

CONSUMER PROTECTION ACT 1997
(Act No 4. 1997)

AN ACT to provide for the appointment of a Director of Consumer Protection and the establishment of a Consumer Protection Board, to specify their functions, to regulate trade practices, to ensure consumer rights, to impose duties on producers and suppliers of goods and to provide for matters connected therewith.

ENACTED by the President of the National Assembly –

1. This Act may be cited as the Consumer Protection Act, 1997 and shall come into operation on such date, as the Minister may, by notice publish in the Gazette, appoint

Short title
and
commencement

2. In this Act-

Interpretation

‘advertisement’ includes a catalogue, circular and a price list:

“Board’ means the Consumer Protection Board established under section 5

‘commercial activity’ means an activity for gain or reward in Seychelles relating to the production and supply of goods, supply of goods and supply of services and export of goods:

‘consumer’ means a person who is –

- a) a person to whom goods are or are sought to be supplied (whether by sale or otherwise) in the course of any commercial activity carried on by the person supplying or seeking to supply them; or
- b) a person for whom services are or are sought to be supplied in the course of a commercial activity carried on by the person supplying or seeking to supply them;

‘Director’ means the Director of Consumer Protection appointed under section 3

‘goods’ means all kinds of moveable property and includes ships, aircraft, vehicles, animals and plants;

‘practice’ means any practice which is for the time being carried on in connection with the supply of goods to consumers or in connection with the supply of services for consumers which relates to –

- a) the terms or conditions (whether as to price or otherwise) on or subject to which goods or services are or are sought to be supplied;
- b) the manner in which those terms or conditions are communicated to persons to whom goods are or are sought to be supplied or for whom services are or are sought to be supplied;
- c) promotion (by advertising, labeling or making of goods, canvassing or otherwise) of the supply of goods or the supply of services;
- d) methods of salesmanship employed in dealing with consumers;
- e) way in which goods are packed or otherwise got up for the purposes of being supplied;
- f) methods of demanding or securing payments for goods or services supplied

‘services’ does not include services under a contract of employment but includes services undertaken and performed for gain or reward in respect of any matter (whether professional or otherwise) other than supply of goods;

‘trade description’ means any description, statement or indication which directly or indirectly and by whatever means given, relates to any of the following matters –

- (a) quantity, length, width, height, area, volume, capacity or weight of any goods;
- (b) method of manufacture, production, processing or reconditioning of any goods;
- (c) composition of any goods;
- (d) fitness for purpose (including expiry date), strength, performance, behavior or accuracy of goods;
- (e) degree of fineness of gold and silver
- (f) physical characteristics of any goods not included in paragraphs (a) to (e)

- (g) testing of any goods by any person and the results thereof;
- (h) approval of any goods by any person or their conformity with a type approved by any person;
- (i) place date of manufacture, production, processing or reconditioning of any goods;
- (j) Person by whom any goods are manufactured produced, processed or reconditioned.
- (k) Other history, including previous ownership or use of any goods

3 (1) There shall be a Director of Consumer Protection who shall be appointed by the Minister for the purposes of performing the functions assigned to the Director by or under this Act

Director and staff

(2) The Director shall hold office for such term and on such conditions as may be determined by the Minister at the time of appointment and shall be eligible for reappointment

(3) The Director may appoint such staff as the Director may think fit subject to the approval of the Minister as to numbers and terms and conditions of service

4 The Director shall –

(a) keep under review the carrying of commercial activities in Seychelles which relate to goods supplied to consumers or produced with a view to being so supplied to consumers or produced with a view to being so supplied or which relate to services supplied for consumers in Seychelles and collect information with respect to such activities and the persons by whom they are carried on with a view to becoming aware of and ascertaining the circumstances relating to, practices which may adversely affect the economic interests of consumers in Seychelles;

Functions and
Director

(b) receive and collect evidence becoming available to the Director with respect to activities mentioned in paragraph (a) and which appears to the Director to be evidence of practices which may adversely affect the interests, whether economic or with respect to health, safety or other matter of consumers in Seychelles;

(c) Refer to the Board for investigation, within such time as may be specified by the Director; practices or complaints received against practices referred to in paragraph (b);

(d) Provide information and assistance to the Board with respect to any of the matters referred to the Board under paragraph (c)

(e) Take such action on the findings of the Board which in the opinion of the Director would be expedient to be taken in the interests of the Consumers.

(2) The Director may-

- (a) require any person carrying on a commercial activity to supply free of charge to the Director samples of the goods relating to the activity for the purpose of testing and any information relating to those goods;
- (b) require any person carrying on a commercial activity to produce books or documents relating to the activity for inspection and to permit the Director or any person authorized by the Director to take copies or extracts there from;
- (c) inspect any goods and for that purpose enter any premises;
- (d) where the Director has reasonable grounds to believe that an offence under this Act has been committed, seize and detain, with notice to the person in whose possession the goods are found, any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed.

(3) The Director may delegate any of the Director's functions and powers under subsections (1) and (2) to any members of the staff of the Director.

(4) Where the Director is satisfied that any person has committed an offence under this Act and if that person admits the commission of the offence and agrees in writing to its being dealt with under this subsection, the Director may compound the offence by accepting a sum not exceeding R5,000

(5) Any sum accepted under subsection (4) shall be paid into the Consolidated Fund.

(6) In any proceedings brought against a person for an offence under this Act, it shall be a defense if the person proves that the offence has been compounded under subsection (4)

5. (1) There is hereby established a Consumer Protection Board.

Consumer
Protection Board

(2) The Board shall consist of the following members-

- (a) three members, representing consumers of goods and services and any organizations of consumers of goods and services, appointed by Minister
- (b) three members, who in the opinion of the Minister are qualified to advise on practices relating to goods supplied to consumers or produced with a view of being so supplied or relating to services supplied for consumers appointed by the Minister;

Cap.212

(c) a member of the staff of the Seychelles Bureau of Standards established by the Seychelles Bureau of Standards Act who shall be nominated by the Director General of the Bureau and appointed by the Minister.

(3) The members, other than the member appointed under subsection 2(c), shall hold office for such period as may be determined by the Minister at the time of appointment and shall be eligible for reappointment.

(4) The Minister shall appoint a member to be the Chairman of the Board.

(5) The Chairman of the Board and in the absence of the Chairman a member appointed by the Minister shall preside at meetings of Board.

(6) Four members shall constitute a quorum for any meetings of the Board;

(7) Subject to sub-regulations (5) and (6) the Board shall regulate its own proceedings.

(8) The members of the Board shall be paid such allowances as the Minister may determine.

(9) The Minister may provide the Board with the necessary staff, office accommodation and other equipment required for the performance of its functions.

6. (1) The Board shall investigate into any complaints referred to it by the Director under section 4 (1)(c) and make its recommendation to the Director within the time specified in the reference.

Functions of
the Board

(2) The Board may-

(a) promote and support the dissemination of consumer education and information in conjunction with consumer organizations;

(b) provide advice to consumers on their rights and responsibilities and conduct or commission research on consumer issues;

(c) create or facilitate the establishment of conflict resolution mechanism on consumer issues;

(d) Formulate and submit to the Minister policy and legislative proposals in the interests of consumers;

(e) encourage the development of organization and associations establishment for the purpose of furthering the interests of consumers and liaise and consult with them on the development of appropriate consumer policies.

(f) liaise with consumer organizations outside Seychelles with a view to exchanging information on consumer issues;

(g) do such other things necessary, expedient or convenient for or in connection with the performance of its functions.

(3) In carrying out an investigation under subsection (1) the Board –

(a) shall take into consideration any representations made to the Board by persons appearing to the Board to have a substantial interest in the subject matter of the investigation;

(b) unless the Board considers it not reasonably necessary or not reasonably practicable to do so, shall permit any such person to be heard orally,

And subject to paragraphs (a) and (b), may determine its own procedure for carrying out the investigation.

7. (1) where on the recommendation of the Board pursuant to a reference made to it under section 4(1)(c), the Director is satisfied that the practice referred to is detrimental to the interests of consumers whether those interests are economic interests or interests in respect of health, safety or other matters, the Director shall use the Director's best endeavors by communicating with written assurance that the person will refrain from continuing the practice and from engaging in a similar practice in the course of the persons commercial activities or will compensate any consumer affected by such practice.

Enforcement of
recommendation

(2) where the Director is unable to obtain a written assurance referred to in subsection (1) or where an assurance has been given and the person giving the assurance has failed to observe it, the Director shall in writing direct the person to refrain from continuing the practice or to compensate the consumer affected by the practice.

(3) A person who without reasonable cause fails to comply with a direction given under subsection (2) is guilty of an offence and liable on conviction to a fine of R5000

8. (1) Any person who in the course of a commercial activity carried on by the person –

False trade
description

(a) supplied a false trade description to any goods; or

(b) supplies any goods to which a false trade description is applied,

guilty of an offence and liable on conviction to a fine of R5000.

(2) For the purposes of subsection (1) –

(a) a false trade description means a trade description which by reason of anything contained therein or omitted therefrom is false or likely to mislead

in a material respect as regards to goods to which it is applied or in connection with which it is used and includes every alteration of a trade description whether by way of addition, effacement or otherwise which makes the description false or likely to mislead in a material respect; and

(b) a false indication or anything likely to be taken as an indication which would be false, that any goods comply with a standard specified or recognized by any person or implied by the approval of any person shall be deemed to be a false trade description, if there is no such person or no standard as specified, recognized and implied.

(3) A person applies a trade description to goods if the person –

- (a) affixes or annexes it to or in a manner marks it on or incorporates it with –
 - (i) the goods themselves;
 - (ii) anything in, on or with which the goods are supplied;
- (b) places the goods in, on or with anything to which the trade description has been affixed or annexed, or incorporate with or places any such thing with the goods.

(4) Where goods are supplied in pursuance of a request in which the trade description is used and the circumstances are such as to make it reasonable to infer that the goods are supplied as goods correspondence to that description, the person supplying the good shall be deemed to have applied that trade description to the goods.

9 (1) Where any person in the course of any commercial activity gives by whatever means any false indication direct or indirect that any goods supplied by the person or any method adopted by the person are or are of a kind supplied to or approved by any person including the government or government department or agency or any international body or agency within Seychelles or outside, the first mentioned person is guilty of an offence and liable on conviction to a fine of R5000.

False representation as to supply or approval of goods

(2) Subsection (1) shall have effect without prejudice to any written law prohibiting or restricting the use of any name, emblem, insignia, seal, flag, pennants, title, coat of arms, sign, words or letters or any other form of description.

10. (1) In any proceedings for an offence under section 8 or section 9, it shall, subject to subsection (2), be a defence for the person charged –

defenses

- (a) that the commission of the offence was due to a mistake on that person's part or to reliance of information supplied to the person, or to the act or default of another person or an accident or some other cause beyond the person's control; and
- (b) that person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the person or any person under the control of the first-mentioned person.

(2) Where in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to the act or default of any other person or to reliance on information supplied by any other person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 14 days before the hearing, the person charged has served on the prosecutor a notice in writing giving such information as was then in that person's possession identifying or assisting in the identification of that other person.

(3) In any proceedings for an offence, under section 8 or section 9, of supplying goods to which a false trade description is applied, it shall be a defence for the person charged to prove that the person did not know, and could not with reasonable diligence have ascertained, that the goods did not conform to the description or that the identification had been applied to the goods.

(4) In any proceedings for an offence, under section 8 or section 9, by the use of a false trade description in an advertisement, it shall be a defence for the person charged to prove that the person is a person whose business is to publish or arrange for the publication of advertisements and that the person received the advertisement for publication in the ordinary course of business and did not know or had no reason to suspect that its publication would amount to that offence.

11. (1) It shall be the duty of every producer of goods produced for supply of consumers-

Duties of
producers of
goods

- (a) to ensure that the goods meet reasonable demands of durability, utility and reliability and are suitable for the purposes for which they are intended and conform to prescribed national or international standards;
- (b) where the goods may be harmful or hazardous to human health, to incorporate with the trade description in relation to those goods clearly legible warnings so that they may be used under the highest possible safety conditions;

- (c) where the producer becomes aware of the existence of any unforeseen health hazards or risks after release into the market of goods referred to in paragraph (b), to communicate such existence to the Director as soon as practicable and take such measures as the Director may consider to be necessary to give publicity to existence of such hazards or risks;
- (d) to take measures to withdraw the goods referred to in paragraph (c) from the market and repurchase those goods.

(2) Any producer of goods who fails without reasonable cause to discharge a duty imposed on the producer under subsection (1) is guilty of an offence and liable on conviction to a fine of R5000.

12. It shall be the duty of every supplier of goods-

Duties of
suppliers of
goods

- (a) to ensure that goods that are sought to be supplied to consumers are handled or stored in such a manner as not to render them unsafe for use or consumption by improper handling or storage;
- (b) where any goods are rendered unsafe for use or consumption by handling or storage or by expiration of the date marked thereon for sale or consumption, to withdraw them from the market.
- (c) where any goods referred to in paragraph (b) are supplied to a consumer, to replace them with goods safe for use or consumption or to refund the consumer the value of those goods.

(2) any supplier of goods who fails without reasonable cause, to discharge any duty imposed on the supplier under subsection (1) is guilty of an offence and liable on conviction to a fine of R5000

13. A person who –

Obstruction of
officers

- (a) obstructs the Director or any person authorized by the Director in the performance of functions under this Act;
- (b) fails to comply with any requirements under section 4(2)
- (c) in any information supplied, supplies information which to the person's knowledge is false or misleading.

Is guilty of an offence and liable on conviction to a fine of R5000

14. Where any goods are submitted to a test under this Act –

Results of tests
and notification

- (a) in the case of goods seized under the Act, the Director shall inform the person from whose possession they were seized the result of the test
- (b) in the case of goods supplied or purchased and the test leads to the institution of proceedings for an offence under this Act, the Director shall inform the person who had supplied the goods from whom the goods were purchased the results of the test,

And shall, where as a result of the test proceedings for an offence under this Act are instituted, allow the person charged to have the goods tested on that person's behalf if reasonable practicable to do so.

15. (1) where any person is convicted of an offence relating to goods under this Act, the court shall forfeit any goods seized in connection with that offence.

Forfeiture of
goods on
conviction

(2) Goods forfeited under subsection (1) shall be delivered to the Director and shall be disposed of in accordance with the directions of the Minister

16 (1) where any goods have been seized under this Act, and if a prosecution in relation to those goods has not been instituted within 30 days after the seizure, the goods seized shall, subject to subsection (2), be released to the person from whom they were seized

Release and
disposal of seized
goods

(2) where goods seized under this Act are of perishable nature or where the custody of the goods involves unreasonable expense and inconvenience, the goods may be disposed of in such manner as the Director thinks fit and –

(a) where no prosecution has been instituted in relation to those goods within 30 days after the seizure, the Director shall pay to the person who claims those goods their value realized by the disposal or where no value has been realized by disposal, their market value on the date of seizure;

(b) where a prosecution has been instituted in relation to the goods, the Director shall comply with the orders of the court in which the prosecution has been instituted.

17. Any complaint against any practices which may affect the interests of a consumer may be made by the consumer or on the consumer's behalf by any consumer organization or association established for the purpose of furthering the interests of the consumers

Representation
by consumer or
consumer
organizations

18. (1) The Minister may make regulations for carrying into effect the purposes and provisions of the Act

Regulations

(2) Without prejudice to the generality of subsection (1) regulations made under that subsection may provide-

(a) for the imposition or requirements for securing that goods supplied to consumers are marked with or accompanied by any information (whether or

not amounting to or including a trade description) or instruction relating to the goods;

(b) for the imposition of requirements for the inclusion of information (whether or not amounting to or including a trade description) relating to goods in advertisements or of an indication in those advertisements of the means by which the information may be obtained;

(c) for the requirements relating to composition, contents, design, construction, finish, quality, packing, or price of goods including distribution and credit facilities on sales and compliance with those requirements;

(d) for information, warning or instructions to be marked on or to accompany goods for which requirements are imposed under paragraph (c)

19 This Act shall be in addition to and not in derogation of any other law relating to goods or services.

Savings
