

# **GAMBIA CONSUMER PROTECTION ACT 2014**

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**PART I – PRELIMINARY**

**Short title and Commencement**

1. This Act may be cited as The Gambia Consumer Protection Act, 2014 and shall come into force on such date as the Minister may appoint by notice published in the Gazette.

**Interpretation**

2. (1) In this Act, unless the context otherwise requires-

“**Commission**” means the Gambia Competition Commission and Consumer Protection Commission;

“**Competent authority**” means a body statutorily mandated to deal with a particular subject matter;

“**consumer**” means a person to whom goods or services are supplied in the course of a business carried on by the person supplying them, and who does not receive them in the course of a business carried on by him or her;

“**Court**” means the High Court of The Gambia

“**Documents**” includes information recorded in written, electronic or any other form;

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**“Enterprise”** means a person or group of persons, whether or not incorporated, carrying on a business, and includes an entity wholly or partly owned by the state to the extent that it carries on a business that is lawfully carried on or is capable of being lawfully carried on in The Gambia by any other enterprise;

**“Executive Secretary”** means the person appointed as Executive Secretary of the Commission or a person carrying out the functions of that office;

**“hearing”** means a hearing convened before a Tribunal to receive representations or submission from concerned persons and to examine the parties or other persons on matters being considered by the Tribunal;

**“Market”** means a market in any part of The Gambia;

**“Minister”** means the Minister responsible for trade and

**“Ministry”** shall be construed accordingly;

**“Provider”** means a person who supplies a service;

**“Regulations”** means regulations made under this Act;

**“Secretariat”** means the Secretariat of the Commission;

**“Services”** includes the undertaking and performance of any engagement, whether professional or not, for gain or reward, other than the supply of goods, but does not include the rendering of any services under a contract of employment;

**“Standard form agreements”** includes agreements whose terms have been approved by an appropriate industry or trade association established by the supplier without the consumer being able to object, materially negotiate or amend the terms thereof; and

**“Supply”** includes, in relation to goods, the supply (including re supply) by way of sales, exchange, lease, hire or hire-purchase of the goods and **“supplier”** shall be construed accordingly.

### **3. Application of the Act**

In addition to its application in The Gambia, this Act shall also apply to conduct outside The Gambia by-

- (a) A citizen of The Gambia or a person ordinarily resident in The Gambia;
- (b) A body corporate incorporated in The Gambia or carrying on business within The Gambia;
- (c) Any person in relation to the supply or acquisition of goods or services by that person into within the Gambia; and
- (d) any person in relation to the acquisition of shares or other assets outside the Gambia resulting in the changed of control of a business, part of a business or an asset of s business, in the Gambia.

### **4. Administration of the Act**

This Act shall be administered by the GCCPC

## **PART II – CONSUMER WELFARE**

### **5. Consumer Rights**

Without prejudice to the rights granted by any other law, Consumers are entitled to the following rights-

- (a) true, sufficient and timely information on technology, goods and services offered in the market as well as on prices, characteristics, quality and risks that might be involved in the consumption thereof;
- (b) fair, non-discriminatory treatment by suppliers of goods and services;
- (c) full and timely compensation for damages attributable to suppliers or provides as defined under Act or through other laws; and

- (d) access to competent authorities and judicial bodies for the protection of their interests, as well as any other rights, freedoms, entitlements, and interests incidental to the enjoyment of the foregoing rights.

## **6. Consumer's rights to safe, good quality goods and services**

- (1) Except to the extent contemplated in sub-section (6), every consumer has a right to receive goods and services that-
  - (a) are reasonable suitable for the purposes for which they are generally intended;
  - (b) are of good quality, in good working order and free of any defects;
  - (c) will be use usable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
  - (d) comply with any applicable standards set under the Gambia Standards Act, 2010 or any other national regulation.
- (2) In addition to the right set out in sub-section (1)(a), if a consumer has specifically informed the supplier or provider of the particular purpose for which the consumer wishes to acquire any goods or services or the se to which the consumer intends to apply those goods and services, and the supplier or provider-
  - (a) ordinarily offers to supply such goods or services; or
  - (b) acts in a manner consistent with being knowledgeable about the use of those goods or services,

The consumer has a right to expect that the goods or services are reasonably suitable for the specific purpose that the consumer has indicated.

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- (3) In determining whether any particular goods or services satisfies the requirements of sub-section (1) or (2), all of the circumstances of the supply of the goods or services shall be considered, including but not limited to-
- (a) the manner in which and the purpose for which the goods or services were marketed, packaged and displayed;
  - (b) the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods or services;
  - (c) the range of things that might reasonably be anticipated to be done with or in relation to the goods or services; and
  - (d) the time when the goods or services were produced and supplied.
- (4) For greater certainty in applying sub-section (3)-
- (a) it is irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods or services; and
  - (b) a product failure or defect may not be inferred in respect of particular goods or services solely on the grounds that better goods or services have subsequently become available from the same or any other supplier or provider.
- (5) Sub-section (1)(a) and (b) do not apply to a transaction if the consumer-
- (a) has been expressly informed that particular goods or services were offered in a specific condition;
  - (b) has expressly agreed to accept the goods or services in that condition or he or she knowingly acted in a manner consistent with accepting the goods or services in that condition.

- (6) This section does not apply to second hand goods and goods bought at an auction.

## **7. Supplier and provider obligations to consumers**

- (1) Where a supplier or provider enters into a contract with a consumer, the terms of the contract shall be clear and understandable to both parties, with references to rules, practices or documents in the public knowledge or are made available to the consumer prior to or upon executive of the contract.
- (2) In supplying or selling goods or services that include the grant of consumer credit, the supplier or provider of the goods or services shall inform the consumer and advise him or her in advance about-
- (a) the cash price of the goods or services;
  - (b) where applicable, the origin, care, terms, components, hazards, proper use, weight, size and instructions for assembly and installation of the goods;
  - (c) the amount of interest charged, if any, the annual or periodic rate at which it is computed as well as the interest rate in arrears.
  - (d) the number of installments payable as well as the frequency or periodicity thereof; and
  - (e) the total amount payable for such goods or services including any extra fees for delivery, installation or other fees.
- (3) In the case of imported or resold commodities –
- (a) when the goods are defective, second hand , reconditioned or restored, such fact shall be indicated clearly on invoices, receipts, vouchers or business records; and
  - (b) manufacturers or importers shall reasonably ensure the regular supply and provision of components, spare parts, accessories, peripherals, and

and technical as well as maintenance services for a reasonable period of time if agreed by both parties.

## **8. Warranties and Conditions of Sale**

- (1) Unless expressly excluded by contract, the following warranties shall be read into any contract between consumers and suppliers or manufacturers-
  - (a) the seller, supplier, or provider of goods or services shall supply or deliver the goods or services reasonably expected by the consumer;
  - (b) the goods or services delivered shall meet the minimum standard or durability, usefulness and viability
  - (c) suppliers or providers of goods or services shall provide consumers with true, sufficient, clear and timely information on goods and services offered;
  - (d) the labeling on all products shall be legible, visible printed, and where possible, in bold letters;
  - (e) the contents names and physical addresses of manufacturers and producers, assemblers or packagers as well as the manufacturers or production and expiry dates of all goods shall be written visibly;
  - (f) The nutrient content of food products shall be clearly spelt out on the package they are contained;
  - (g) Suppliers or providers of goods or services shall provide consumers with a contract, receipt, ticket, invoice, business record or other document that embodies or evidence the transaction and which shall indicate-
    - (i) the date and place where delivery, supply or performance is to take place and the consequences of any failure or delay,

- (ii) the material components, spare parts, accessories, paraphernalia or peripherals to be used, the price(s) thereof, as well as the terms and conditions under which the supplier undertakes to provide such goods or services,
    - (iii) any taxes or other charges applied or other information prescribed under this Act or any other law;
  - (h) the price of any goods or services shall be indicated clearly and unmistakably;
  - (i) the term “guarantee” or “warranty” or any equivalent term shall only be used to indicate the extent of the warranty and conditions, manner, duration and place in which they can be enforced by the consumer;
  - (j) the penalty for breach of warranty include and repairs replacement, partial or full refund, damages or a criminal prosecution.
- (2) A supplier or provider shall not supply or agree to supply goods or services to a consumer if the supplier has reason to know that the goods or services are materially unsuitable for the customer’s intended purpose and that the consumer is unable or unlikely to make that determination.
- (3) A supplier or provider shall not accept payment for goods or services if he or she does not have a reasonable basis to assert an intention to supply those goods or provide those services, or intends to provide materially different goods or services in respect of which the payment or consideration was accepted;
- (4) If the supplier or provider determines after the fact that he or she cannot meet the commitment or reservation he or she shall-
- (a) refund the consumer any amount paid; and
  - (b) compensate the consumer for breach of content and consequential damages in an amount equal to the loss suffered.
- (5) Supplier or providers who offer repair services shall keep records and give a copy to the consumer stating-

- (a) the name, address and telephone number of the consumer;
  - (b) description of goods to be repaired;
  - (c) an estimate of the replacement value of the goods in its present state as agreed upon with the consumer;
  - (d) an estimate of the labor and other costs to be paid by the consumer with respect to the repairs; and
  - (e) the date on which the goods are received for repair and when they will be ready for delivery.
- (6) The supplier or provider shall disclose to the consumer any additional repairs necessary and obtain a written indemnity if the consumer chooses not to effect the recommended repairs.

### **9. Standard Form Agreements**

- (1) The use of standard form agreements shall be regulated by the Commission to ensure adequate consumers protection and such regulations may be sector-specific.
- (2) A standard form agreement shall be drafted in English and shall upon request, be read and explained to a consumer in a language and manner he or she can reasonably understand.
- (3) The terms of a standard form contract shall be favorable and reasonable to vulnerable consumers in terms of scope, interest rates, charged costs and repayment schedules, where applicable.
- (4) A standard form contract shall not contain any provision that waives substantive or procedural rights available under this Act or inconsistent with rights guaranteed by any other law.
- (5) Consumers retain a right of retraction within seven days from the executive of a contract or reception of the goods or service when the contract has been entered into at the initiative of the supplier, seller or agent thereof at a place other than the ordinary business premises of the supplier, seller or representative in interest thereof.

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- (6) In determining whether a standard form contract is unfair, the Commission or Tribunal shall take into account the interests of both parties and any prices, charges, costs or other expenses reasonably incurred and it shall be deemed unfair if-
- (a) as a whole, it result in an unreasonable unequal exchange of values or benefits or it is unreasonably oppressive;
  - (b) it imposes obligations or liabilities on a party which are not reasonably necessary
  - (c) it is contrary to commonly accepted standards of fair dealing; or
  - (d) it is expressed in a language not readily understood by the consumer.
- (7) A standard form contract is not unfair solely because it-
- (a) imposes onerous obligations in a party;
  - (b) does not result in substantial or real benefit to a party; or
  - (c) may have been concluded with another entity on more favorable terms or conditions.
- (8) The actual or anticipated exercise or non-exercise of a power, right or discretion under a standard form contract is subject to review by the Tribunal if-
- (a) the result is or would be unreasonably oppressive to the party affected by it;
  - (b) it would not be reasonably necessary to protect the interests of any party; or
  - (c) it would be contrary to commonly accepted standards of fair dealings
- (9) Where the Tribunal is satisfied that a contract is unfair or the exercise of which would be unfair, it may-
- (a) cancel the whole or any part of it;

- (b) vary it such that it is no longer unfair;
- (c) enforce only the fair portion of it;
- (d) declare it to be enforceable for a particular purpose only;
- (e) order restitution or award compensation or reduce the amount payable under the contract; or
- (f) annul the exercise of a power, right of discretion under the contract or direct that such power can only be exercised in a particular way, subject to any conditions the Tribunal may fix.

## **10. Distance Selling**

- (1) Prior to conclusion of any distance selling contract, the supplier or provider shall provide the consumer with-
  - (a) the identity of the supplier and , in the case of a consumer agreement requiring advance payment, his or her physical address;
  - (b) a description of the main characteristics of the goods or services;
  - (c) the prices of the goods or services including all taxes;
  - (d) delivery cost where appropriate;
  - (e) the arrangement for payment, delivery or performance;
  - (f) the exercise of a right of cancellation;
  - (g) the cost of using the means of distance communication where it is calculated other than at a basic rate;
  - (h) the period for which the offer or price remains valid; and
  - (i) the minimum duration of the consumer agreement, where appropriate.

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- (2) For proposed or draft agreements, the supplier shall provide the consumer with an express authority to accept or decline the agreement and correct errors before entering into it.
- (3) A consumer may request the cancellation of payments using credit card where fraudulent use is made of his or her card, and the consumer shall be re-credited with the sums paid.
- (4) Unless agreed otherwise, the supplier shall execute a consumer's order within thirty days from the day following that on which the consumer entered his or her order with the supplier.
- (5) If the supplier is unable to perform the contract, he or she shall inform the consumer and refund any sums received within thirty days.

### **11. Unfair Trade Practices**

- (1) A supplier or provider shall not engage in any of the following deceptive practices in the course of business-
  - (a) passing off goods or services as those of another;
  - (b) causing likelihood of confusion or misunderstanding as to source, sponsorship, approval or certificate of goods or services;
  - (c) causing likelihood of confusion or misunderstanding as to affiliation, connection, association with or certification by another;
  - (d) using deceptive representations or designations of geographic origin in connection with goods or services;
  - (f) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or second-hand;

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- (g) representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (h) disparaging the goods, services or business of another by false or misleading representation of fact;
- (i) advertising goods or services with no intention to sell them as advertised;
- (j) advertising goods or services with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity;
- (k) making false or misleading statements of fact concerning the reasons for; existence of, or amounts of price reduction; or
- (l) engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding for consumers.

(2) A supplier or provider shall not adopt or indulge in a trade practice that-

- a) brings about manipulation of price or conditions of delivery of affect the flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions;
- b) delays beyond the period agreed to by a supplier in the supply of goods or in providing the services which has led or is likely to lead to a price increase;
- c) requires a consumer to buy, hire or avail of any goods or services as a condition to buying hiring or availing of other goods or services, and
- d) is misleading, unfair or abusive advertising and other practices that are likely to result in adverse effects on the consumer.

(3) It is an unfair trade practice for a supplier or provider to engage in unconscionable conduct or use any means of coercion or undue influence in connection with the marketing or sale of goods or services.

(4) In determining unconscionability, the tribunal may take into account the fact that-

- a) the consumer is not reasonably able to protect his or her interests;
- b) the price charged grossly exceeds the market price;
- c) the consumer is unable to receive a substantial benefit from the goods or services;
- d) there is no reasonable probability of payment by the consumer;
- e) the terms are so adverse as to be inequitable;
- f) the consumer relied on a misleading statement; or
- g) the consumer was subject to undue pressure to enter into a consumer transaction.

## **12. Advertising Regulations**

(1). Advertisements shall conform to the rules of decency, sincerity and shall not exploit superstition, ignorance or fear.

(2). Any false or misleading offer, promotion or advertising of goods or services shall be subject to investigation and prosecution.

(3) False or misleading advertisements include any information or communication using text, dialogue, sounds, images or descriptions which, directly or indirectly, expressly or by omission, lead consumers to mistake, misunderstand, or confuse-

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- (a) The geographic, business or other origin of the offered goods or services;
  - (b) The components or ingredients of the goods offered;
  - (c) The benefits or repercussions of the use of such goods or hiring of services;
  - (d) The basic characteristics of the goods sold or services supplied;
  - (e) The correct date of manufacture or useful life of technology;
  - (f) The terms of warranties as offered;
  - (g) The official or private, domestic or foreign recognitions, approvals or distinctions licenses, such as patents, trademarks, medals, awards prizes or diplomas;
  - (h) The price of the offered goods or services and terms of payment; and
  - (i) Any other information material to the transaction.
- (4). A person shall not engage in abusive advertising.
- (5) For the purpose of sub-section (4) “abusive advertising” includes-
- (a) Unfair or discriminatory advertising;
  - (b) Advertising likely to incite violence;
  - (c) Advertising exploitation fear;
  - (d) Advertising exploiting children;
  - (e) Advertising infringing environmental values; or
  - (f) Advertising capable of leading consumers to behave in a manner detrimental or hazardous to their health or safety.

(6) A person or entity engaged in promotional advertising shall indicate the duration, volume of goods or services offered as well as the general conditions, warranties and terms of the promotion.

(7) Where the supplier does not comply with the advertisement, consumers may-

- a) require the compulsory compliance with the obligations of the supplier according to general contract law;
- b) accept another good or rendering of an equivalent service; or
- c) cancel the contract if there has been an advance payment or otherwise claim compensation from the supplier.

(8) Where statements in an advertising message are considered false or misleading, the tribunal shall order an amendment of the content.

(9) In any dispute that may arise, the advertiser bears the burden of proving the truth of the statements contained in the advertising material.

(10) A supplier shall not advertise goods or services which he or she does not intend to offer for sale or provide in reasonable quantities at the price advertised.

### **13. Warnings about harmful technology, goods and services**

(1) The producer or supplier of consumer goods which are harmful or hazardous to human health or the environment shall incorporate into the product or the annexed instructions easily noticeable warnings so they may be used under the strongest possible safety conditions.

(2) The information in sub-section (1) along with clearly visible and prominent warnings shall be provided by the supplier or provider of dangerous goods or services.

(3) A supplier or provider who, subsequent to the introduction of goods or services, realizes the existence of unforeseen health hazards or risks shall communicate as soon as possible to the competent authority and inform consumers of the existence of such hazards or risks.

(4) These provisions do not exempt the suppliers from their responsibility for the damage actually caused by the goods or services.

#### **14. Remedies for harmful goods and services**

(1) In the event that a material hazard, risk or defect is detected in a good or service, the supplier or provider shall withdraw the same from the market and substitute or replace the same at his or her own expense.

(2) The damage caused by the goods or services shall be at the expense of the supplier or provider.

#### **15. Recall of products from the market**

(1). Where goods are found likely to cause injury, loss or damage to any person, the competent authorities may by notice in writing published in newspapers of general circulation-

- a) require the manufacturer, supplier or other party to the distribution chain to take action to recall the goods;
- b) disclose to the public the nature of the defect, circumstances in which the use of the goods is dangerous; and
- c) require the manufacturer, supplier or other part to the distribution to refund the price of the goods to the affected consumers with the period specified.

- (2) Once a notice is in force, the supplier shall cease trading in the dangerous or defective goods.
- (3) If the manufacturer, supplier or other to the distribution chain chooses to repair the recalled goods, they shall cause the goods to be so repaired to that any defect is remedied.
- (4) If the manufacturer, supplier or other party to the distribution chain chooses to replace the goods, they shall replace them with goods that do not have the defect.
- (5) In any case, the costs of repair or replacement will be borne by the supplier.
- (6) In the case of a voluntary recall, the supplier shall give notice to the competent authority stating what goods are subject to recall and the nature of the defect or dangerous characteristic.

## **PART III- FUNCTIONS AND POWERS OF THE COMMISSION**

### **16. Functions of the Commission**

- (1) In addition to its functions under the competition Act, the Commission shall-
  - a) establish a directorate responsible for consumer
  - b) conduct investigations into consumer complaints;
  - c) appoint officers who shall receive and process complaints for submission the Tribunals;
  - d) deploy its officials at all tribunals to receive and process complaints from consumers;
  - e) build the capacities of members of the tribunals
  - f) monitor and evaluate the activities of tribunals;

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- (g) advocate and facilitate the mainstreaming of consumer protection issues in national policies and programmes;
- (h) formulate policy and legislative proposals in respect of consumer welfare issues;
- (i) undertake consumer education and information programmes;
- (j) conduct or commission research on consumer protection issues;
- (k) sensitise and provide advice to consumers on their rights and duties under this Act;
- (l) provide information on any dangerous goods and services that might harm consumers to the competent authorities for appropriate action;
- (m) provide funding for the functioning of the tribunals.

(2) The commission shall formulate rules for the submission and treatment of complaints, including the procedures on-

- a) accepting complaints and assigning a cases agent;
- b) serving notice on the other party; and
- c) conducting an investigation.

### **17. Powers of the commission**

(1) The commission may serve a written notice on an enterprise or any person who appears to be in possession of relevant information or documents.

(2) The Commission may, in the notice, require the enterprise or person on whom it is served to do all or any of the following-

- (a) provide to the Commission, either forthwith or within a time specified in the notice, information or documents that the Commission reasonably requires for its investigation;
- (b) answer questions in respect of any information the Commission requires for the purposes of its investigation, either forthwith or at a time and place specified in the notice.

(3) A person who-

- (a) fails to comply with a notice served under sub-section (2); or
- (b) knowingly or recklessly provides information that is false, misleading incomplete,

Commits an offence and is liable on conviction, if an individual, to a fine of not less than one hundred thousand dalasis and in default to imprisonment not exceeding two years, and in the case of a body corporate, to a fine of not less than five hundred thousand dalasis.

### **18. Complaints to the Commission**

(1) A complaint may be brought to the Commission in writing when consumer alleges that-

- (a) an unfair trade practice or unfair term has been adopted by a supplier;
- (b) goods which are hazardous to life and safety are being offered for sale in contravention of standards and the supplier should have known that the goods were unsafe to the public;
- (c) services which are hazardous or likely to be hazardous to life and safety of the public when used are being offered by the supplier where such person should have known with due diligence to be injurious to life and safety; or
- (d) a provision of this Act has been breached.

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(2) A complaint may be filed with the Commission with two years from date the cause of action arose the complainant can show good cause for not filing the complaint within the two year period.

(3) When a complaint is brought to the Commission, its officers will hold an inquiry to resolve the dispute.

(4) A complaint may filed by-

- (a) consumer who purchased or agreed to purchase goods or services;
- (b) A recognized consumer association;
- (c) One or more consumers, for the benefit of all consumers having the same interest; or
- (d) The state

(5) The complaint shall be accompanied by fees in the amount and manner prescribed by the Commission.

(6) The Commission has absolute discretion to determine whether to conduct or continue an investigation and it may refuse to conduct or continue an investigation if-

- (a) (a). the subject matter of the complaint is trivial;
- (b) The complaint is frivolous or not made in good faith;
- (c) The delay in making the complaint was unreasonable;
- (d) the complainant does not have a sufficient interest in the subject-matter of the complaint;
- (e) the subject-matter of the complaint is more appropriately dealt with in another forum and the Commission so relays to the complainant; and

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- a. The Commission determines on the merits that it is not necessary to conduct or continue the investigation.

(7) If the Commission decides not to conduct or continue an investigation, it shall inform the complainant in writing of both the decision and reason for it.

(8) The Commission shall not be precluded from conducting and investigation into any matter unless a court directs otherwise.

### **19. Assistance by State agencies**

(1) The Commission may request any state agency to carry out an investigation on behalf of the Commission into any consumer protection issue.

(2) A State agency may decline to comply with the request if the Ministry with responsibility for the said agency or the chief executive officer of the State agency certifies to the Commission that the state agency does not have, and is not likely to have the financial or human resources available to carry out the investigation and that the resources cannot reasonably be obtained.

(3) In the circumstances described in sub-sections (2), the Minister shall take such steps as may be required to enable the investigation to proceed.

## **PART IV- ESTABLISHMENT, FUNCTIONS AND POWER OF CONSUMER PROTECTION TRIBUNALS**

### **20. Establishment of Consumer Protection Tribunals**

(1) There is established by this Act, Consumer Protection Tribunals, which shall sit in every administrative region of the Gambia.

(2) East Tribunal shall consist of three persons and shall be chaired by a person with a legal background.

(3) The members of the Tribunal shall be appointed by the Minister in consultation with the Chief Justice.

(4) The members of the Tribunal shall be entitled to receive such fees and allowances as the Minister may determine.

## **21. Power of a Tribunal**

(1) A Tribunal may-

- (a) Hear complaints in respect of a breach of this Act;
- (b) Summon and enforce the attendance of the parties to any complaint and witnesses;
- (c) Request the commission to investigate any complaint;
- (d) Impose any sanction, penalty or remedy provided for in This Act;  
and
- (e) Do anything necessary to address consumer complaints.

(2) A complaint may be filed by-

- (a) Consumer who purchased or agreed to purchase goods and services;
- (b) A recognized consumer association of which the consumer who purchase or agree to purchase is a member
- (c) One or more consumers, for the benefit of all consumers having the same interest; or
- (d) The state

## **22. Hearing by a Tribunal**

(1) A Tribunal may at any time convene a hearing at which it can hear the views of any person it considers has a relevant interest in the case.

(2) A Tribunal shall not hear a complaint unless the commission's officer attached to the tribunal vets and forwards the complaints for a hearing

(3) A person who is dissatisfied with the decision of an official of the tribunal is to forward his or her complaint for hearing may appeal to the Executive Secretary of the Commission.

(4) The Minister may in consultation with the Commission, make rules.

(a) prescribing the manner in which the Tribunal shall hear cases and the fees to be paid

(b) prescribing the manner in which the Tribunal shall hear be convened and places where and the time at which the sittings shall be held; and

(c) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals thereto.

### **23 Attendance, etc. at hearing**

(1) A Tribunal may require the attendance of a person at a hearing and may require the production of documents and other material.

(2) A person who fails to attend a hearing or to produce a document or other material when required to do so under sub-section(1) commits an offence and is liable on conviction, in the case of-

(a) An individual, to a fine of not less than one hundred thousand dalasi or imprisonment for a term not exceeding five(5) years, or to both the fine and imprisonment; or

(b) A body corporate, to a fine of not less than five hundred thousand dalasi.

(3) The Tribunal may require evidence at a hearing to be given under oath.

(4) A witness who declines to take the oath or affirmation or fails to answer, fully, truthfully and satisfactorily, questions put by the Tribunal at a hearing commits an offence and is liable on conviction to a fine of not less than one hundred thousand dalasi or face imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

**24. Tribunal to hold hearing before imposing penalties on giving directions**

(1) A tribunal shall not impose a penalty on an enterprise or give a direction unless it has held a hearing

(2) Notwithstanding sub-section (1), a tribunal may impose a penalty or make a direction if the enterprise concerned has elected not to attend a hearing requested by the Tribunal or has failed to attend a hearing when required to do so by the Tribunal on proof of service.

**25. Hearing governed by procedural rules**

(1) A member of a tribunal shall not attend a hearing if he or she has a direct or indirect interest in the outcome of the case to which the hearing relates.

(2) A hearing shall be governed by and be conducted in accordance with rules, for the time being in force.

**26. Tribunal to give reasons for direction, etc.**

A Tribunal shall set out in decision, direction or determination the reasons for the decision, direction or determination.

**27 Appeals**

(1) A person or entity aggrieved with the decision of a Tribunal may appeal to the High Court within thirty days of the notification of the decision.

(2) On an appeal under sub-section (1), the court may-

(a) Confirm the decision of the tribunal;

- (b) Under the tribunal to vary its decisions or such part of it as the Court may specify
- (c) Order the tribunal to revoke its decision in whole or in part, or
- (d) Order the tribunal to re-hear the whole or any part of the evidence presented to it and any new or other evidence the Court may specify.

## **PART V- PENALTIES AND REMEDIES**

### **28. Financial Penalties**

- (1) A tribunal may in addition to, or in place of giving a direction, make an order imposing a financial penalty on an enterprise,
- (2) A tribunal shall not impose a financial penalty unless it is satisfied that the breach of the prohibition was committed intentionally or negligently.
- (3) The amount of the penalty must not exceed ten per cent(10%) of the turnover of the enterprise in The Gambia during the period of the breach of the prohibition up to a maximum period of two years.
- (4) The Minister may, by regulations, prescribe the manner in which is to be calculated for the purpose of sub-section (3).
- (5) An order imposing a penalty under sub-section (!) shall be in writing and specify the date before which the penalty is required to be paid.
- (6) If a penalty has not been paid within the specified date and
  - (a) no appeal against the order was brought; or
  - (b) an appeal was made but dismissed or withdrawn, a Tribunal may attach the assets of the enterprise concerned.

### **29. Civil Liability**

(1) Suppliers or providers of goods or services shall be subjected to legal and administrative liability for their own conduct and the conduct of their assistants or agents who play a material role in the supply of goods or service

(2) Producers, importers, dealers, suppliers, providers and all persons involved in the distribution chain shall be jointly liable under civil law, for indemnities deriving from injury or loss caused by the goods supplied or services rendered so long as the person who suffered the damage makes the request in a reasonable time after damage occurs.

(3) Parties in the distribution chain are contributory liable under civil law for damages and harm caused if they-

(a) Fail to comply with the request to identify the supplier or manufacturer of the harmful product; or

(b) Knew or had reason to know the product could be dangerous to consumers and failed to take reasonable remedial actions or inform the authorities so the product could be removed.

### **30. Criminal Liability**

(1) Suppliers or providers may also be criminally liable under applicable provisions of the penal or criminal laws

(2) in addition to any other remedy provided, a person who contravenes any provisions of this Act for which no other penalty is prescribed commits an offence and is liable on conviction to a fine not exceeding one million dalasi or imprisonment for a period term not exceeding five years or both

(3) Defense under this section shall include the product not been supplied by the defendant, or that the defect was not present while the defendant had custody over the product

### **31. Remedies for consumers**

(1) Sanctions, penalties or remedies for consumers include cancellation, rescission or revision of a contract or its clauses,

the obligation to pay damages and interest as well as the obligation to pay fines.

(2) A tribunal may grant either on an application to relief or on its own initiative or at the instance or a party to the proceedings unless the party has waived his or her rights at any stage In the proceedings.

(3) A tribunal may at the consumer's request order the replacement of the goods or service, refund the contract price, or any consideration paid in excess of the contract price.

(4) consumers may request cancellation of reduction of price without prejudice to being indemnified for injury or lose when the goods or services of a contract have concealed faults, defects, or any deficiencies that diminish its quality or usefulness before expected standards such that, if the consumer had known, he or she would have refrained from purchasing it or would have paid a lower price for it.

(5) Consumers are entitled to indemnity for consequent injury or loss as well as the fee replacement of the goods or free rendering of the services and when such is not possible, to its replacement or return of the amount paid in the following events-

- (a) When good or services subjected to compulsory standards regarding safety, quality or efficiency do not comply with the proper specifications;
- (b) When the materials, elements, substances or ingredients forming or constituting the goods or services do not correspond with the specifications.
- (c) When the goods or services have been purchased under a warranty and the deficiency is delivered within the effective term, and
- (d) When the supplier and the consumer agree that the goods or services subject to the agreement should meet certain specifications which are not complied with.

(6) An action may be brought against any entity in the distribution chain which sold such goods or services.

(7) Any delay in compliance with the obligations of the suppliers of goods or services entitles the consumer to cancel the contract without prejudice to any applicable indemnities

(8) When goods under repair show defects relates to the services rendered and attributable to the supplier of the service the consumer shall be entitled upon discovery of the defect, to have it repaired without additional cost in the shortest time possible without prejudice to the consumer's right to the proper indemnity for damages.

(9) when goods under service for fitness repair, cleaning or otherwise suffers such detriment as to diminish its value or render it wholly or partly unfit for normal use the services supplier shall indemnify the consumer for the injury or loss suffered.

(10) The enforcement of consumer right under this Act may be given exercised through individual or collective litigation.

(11) Consumer associations are entitled to act in the tribunals in the collective enforcement of the rights vested in consumers by this Act.

(12) Once a complaint against a supplier is validated by the Commission, the supplier may undertake to pay the consumer all reasonable costs to correct the damage including any bodily injury or pecuniary loss sustained, but the supplier is not relieved of his obligation if the consumer chooses not to accept complementary goods or services.

### **32 Defences**

(1) A supplier may have a defense against liability under the Act if it can be proved that-

(a) The action complained against was-

(i) a mistake;

- (ii) due to reliance on informing from another source;
  - (iii) the act or default of another person;
  - (iv) accidental; or
  - (v) caused by some other cause beyond control; and
- (b) the supplier took reasonable precautions and exercised due diligence to avoid contravention of the provision of this Act.
- (2) If the defence relies on the actions of another party, the supplier is not entitled to that defence until the other party has been served a notice in writing.

## **PART VI – MISCELLANEOUS**

### **33. Disclosure of information**

1. A person shall not disclose information with respect to a particular business or the affairs of an individual that has been obtained under or by virtue of a provision of this Act while the business continues to be carried on or during the lifetime of the individual.
2. Sub-section (1) does not apply to a discloser of information-
  - (a) made with the consent of the person carrying on the business or the individual concerned;
  - (b) made in circumstances where the information is in the form of a summary or collection of information so framed as not to enable information relating to a particular person to be ascertained from it;
  - (c) that is already in the public domain;
  - (d) made to facilitate the performance of a function of the Commission or Tribunal;

(e) made in proceedings under this Act;

(f) made in connection with the investigation of a criminal offence; or

(g) made to facilitate the performance of a function specified by regulations made by the Minister.

(3) A person who contravenes sub-section (1) commits an offence and is liable on conviction, if an individual, to a fine of not less than one hundred thousand dalasis and in default to imprisonment not exceeding two year, or, in the case of a body corporate, to a fine of not less than five hundred thousand dalasis.

#### **34. Supplying false information**

(1) A person who knowingly or recklessly provides the Commission or any other person entitled to information under this Act with information that is false or misleading in a material particular commits an offence if the information is provided in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Commission to exercise a function under this Act.

(2) A person who commits an offence under sub-section (1) is liable on conviction, if an individual, to a fine not exceeding one hundred thousand dalasis and in default to imprisonment not exceeding two years, and in the case of a body corporate, to a fine of not less than one hundred thousand dalasis.

#### **35. Conflicting and concurrent jurisdictions**

(1) Where there is a conflict between the provision of this Act and the provisions of any other written law with regard to matters concerning consumer welfare and the powers or functions of the Commission or a Tribunal under this Act, the provisions of this Act shall prevail.

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- (2) If a body charged with public regulation has jurisdiction in respect of any conduct regulated in terms of this Act within a particular section, the Commission and that body shall identify and establish procedures for management of areas of concurrent jurisdiction;
- (a) promote co-operation
  - (b) Provide for the exchange of information and protection confidential information; and
  - (c) Ensure consistent application of the principles of this Act.
- (3) Notwithstanding sub-section (2), in all matters concerning competition and consumer welfare, if there is any conflict, disharmony or inconsistency, the determinations, directives, regulations, rules, order and decisions of the Commission nor Tribunal shall prevail.

### **36. Regulations**

The Minister may make regulations generally for the better carrying into effect of the provisions of this Act.

### **OBJECTIVES AND REASONS**

In the long term economic development blueprint, Vision 2020 the Government set out its market oriented programme of development and emphasized its commitment to a vibrant private sector. Commission is one of the main engines of economic development.

This Bill seeks to give confidence to those wishing to invest in The Gambia, by helping to provide a more predictable business environment and to protect consumer welfare.

**ABDOU KOLLY**  
**MINISTER FOR TRADE, INDUSTRY,**  
**REGIONAL INTERGRATION AND EMPLOYMENT**