of charge; or
- (b) refund the consumer the price paid for the goods within 48 hours of the return of the goods to the supplier.

(3) A remedy shall be deemed to be disproportionate if it imposes costs on the supplier which, in comparison with the alternative remedies available under this Part, are unreasonable, taking into account —

- (a) the value of the goods had there not been lack of conformity,
- (b) the significance of the lack of conformity, and
- (c) whether the alternative remedy could be completed without significant inconvenience to the consumer.

(4) If the consumer directs that the goods be repaired, the supplier shall —

- (a) evaluate and assess the repairs required and report to the consumer within 10 days on the nature, extent and costs; and
- (b) the repair shall be effected within 60 days, unless there are unavoidable circumstances beyond the control of the supplier.

(5) If the consumer directs that the goods be replaced, the supplier shall replace the goods within 3 days or such longer period as the parties agree among themselves.

(6) The consumer may require a refund of the price paid for the goods —

- (a) where the consumer cannot obtain either the remedy of repair or of replacement, or

- (b) if the supplier has not completed the remedy of repair or replacement within a reasonable time, or
- (c) if the supplier can only provide or complete the remedy of repair or replacement with significant inconvenience to the consumer.

(7) The consumer is not entitled to have a refund of the price if the lack of conformity is minor or insignificant.

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

- (a) replace the goods; or
- (b) refund to the consumer the price paid by the consumer for the goods, in accordance with subsections (5) and (6).

(9) The implied warranty and the right to return goods under this Section, —

- (a) are in addition to —
 - (i) any other warranty or condition specified by or under this Act; and
 - (ii) any express warranty or condition stipulated by the supplier; and
- (b) shall not be reduced by agreement between the supplier and the consumer.

Warranty on new or reconditioned parts installed during repairs or maintenance work

108.(1) A person who carries on any repair or maintenance work shall warrant any new or reconditioned part installed during the course of any

such work and the labour required to install it for a period of 6 months after the date of installation or such a longer period as the supplier may specify in writing.

- (2) A warranty under this section —
- (a) is concurrent with any other implied or express warranty;
 - (b) is void if the consumer has subjected the part or the goods or property in which it was installed to misuse or abuse; and
 - (c) does not apply to ordinary wear and tear, having regard the circumstances in which the goods are intended to ordinarily be used.

Liability for damage caused by unsafe, unsuitable and defective goods

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

- (a) any unsafe goods;
- (b) a product failure or defect, or a hazard in any goods; or
- (c) inadequate instructions or warnings provided to the consumer pertaining to any hazards arising from or associated with the use of any goods,

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

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

- (3) Subsection (1) applies to —

- (a) the producer of the goods;
- (b) any person who or which, by putting the person's name on the product or using a trademark or other distinguishing mark in relation to the goods, holds the person out to be the producer of the goods;
- (c) any person who always, in the course of the person's business, imports the goods into Seychelles to supply them to another person;
- (d) the retailer of the goods.

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

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

- (a) the unsafe product characteristic, failure, defect or hazard that causes the damage is attributable to compliance with —
 - (i) a requirement imposed by or under any written law; or
 - (ii) a mandatory standard for the product;
- (b) the alleged unsafe product characteristic, failure, defect or hazard did not exist in the goods at the time they were supplied by that person to another person alleged to be liable or to the person who suffered the damage;
- (c) the person did not at any time supply the product to another person;
- (d) the following conditions are satisfied, that is to say —
 - (i) that the only supplier of the product to another by the person was otherwise than in the course of business of the person;

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

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

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

- (a) from facts observable or ascertainable by the person; or
- (b) from facts ascertainable by the person with the help of appropriate expert advice which it is reasonable for the person to seek.

(10) A person shall not be presumed under this section to have knowledge of the fact ascertainable by the person only with the help of expert advice unless the person has failed to take all reasonable steps to obtain and, where appropriate, to act on that advice.

Unidentified manufacturer

110.(1) Where a person is liable under section 109, a person who supplies the goods which give rise to the liability, whether to the person who suffered the damage, to the producer of a product in which the goods in question are comprised, or to any other person, is liable for the damage, if—

- (a) the person who suffered the damage serves a written request to the supplier to identify —
 - (i) one or more of the persons, whether still in existence

or not, to whom section 109(3) applies, in relation to the goods; or

- (ii) the person who supplied the goods to the supplier on whom the request is served;
- (iii) that request is made within a reasonable time after the damage occurs; and
- (iv) the supplier fails, within 30 days after being served with the request, either to comply with the request or to identify the person who or which supplied the goods to the supplier.

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

Prohibition on the exclusion of liability

111. The liability of a person to another person who has suffered damage caused wholly or partly by unsuitable or defective products or to a dependant or relative of such a person shall not be limited or excluded by any contract term, notice or any other written law.

Chapter IX **Protection of Consumer's Rights**

Prohibition of notice to disclaim liability or right

112. A supplier of goods or a service shall not cause any sign or notice to be displayed that purports to disclaim any liability or deny any right that a consumer has under this Act or any other law.

Prohibition of supplier action against consumer for asserting rights

113.(1) If a consumer has exercised, asserted or sought to uphold any right under this Act or in a transaction or agreement with a supplier, the supplier shall not, in response —

- (a) discriminate, directly or indirectly, against that consumer, compared to the supplier's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right;
- (b) penalise the consumer;
- (c) alter, or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or
- (d) take any action to accelerate, enforce, suspend or terminate a transaction or agreement with the consumer.

(2) If an agreement or any provision of an agreement is declared to be void, or is severed from the agreement under this Act, the supplier who is a party to that agreement shall not, in response to that decision —

- (a) directly or indirectly, penalise another party to that agreement;
- (b) alter the terms or conditions of any other transaction or agreement with another party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
- (c) take any action to accelerate, enforce, suspend or terminate another agreement with another party to the impugned agreement.

Liability for contravening or conspiring to contravene the Act

114. A person who engages in conduct that constitutes —

- (a) a contravention of any of the provision of this Act;
- (b) the inducing by threats, promises or otherwise, of the contravention of any provision of this Act;

- (c) being knowingly concerned in or party to any contravention referred to in paragraph (a); or
- (d) conspiring with any other person to contravene any provision referred to in paragraph (a),

may be —

- (i) liable for any loss or damage caused to any other person by such conduct; and
- (ii) liable to be declared in contravention of this Act and liable to a financial penalty.

Prohibition and warning notices

115.(1) The Commission may —

- (a) serve on any person a notice prohibiting that person from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, any goods which the Commission considers are unsafe and which are described in the notice;
- (b) serve on any person a notice requiring that person at the person's own expense to publish, in a form and manner and on occasions specified in the notice, a warning about goods which the Commission considers are unsafe, being goods which that person supplies or has supplied, and which are described in the notice.

(2) Any regulations made under section 142 may make provision with respect to prohibition notices and warning notices and may prescribe the manner in which information may be given to any person.

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

(4) Where a notice is in force in relation to a person, the person —

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

- (b) shall not, in trade or commerce —
 - (i) where the notice specifies a defect in, or a dangerous characteristic of, the goods, supply goods of the kind to which the notice relates which have that defect or characteristic;
 - (ii) in any other case, supply goods of the kind to which the notice relates.

Notice to produce information

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

- (a) a prohibition notice needs to be served, varied or revoked;
or
- (b) a warning notice needs to be served or revoked,

the Commission needs information which another person is able to furnish, it may issue to that person a notice to furnish such information.

- (2) A notice issued under subsection (1) may require a person —
 - (a) to furnish to the Commission, within a period specified in the notice, such information as specified in the notice;
 - (b) to produce such records as specified in the notice at a time and place specified, and to permit a person appointed by the Commission for the purpose to take copies of the records at that time and place.

Compulsory recall of goods

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

- (a) it appears to the Commission that the goods are of a kind which will or may cause injury to any person;

- (b) the goods are of a kind in respect of which there are standards referred to in section 100(2) (b) and (c) and the goods do not comply with those standards; or
- (c) the goods are of a kind in relation to which there is in force a notice under section 115(1) (a) and (b) and it appears to the Commission that the supplier has not taken satisfactory action to prevent the goods causing injury to any person,

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

- (i) take action within the period specified in the notice to recall the goods;
- (ii) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following —
 - (A) the nature of a defect in, or a dangerous characteristic of, the goods specified in the notice;
 - (B) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous;
 - (C) procedures for disposing of the goods specified in the notice;
- (iii) inform the public, or a class of persons specified in the notice, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate —
 - (A) repair the goods, except where the notice specifies a dangerous characteristic of the goods;

- (B) replace the goods;
- (C) refund to the person to whom the goods were supplied, whether by the supplier or by another person, the price of the goods, within the period specified in the notice.

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

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

Compliance programme

118.(1) The Commission may agree with a person on a compliance program as a self-monitoring system of checks and balances relating to its business activities to ensure that such person consistently complies with this Act and other laws.

Compliance notice

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

(2) The Commission may, before issuing a compliance notice under subsection (1), to a regulated entity, consult the regulatory authority that issued a licence to that regulated entity.

(3) A compliance notice issued under subsection (1) shall specify —

- (a) the person to whom the notice applies;
 - (b) the provision of this Act that has been contravened;
 - (c) details and extent of the non-compliance;
 - (d) any action that is required to be taken and the period within which that action should be taken; and
 - (e) any penalty that may be imposed under this Act if that action is not taken.
- (4) A compliance notice issued under subsection (1) remains in force until —
- (a) it is set aside by the Tribunal; or
 - (b) the Commission issues a compliance certificate in accordance with subsection (5).
- (5) If the requirements of a compliance notice issued under subsection (1) have been satisfied, the Commission shall issue a compliance certificate.

Compulsory compliance with notices

- 120.** Where a notice is in force in relation to a person, the person —
- (a) shall comply with the requirements and directions in the notice; and
 - (b) shall not, in trade or commerce —
 - (i) where the notice specifies a defect in, or a dangerous characteristic of, the goods, supply goods of the kind to which the notice relates which have that defect or characteristic;
 - (ii) in any other case, supply goods of the kind to which the notice relates.

Liability for loss or damage due to non-compliance

121. Where a person contravenes section 119 or section 120 by —

- (a) supplying goods of a kind in relation to which a notice under section 119 or section 120 is in force; or
- (b) failing to comply with the requirements of such a notice,

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

Voluntary recall

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

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

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

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

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

Liability of insurer in certain cases

123.(1) The liability of an insurer under a contract of insurance with a person, being a contract relating to —

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

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

(2) The Commission may accept an undertaking given by a person for the purposes of this section in accordance with section 61.

(3) A person who gives an undertaking under subsection (2) may apply to the Tribunal to withdraw or vary the undertaking, after giving the Commission notice to do so.

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

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

Review of notices by Tribunal

124.(1) A person issued with a notice by the Commission under this Act may apply to the Tribunal in the prescribed manner and form to review the notice within 20 days of receiving it , or such longer period as may be allowed by the Tribunal on good cause shown.

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

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

PART V FAIR COMPETITION

Abuse of a dominant position

125.(1) An enterprise holds a dominant position in a market if —

- (a) by itself or together with an interconnected enterprise, or any other enterprise, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors; or
- (b) in the opinion of the Commission —
 - (A) it holds a substantial share of that market; or
 - (B) it hold a substantial share of that market but has market power.

(2) For the purposes of subsection (1), any two enterprises shall be treated as interconnected enterprises, if one of them is a subsidiary of the other or both of them are subsidiaries of the same parent enterprise.

(3) For the purposes of determining market power referred to in

subsection (1) (b) (B), a market analysis has to be conducted, taking into account the following factors, amongst others —

- (a) the ability of the enterprise to restrict a potential competitor from entering the market;
 - (b) the financial position of the enterprise;
 - (c) the existence of countervailing buyer power; and
 - (d) the existence of barriers to entry or expansion into the market;
 - (e) beneficial ownership.
- (4) Abuse of a dominant position includes —
- (a) directly or indirectly, imposing unfair purchase or selling prices or other unfair trading conditions;
 - (b) limiting or restricting production, market access, investment, technical development or technological progress;
 - (c) applying dissimilar conditions to equivalent transactions with other trading parties;
 - (d) making the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject-matter of the contracts;
 - (e) exclusive dealing;
 - (f) refusing to give a competitor access to an essential facility when it is economically feasible to do so;
 - (g) tied selling;
 - (h) bundling.

(5) An enterprise is not to be treated as abusing a dominant position —

- (a) if it is shown that its behaviour was exclusively directed to improving the production or distribution of goods or promoting technical or economic progress, and consumers were allowed a fair share of the resulting benefit;
- (b) if the effect or likely effect of its behaviour in a market is the result of its superior competitive performance; or
- (c) by reason only that the enterprise enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trademark except where the exercise of those rights —
 - (i) has the effect of lessening competition substantially in a market; and
 - (ii) impedes the transfer and dissemination of technology.

(6) In this section —

- (a) “essential facility” means an infrastructure or resource that cannot reasonably be duplicated, and without access to which competitors cannot reasonably provide any goods or service to their customers;
- (b) “market power” means the power of an enterprise to control prices, output or terms of trading, to exclude competition or to behave to an appreciable extent independently of its competitors, consumers or suppliers, over a period of time.

Restrictive horizontal practices

126.(1) An agreement between, or decision or concerted practice by, enterprises in a horizontal relationship, or an association of enterprises, in the same market is prohibited —

- (a) if it involves any of the following practices —

- (i) directly or indirectly fixing a purchase or selling price or any other trading condition;
 - (ii) dividing markets by allocating customers, suppliers, territories, or specific types of goods or services;
 - (iii) collusive tendering or bid rigging;
 - (iv) limiting or controlling production, market outlets or access, technical development or investment; or
- (b) if it has the object or effect of preventing, restricting or distorting competition in a market, unless a party to the agreement, decision or concerted practice can prove that any technological, efficiency, or other pro-competitive or public interest gain resulting from it outweighs that effect.

(2) It is presumed that an agreement or a concerted practice of the nature prohibited under subsection (1) exists between two or more enterprises, if —

- (a) any one of those enterprises owns a significant interest in the other, or they have at least one director or substantial shareholder in common; and
- (b) any combination of those enterprises engages in that restrictive horizontal practice.

(3) The presumption created by subsection (2) may be rebutted if an enterprise or a director or shareholder concerned establishes that a reasonable basis exists to conclude that any practice in which any of the enterprises engaged in was a normal commercial response to conditions prevailing in the market.

(4) Notwithstanding subsections (2) and (3), subsection (1) does not apply in respect of an agreement or a concerted practice engaged in by —

- (a) an enterprise and its wholly owned subsidiary or a wholly owned subsidiary of that subsidiary enterprise; or

- (b) the constituent enterprises within a single economic entity similar in structure to those referred to in paragraph (a).
- (5) In this section —
- (a) “concerted practice” means co-operative or coordinated conduct between enterprises, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement;
 - (b) “horizontal relationship” means a relationship between enterprises each of which operates at the same level of the market in the provision of goods or services and would ordinarily be actual or potential competitors in that market.

Restrictive vertical practices

127.(1) An agreement, decision or concerted practice by enterprises in a vertical relationship is prohibited if it has the object or effect of preventing, restricting or distorting competition in a market.

(2) Subsection (1) shall not apply if a party to the agreement can prove any technological, efficiency or other pro-competitive gain resulting from that agreement outweighs that effect.

(3) The practice of minimum resale price maintenance is prohibited.

(4) The practice of maximum resale price maintenance is prohibited.

(5) Notwithstanding subsections (3) and (4), a supplier or producer may recommend a minimum and or a maximum resale price to the reseller of goods or a service provided —

- (a) the supplier or producer makes it clear to the reseller that the recommendation is not binding; and
- (b) if the product has its price stated on it, the words “recommended price” appear next to the stated price.

(6) In this section —

- (a) “concerted practice” means co-operative or coordinated conduct between enterprises achieved through direct or indirect contact that replaces their independent action, but which does not amount to an agreement;
- (b) “vertical relationship” means a relationship between enterprises each of which operates at a different level of the production or distribution chain and relates to the conditions under which the parties may purchase, sell or resell certain goods;

Grant of authorisation

128.(1) Notwithstanding this Part, an enterprise that proposes to enter into or carry out an agreement or to engage a business practice which, in its opinion, is an agreement or practice affected or prohibited by this Part, may apply to the Commission for an authorisation to do so.

(2) An application under subsection (1) shall be made in the prescribed form and manner and accompanied with such information as may be prescribed or as the Commission may reasonably require.

(3) The Commission, upon receipt of an application under subsection (1), where it is satisfied that the agreement or practice is likely to promote the public benefit and is reasonable in the circumstances, shall recommend to the Tribunal to grant an authorisation.

(4) The Tribunal may grant an authorisation, subject to such terms and conditions as the Tribunal considers fit and for such time as it may specify.

(5) The Tribunal shall, before granting or refusing an authorisation, give a notice to the interested persons to submit, within 30 days of the notice, any written representations on the application for an authorisation.

(6) The Tribunal may grant an authorisation only if any restriction imposed on the enterprises concerned by the agreement, decision or practice

concerned or category of agreements, decisions or practices concerned, contributes to or results in or will be likely to contribute to or result in —

- (a) the maintenance or promotion of exports;
- (b) the promotion or the ability of small businesses or enterprises to become competitive;
- (c) the change in productive capacity necessary to stop decline in an industry;
- (d) the technical or economic progress or stability of any industry designated by the Minister, after consulting the Minister responsible for that industry; or
- (e) obtaining a benefit for the public which outweighs or would outweigh the prevention, restriction or distortion of competition that would result, or would be likely to result, from the agreement, decision or practice or the category of agreements, decisions or practices.

(7) While the authorisation granted under subsection (4) remains in force, nothing in this Part shall prevent the applicant from giving effect to any provision of an agreement, or from engaging in any practice to which the authorisation relates.

Register of authorisations

129.(1) The Commission shall keep or cause to be kept, in such form as it may determine, a Register of Authorisations granted under this Part.

(2) The Register of Authorisations shall be kept at the office of the Commission and shall be available for inspection by any person during the hours of business of the Commission.

Revocation or amendment of authorisation

130.(1) Subject to subsection (2), the Tribunal may —

- (a) revoke an authorisation where it is satisfied that —

- (i) the authorisation was granted on information that was false or misleading;
 - (ii) there has been a breach of any terms or conditions, subject to which the authorisation was granted; or
 - (iii) the circumstances that justified the grant of the authorisation no longer exist; or
- (b) amend the authorisation where it is satisfied that the current conditions in the market necessitate an amendment.

(2) The Tribunal shall, before revoking or amending an authorisation —

- (a) serve on the applicant a notice in writing specifying the reason for the proposed revocation or amendment; and
- (b) inform the applicant of its right to apply to it to be heard on the matter within such time as may be specified in the notice.

Merger defined

131.(1) For purposes of this Part, “merger” means the acquisition or establishment, direct or indirect, by one or more enterprises, or persons, whether by —

- (a) sale or purchase of shares or assets;
- (b) sale or purchase of shares or assets in exchange of shares in the merged enterprise;
- (c) lease of assets;
- (d) amalgamation or combination or otherwise,

of control over the whole or a part of the business of an immediate competitor, supplier, consumer or other enterprise.

- (2) A person controls an enterprise, if the person —
- (a) beneficially owns more than one-half of the issued share capital of the enterprise;
 - (b) is entitled to vote a majority of the votes that may be cast at a general meeting of the enterprise, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;
 - (c) is able to appoint or to veto the appointment of a majority of the directors of the enterprise;
 - (d) is a parent company, and the enterprise is a subsidiary of that company under the International Business Companies Act (Cap 274) or the Companies Act (Cap 40);
 - (e) has the ability to materially influence the policy of the enterprise in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (d).

(3) A merger shall not be effected, unless it is approved by the Tribunal on the recommendation of the Commission.

Thresholds and categories of mergers

132.(1) For purposes of this Part, a merger or proposed merger shall be determined with a value of combined annual turnover or assets in accordance with subsection (3).

(2) The proposed merger shall have a minimum trading activity in Seychelles.

(3) The Minister, in consultation with the Commission, shall prescribe —

- (a) a minimum threshold of combined annual turnover or assets, in Seychelles, in general or in relation to specific

industries, for the purposes of determining categories of mergers under subsection (1); and

(b) a method for the calculation of annual turnover or assets to be applied in relation to each of those thresholds.

(4) The Minister shall, before prescribing anything under subsection (3), in consultation with the Commission, publish in the Gazette a notice setting out the proposed threshold and method of calculation for purposes of this section.

Application to Commission for merger

133.(1) Where an enterprise is desirous of effecting a merger, it shall make an application to the Commission.

(2) An application under subsection (1) shall be made in the prescribed form, upon payment of the prescribed fee and accompanied with the prescribed information and document.

(3) If the application does not satisfy subsection (2) —

(a) the Commission may notify the applicant and the other parties of the defect requiring the applicant to complete the application within such period as may permit; and

(b) the applicant shall within the period permitted under paragraph (a), complete the application and, if required to do so, furnish additional documents or information to the Commission and the parties.

(4) The application shall lapse if the applicant fails to take required steps within the time permitted under subsection (3) (b).

(5) The Commission shall make a determination on the application within 120 days and make a recommendation to the Tribunal.

(6) The period referred to in subsection (5) may be extended for such longer period as the Tribunal may consider appropriate.

(7) Subsection (1) shall apply to any public bid for the control of an enterprise.

Conditions for merger

134.(1) A merger shall not be permitted, unless the parties to the proposed merger demonstrate that if the merger was not permitted it is not likely that the relevant efficiency gains would be realised by means that would limit competition to a lesser degree than the merger.

- (2) A merger may be permitted, if the parties establish that —
- (a) the merger is likely to bring about gains in real as distinct from pecuniary efficiencies that are greater than or more than offset the effects of any limitation on competition that result or are likely to result from the merger; or
 - (b) one of the parties to the merger is faced with actual or imminent financial failure, and the merger represents the least anti-competitive among the known alternative uses for the assets of the failing business.

Factors to be considered in determining merger

135.(1) In determining whether to permit the merger, the following shall be taken into consideration —

- (a) the structure of the market likely to be affected by the proposed merger;
- (b) the degree of control exercised by the enterprises concerned in the proposed merger in the market, and particularly the economic and financial power of the enterprises;
- (c) the availability of alternatives to the services or goods supplied by the enterprises concerned in the merger;
- (d) the likely effect of the proposed merger on consumers and the economy;

- (e) the actual or potential competition from other enterprises and the likelihood of detriment to competition;
- (f) the actual and potential level of import competition in the market;
- (g) the ease of entry into market, including tariff and regulatory requirements;
- (h) the level, trend of concentration and history of collusion in the market and the degree of countervailing power in the market;
- (i) the likelihood that the acquisition would result in the parties to the merger having market power;
- (j) the dynamic characteristics of the market, including growth, innovation and product differentiation;
- (k) the nature and extent of vertical integration in the market;
- (l) whether the business or part of the business of a party to the merger has failed or likely to fail;
- (m) whether the merger will result in the removal of efficient competition.

Determination of proposed merger

136.(1) The Commission, in relation to a proposed merger, may recommend to the Tribunal —

- (a) to permit the proposed merger, without conditions or subject to such conditions as the Commission considers appropriate; or
- (b) to prohibit the proposed merger.

(2) Where conditions are proposed by the Commission under subsection (1) (a), it may contain such directions as the Commission

considers necessary, reasonable and practicable to remedy, mitigate or prevent any adverse competition effects of the merger.

(3) The conditions of the merger under subsection (2), may, *inter alia*, require an enterprise or enterprises to —

- (a) divest such assets as are specified in the direction within a period also so specified; or
- (b) adopt, or desist from, such conduct in relation to prices, as is specified in the direction, before the merger can be completed or implemented.

(4) The Commission, while making a recommendation under this section, shall —

- (a) give notice, in writing, of the recommendation and of any conditions in relation to a merger to the parties involved in the proposed merger; and
- (b) issue written reasons —
 - (i) if it recommends the prohibition of the proposed merger; or
 - (ii) if it is requested to do so by any person.

(5) The Tribunal, on receipt of the recommendation by the Commission and after hearing the parties or such other persons as it may consider necessary, may —

- (a) accept the recommendation with or without modification as it may consider appropriate and permit the merger; or
- (b) make such order as it may consider appropriate.

(6) Any merger not permitted by the Tribunal shall have no legal effect and no right or obligation imposed on the parties to the merger shall be enforceable.

Consideration upon finding of adverse effects on competition

137.(1) Where the Commission is satisfied that there are adverse or unfair effects on competition in a particular case, it shall, before determining any matter in this Part, consider —

- (a) if any of the offsetting public benefits specified in subsection (2) are present; and
- (b) whether and to what extent the benefits, if they are present, should be taken into account in determining the matter.

(2) A benefit shall be considered for the purposes of subsection (1) if it is shown that the effects of any absence, prevention, restriction or distortion of competition are outweighed by specific gains of —

- (a) the safety of goods and services;
- (b) the efficiency with which goods are produced, supplied or distributed or services are supplied or made available;
- (c) the development and use of new and improved goods and services, and in the means of production and distribution; or
- (d) the promotion of technological and economic progress,

and the benefits have been or are likely to be shared by the consumers and businesses in general.

**PART VI
MARKET INQUIRIES****Market inquiry**

138.(1) The Commission may make a market inquiry for the purpose of determining —

- (a) whether any conduct by one or more enterprises in the market has the effect of preventing, restricting or distorting competition or any market failure is affecting consumers;

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- (b) appropriate remedies to restore effective competition in the market; and
 - (c) appropriate remedies to safeguard the interest of consumers in the market;
- (2) The Commission may initiate a market inquiry if —
- (a) the Commission on reasonable grounds suspects that a prevention, restriction or distortion of competition is occurring;
 - (b) the Commission on reasonable grounds suspects that a market failure affecting consumers is occurring;
 - (c) a complaint has been lodged with the Commission by any person;
 - (d) the Minister requests the market inquiry in writing;
 - (e) the outcome of any research, investigation or a merger evaluation points to any possible anti-competitive practice in a particular market or markets; or
 - (f) a market inquiry undertaken in another jurisdiction leads to the need for a similar inquiry in Seychelles.
- (3) The Commission, in initiating a market inquiry, may publish a notice to specify —
- (a) the purpose of the inquiry;
 - (b) the terms of reference of the inquiry;
 - (c) the duration of the inquiry;
 - (d) the manner of making submissions to the inquiry;
 - (e) the matters that the Commission wishes submissions regarding the inquiry to deal with; and
 - (f) the date of publication of the final report regarding the inquiry.

(4) The Commission may conduct the market inquiry in any manner it considers appropriate, subject to the provisions of this Act.

(5) In conducting the inquiry under this section, the Commission may —

- (a) convene and hold public hearings;
- (b) request persons to appear before the Commission and answer questions, give evidence or produce information;
- (c) summon any person who fails to appear before the Commission pursuant to a request under paragraph (b).

(6) At the end of a market inquiry, the Commission shall publish the final report of the market inquiry.

(7) Subsequent to publishing the final report of the market inquiry under subsection (1), the Commission may —

- (a) accept a written undertaking in connection with a matter under this Act, given by a person to ensure compliance with this Act or any other written law;
- (b) initiate a formal investigation against any contravention reported in the market inquiry;
- (c) make recommendations to a regulatory authority in relation to any consumer or competition matter;
- (d) make such recommendations to the Government relating to any policy or legislation as it may consider necessary; or
- (e) take appropriate remedial measures as may be considered necessary.

PART VII OFFENCES AND PENALTIES

Offences and penalties

139.(1) A person who —

- (a) without reasonable excuse, fails to attend the Tribunal when summoned or required by the Tribunal;
- (b) without reasonable excuse, fails to produce a document when required to do so by the Tribunal;
- (c) disrupts or interrupts, or misbehaves in course of the proceedings of the Tribunal;
- (d) insults or otherwise threatens a member of the Tribunal in the performance of the member's functions;
- (e) fails or refuses to comply with an order, direction or undertaking of the Commission;
- (f) fails or refuses to comply with a non-monetary order or direction of the Tribunal,

commits an offence and shall, on conviction, be liable —

- (i) where the person is an individual, to a fine of level 6 on the standard scale or to imprisonment for a term not exceeding 2 years, or to both such of and imprisonment;
- (ii) where the person is other than an individual, to a fine of level 7 on the standard scale.

(2) A person who —

- (a) impedes, prevents or obstructs any investigation, inspection by the Commission or any authorised officer in the execution of an inquiry;
- (b) attempts to bribe or bribes any officer of the Commission;
- (c) obstructs the execution of a warrant issued under section 38(2);
- (d) destroys or alters any document which that person is required to produce to the Commission, or causes such document to be destroyed or altered;

- (e) refuses or fails to comply with a notice, summon, direction or order of the Commission,

commits an offence and shall be liable on conviction —

- (i) where the person is an individual, to a fine of level 6 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment;
- (ii) where the person is other than individual, to a fine of level 7 on the standard scale.

(3) A person who gives to the Commission or an officer of the Commission any information which he or she knows to be false or misleading commits an offence and is liable on conviction to a fine of level 4 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

(4) Where the offence is committed by an enterprise or other entity, every director or officer of that enterprise or entity is severally liable on conviction to a fine of level 6 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment, unless the director or officer proves that he or she took all necessary and proper means to prevent the commission of such offence.

PART VIII MISCELLANEOUS

Application of Penal Code

140. The Chief Executive Officer, the Deputy Chief Executive Officer and other employees of the Commission shall be deemed to be employed in public service for the purposes of sections 91 to 96 of the Penal Code (Cap 158).

Protection of action taken in good faith

141. Any suit or other legal proceedings shall not lie against the Chief Executive Officer, Deputy Chief Executive Officer, officers and

employees of the Commission in respect of any action taken or an act done or omitted to be done in good faith in the performance of any functions under this Act.

Regulations

142.(1) The Minister may, in consultation with the Commission, make regulations consistent with this Act, for all matters which by or under this Act are required or necessary to be provided for in giving effect to the provisions of this Act.

(2) Regulations made under subsection (1) may provide for standards of goods imported into Seychelles.

(3) The regulations made under this Act may create offences and provide penalties therefor to a fine not exceeding that of level 6 on the standard scale or to imprisonment not exceeding 5 years or both a fine and imprisonment.

Repeal and savings

143.(1) The Consumer Protection Act (Cap 257), the Fair Competition Act (Cap 266) and the Fair Trading Commission Act (Cap 267) are hereby repealed.

(2) Notwithstanding such repeal —

- (a) any regulations made under the repealed Acts shall, in so far as not inconsistent with the provisions of this Act, be deemed to have been made under this Act and shall continue to be in force under this Act until amended or repealed under this Act;
- (b) any investigation, legal proceedings or penalty, forfeiture or punishment instituted or incurred in respect of a contravention or an offence committed under the repealed Acts, before the commencement of this Act, may be instituted or continued under the repealed Acts, as if this Act had not been enacted.

(3) Any matter filed under a repealed Act, on or before the commencement of this Act, and pending before —

- (a) the Board of Commissioners, appointed under section 5 of the Fair Trading Commission Act (Cap 267); or
- (b) the Appeals Tribunal, established under section 44 of the Fair Trading Commission Act (Cap 267),

shall be transferred to and deemed to have been transferred to the Tribunal established under this Act and the Tribunal shall, notwithstanding such repeal, have jurisdiction and decide the matter in accordance with the provisions of that Act as if that Act had not been repealed.

Transitional provisions

144.(1) On the commencement of this Act —

- (a) the Commissioner appointed as chief executive officer of the Fair Trading Commission under the Fair Trading Commission Act (Cap 267) shall be deemed to be the Chief Executive Officer of the Commission;
- (b) the Deputy Chief Executive Officer and other staff of the Fair Trading Commission, experts or advisors appointed under the Fair Trading Commission Act (Cap 267), shall be deemed to be the Deputy Chief Executive Officer and other staff of the Commission, experts or advisors, respectively,

appointed under this Act for the same term of appointment on the same terms and conditions of employment until they are amended, varied or repealed under this Act and the provisions of this Act shall apply as if they are appointed under this Act.

(2) On the commencement of this Act —

- (a) the Board of Commissioners appointed under section 5 of the Fair Trading Commission Act (Cap 267); and

- (b) the Appeals Tribunal, established under section 44 of the Fair Trading Commission Act (Cap 267),

shall stand dissolved and the Chairperson and other Commissioners of the Board of Commissioners and the Chairperson and members of the Appeals Tribunal shall vacate their offices as such and they shall not be entitled to claim any compensation for premature termination of the respective terms of their office or of any contract of service.

- (3) On the commencement of this Act —

- (a) the assets, rights and liabilities of the Fair Trading Commission under the Fair Trading Commission Act (Cap 267) shall be deemed to be the assets and liabilities of the Commission under this Act;
- (b) any contract or agreement executed by the Fair Trading Commission under the Fair Trading Commission Act (Cap 267) shall continue to have effect in accordance with its terms as if it was originally made and entered into by the Commission.

SCHEDULE

[Sections 64(1)(d) and (4) and 66]

CONTRACT TERMS DEEMED UNFAIR IF NOT INDIVIDUALLY NEGOTIATED

1. Any contract term that has the object or effect of —
- (a) Excluding or limiting the legal liability of a supplier resulting from an act or omission of that supplier, in respect of the quality of the product or service;
- (b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the supplier or another party in the event of total or partial non-performance or inadequate performance by the supplier of any of the contractual

obligations of the supplier, including the option of off-setting a debt owed to the supplier against any claim which the consumer may have against the supplier;

- (c) making an agreement binding on the consumer whereas provision of services by the supplier is subject to a condition the realization of which depends on the supplier's 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 the consumer fails to fulfil his or her 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 the supplier where it is the supplier who dissolves the contract;
- (g) enabling the supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious 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 or her desire not to extend the contract is unreasonably early;
- (i) irrevocably binding the consumer to terms with which the consumer had no real opportunity of becoming acquainted before the conclusion of the contract;
- (j) enabling the supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;

- (k) enabling the supplier to alter unilaterally 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 contract if the final price is too high in relation to the price agreed when the contract was concluded;
- (m) giving the supplier the right to determine whether the goods or services supplied by the supplier are in conformity with the contract, or giving the supplier the exclusive right to interpret any term of the contract;
- (n) limiting the supplier's obligation to respect commitments undertaken by the supplier's agents, or making the supplier's commitments subject to compliance with a particular formality;
- (o) obliging the consumer to fulfil all his or her obligations where the supplier does not perform his or her obligations;
- (p) giving the supplier the possibility of transferring the supplier's rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement; or
- (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to the consumer or imposing on the consumer a burden of proof which, according to the applicable law, should lie with another party to the contract.

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

that the supplier is required to inform the other contracting party or parties immediately.

3. Paragraph 1(g) 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(g) 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 the supplier is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

5. Paragraph 1(g), (j) and (l) does not apply to —

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

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

7. The terms referred to in paragraph 1(1) include terms which have the object or effect of —

- (a) excluding or limiting the liability of a supplier by reason of the supplier's own fraud or gross negligence or that of his or her employees or agents, or by reason of any failure to fulfil an obligation constituting one of the fundamental elements of the contract;

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- (b) establishing an unreasonably short period for notifying the supplier of any defects;
 - (c) excluding or limiting the legal rights of a consumer against the supplier in the event of total or partial non- performance or inadequate performance by the supplier of any of his or contractual obligations;
 - (d) prohibiting the consumer from offsetting a debt owed to the supplier against a claim which the consumer may have against the same supplier;
 - (e) making an agreement binding on the consumer whereas the provision of services or goods by the supplier is subject to a condition whose realisation depends solely on the will of the supplier;
 - (f) allowing the supplier to retain sums paid by the consumer if the consumer 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 supplier is the party cancelling the contract;
 - (g) requiring a consumer who fails to fulfil his or her obligation, to pay to the supplier as compensation a sum which is disproportionately high compared to the value of the goods or services purchased or hired;
 - (h) determining the compensation payable by a consumer who fails to fulfil his or her obligations, without providing for compensation of the same magnitude by the supplier who fails to fulfil his or hers;
 - (i) limiting the means of proof which the consumer can use;
 - (j) causing the consumer to waive any ground of claim against the supplier in the event of a dispute;
 - (k) prohibiting the consumer from seeking the cancellation of the contract if the supplier fails to fulfil his or her obligations;

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- (l) restricting the right of the consumer to cancel the contract if the supplier, in connection with any guarantee or warranty given, does not fulfil his or her obligation or fails to do so within a reasonable period;
 - (m) irrevocably binding the consumer to terms with which he or she had no real opportunity of becoming acquainted before the conclusion of the contract;
 - (n) enabling the supplier to alter the terms of a contract unilaterally, without a valid reason which is specified in the contract;
 - (o) enabling the supplier to alter unilaterally, without a valid reason, any characteristics of the product or service to be provided;
 - (p) providing for the price of goods to be determined at the time of delivery by the supplier or allowing the supplier to increase the price without in any case giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
 - (q) causing the price to vary by reference to factors depending only on the will of the supplier;
 - (r) giving the supplier the right unilaterally to determine whether the goods or services supplied are in conformity with the contract;
 - (s) giving the supplier the exclusive right to interpret any term of the contract;
 - (t) limiting or eliminating the obligation of the supplier to respect commitments undertaken by his or her agents or employees;
 - (u) obliging the consumer to fulfil his or her obligations where the supplier does not perform his or hers;

- (v) allowing the supplier the possibility of transferring all his or her rights and obligations under the contract where this may serve to reduce the supplier's obligations;
- (w) reducing the guarantees or warranties for the consumer, without the consent of the consumer;
- (x) providing for an immediate and final commitment by the consumer on signature of the contract, with the supplier contracting subject to a condition the fulfilment of which depends only on the will of the supplier;
- (y) permitting the supplier to establish or alter unilaterally the period for delivering goods or supplying a service;
- (z) excluding or limiting the legal liability of a supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that supplier;
- (aa) 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 or her where it is the supplier himself or herself who dissolves the contract;
- (bb) enabling the supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;
- (cc) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early;
- (dd) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes to arbitration not covered by legal provisions, unduly restricting the evidence available to him or her or imposing on him or her a burden of

proof which, according to the applicable law, should lie with another party to the contract.

8. Nothing in paragraphs 1 to 7 shall be construed as limiting or otherwise affecting prejudicially the generality of the provisions of section 66 of the Act.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 25th May, 2022.



Mrs. Tania Isaac
Clerk to the National Assembly