

# **THE CONSUMER PROTECTION ACT 2014**

## **Introduction**

The consumers now stand in need of greater protection. The consumers fifty years ago needed only a reasonable modicum of skill and knowledge to recognize the composition of the goods on offer and their manner of production, and to assess their quality and fitness for their particular purposes. The consumers of today find it difficult if not impossible to do so because of the development of complicated production techniques. There is a widespread recognition that the ordinary consumers- devoid of technical knowledge, lacking ready access to independent technical advice, uncertain of the strength of his case, a stranger to law and its ways- must be reluctant to incur the considerable trouble and appreciable cost of pursuing what they regard as their legitimate complaints. This reluctance is deepened if the outlay on expert investigation and legal proceedings is disproportionate to the price paid for goods.

Every consumer problem shows one or more of the following characteristics. First, a disparity of bargaining power between the supplier of goods or services and the consumer to whom they are offered; secondly, a growing and frequently total disparity of knowledge concerning the characteristics and technical components of goods or services; and thirdly, a striking disparity of resources between the supplier of goods or services and the consumer.

## **The Reasons behind the Enactment of the Legislation**

The overall efficiency of the market depends upon the institutional framework which secures the performance of market exchanges. A major issue in consumer protection has been the perceived inadequacy of the system of individual private law litigation to secure performance in a mass-consumption economy where the impact of harm is large in the aggregate but small for any one individual. Public regulation is not, however, the only method of addressing this problem. The consumer protection law is the solution to the inadequacy of the individual private law enforcement of rights. Abdou Kolley, the minister for Trade and Industry stated that the formulation of a consumer protection law is part of his ministry's efforts to implement the National Trade Policy of 2011.

## **The Purposes of the Legislation**

The Consumer Protection Bill 2014 was passed into law by the National Assembly on the 9<sup>th</sup> of April 2014. The Act is cited as The Gambia Consumer Protection Act, 2014 and the Minister responsible for trade and industry will decide when this Act will be brought into active use. The purposes of the Act are "to protect consumers from unfair and misleading market conduct, provide for the establishment of a Consumer Tribunal and for connected matters. Abdou Colley, the minister for Trade and Industry stated that the drafting of consumer protection bill was done after consultations with different stakeholders, including all the regional administrative areas of the country.

## **Application of the Act**

The Consumer Protection Act will not only be applied to conduct in The Gambia but it will also apply to conduct in outside The Gambia by a citizen of The Gambia or a person ordinarily resident in The Gambia, a body corporate incorporated in The Gambia or carrying on business within The Gambia, any person in relation to the supply or acquisition of goods or services by that person into or within The Gambia and any person in relation to the acquisition of shares or other assets outside The Gambia resulting in the change of control of a business, part of a business or an asset of a business, in the Gambia. This Act, unlike the Competition Act 2007 which only applies to enterprises whose annual turnover in The Gambia exceed D250,000, applies to every consumer. The Consumer Protection Act 2014 defines a consumer as “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.” This means that any one who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing is a consumer.

## **Administration of the Act**

The Act will be administered by The Gambia Competition Commission. Abdou Kolley, the minister for Trade and Industry in presenting the Bill has asserted that “the bill will be administered by The Gambia Competition Commission, through the establishment of consumer protection tribunals throughout the administrative regions of The Gambia to hear and adjudicate consumer protection issues regulated under this bill.” The Commission is the right regulatory institution to administer this important legislation because there is an interface between competition policy and consumer protection policy. Abdou Kolley has also stated in the National Assembly that “trade goes with competition, and where there is trade there is a need for consumer protection.” The competition policy and consumer protection policy share a common goal: the enhancement of consumer welfare. In this way they are highly complementary. Applied properly, they reinforce one another. The name of the Commission has now been changed to The Gambia Competition and Consumer Protection Commission.

## **The Rights of Consumers under the Act**

The Act elucidates the rights of consumers who before the enactment of this legislation have little or no rights. Under the Consumer protection Act consumers are entitled to true, sufficient and timely information on technology, goods, and services offered in the market as well as on prices, characteristics, quality and risk that might be involved in the consumption of goods and services. Consumers also are also entitled to fair, non-discriminatory treatment by suppliers of good and services, full and timely compensation for damages attributable to suppliers or providers, access to competent authorities and judicial bodies for the protection their rights and to safe, good quality goods and services

## **Supplier and Provider Obligations to Consumers**

The suppliers and providers of goods or services also have obligations to consumers. When suppliers or providers enter into contracts with consumers, the terms of the contracts should 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 execution of the contracts. When the suppliers or providers are supplying or selling goods or services that include the grant of consumer credit, suppliers or providers of goods and services should inform the consumers and advise them in advance about the terms and conditions of the contracts or agreements. The suppliers or providers of resold or imported commodities are under a legal obligation to show honest and transparency in their commercial dealing with the consumers. It is clearly stated in section 7(3)(a) of the Consumer Protection Act, 2014 that when the goods are defective, second hand, reconditioned or restored, such fact should be indicated clearly on invoices, receipts, vouchers or business records. Section 7(3)(b) also imposes the legal or contractual obligation on manufacturers and importers of resold and imported commodities to make sure that there is a regular supply and provision of components, spare parts, accessories, peripherals and technical as well as maintenance services for a reasonable period of time if agreed by both parties.

## **Implied Warranties and their Application under the Act**

Warranties are very important part of the Act in that they are the implied terms of the agreements or contracts between suppliers and consumers under the Consumer Protection Act, 2014. Implied terms are terms that become terms of the contract even when they have not been included in the agreement or contract at the time of its formation or conclusion. However, section 8 (1) of the Act states that if consumers and suppliers or manufacturers expressly state that the warranties should be excluded they should not be read into contract between consumers and suppliers or manufacturers. Under the Act the following warranties will be read into every agreement between consumers and suppliers or manufacturers in the absence of their expressed exclusion from the agreement or contract by mutual consent: the seller, supplier, or provider of goods or service should supply or deliver the goods or services reasonably expected by the consumer, the goods or services delivered shall meet the minimum standards of durability, usefulness and viability, suppliers or providers of goods or services shall provide consumers with true, sufficient, clear and timely information on goods and services offered, the labelling on all products should be legible, visibly printed, and where possible, in bold letters, the contents, names and physical addresses of manufacturers and producers, assemblers or packagers as well as the manufacture or production and expiry dates of all goods should be written visibly, the nutrient content of food products should be clearly spelt out on the packages, suppliers or providers of goods or services should provide consumers with contracts, receipts, tickets, invoices, business records or other documents that embody or evidence the transactions. The contracts, receipts, tickets, invoices, business records, or other documents should indicate the date and place where delivery, supply or performance is to take place and the consequences of any failure or delay, the material components, spare parts, accessories, paraphernalia or peripherals to be used, the prices, as well as the terms and conditions

under which the suppliers undertake to provide such goods or services, and any taxes or other charges applied or other information prescribed under Consumer Protection Act or any other law.

The price of any goods or services should be indicated clearly and unmistakably. The term “guarantee” or “warranty” or any equivalent term should 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. The penalty for breach of a warranty includes repairs, replacement, partial or full refund, damages or criminal prosecution. A supplier or provider should 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 consumer’s intended purpose and that the consumer is unable or unlikely to make that determination. A supplier or provider should not accept payment for goods or services if he or she does not have the 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. If the supplier or provider determines that he or she cannot meet the commitment or reservation he or she should refund the consumer any amount paid and compensate the consumer for breach of contract and consequential damages in an amount equal to the loss suffered.

Suppliers or providers who offer repair services should keep records and give a copy to the consumer stating the name, address, and telephone number of the consumer, description of the goods to be repaired, an estimate of the replacement value of goods in its present state as agreed upon with the consumer, an estimate of the labour and other costs to be paid by the consumer with respect to repairs and the date on which the goods are received for repair and when they will be ready for delivery. The supplier or provider should disclose to the consumer any additional repairs necessary and obtain a written indemnity if the consumer chooses not to pay for the recommended repairs.

## **Standard Form Agreements or Contracts**

The Act also empowers the Commission to regulate the standard form agreements. These are 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 their terms. Standard form agreements are sometimes referred to as unilateral agreements or contracts of adhesion. It is stated in section 9(1) of the Act that the use of standard form agreements should be regulated by the Commission to ensure adequate consumer protection. A standard form agreement should be drafted in English and should upon request by a consumer be read and explained to a consumer in a language and manner he or she can reasonably understand. The terms of a standard form contract should be favourable and reasonable to vulnerable consumers in terms of scope, interest rates, charged costs and repayment schedules. Section 9(4) of the Act states that a standard form contract should not contain any provision that waives substantive or procedural rights available under this Act or inconsistent with rights guaranteed by any other law.

## **Distance Selling**

Before the conclusion of any distance selling contract, the supplier or provider should provide the consumer with the following: the identity of the supplier and, in the case of a consumer agreement requiring advance payment, his or her physical address, a description of the main characteristics of the goods or services, the price of the goods or services including all taxes, delivery cost where appropriate, the arrangement for payment, delivery or performance, the existence of a right of cancellation, the cost of using the means of distance communication where it is calculated other than at a basic rate, the period for which the offer or price remains valid and the minimum duration of the consumer agreement where appropriate. For proposed or draft agreements, the supplier should provide the consumer with an express authority to accept or decline the agreement and correct errors before entering into it.

### **Unfair Trade Practices**

Abdou Kolley, the minister responsible for Trade and Industry has stated that the Bill “highlighted unfair trade practices that should not be engaged in the course of business.” He also asserted that “the objective is to ensure clarity in the supply and consumption of goods and services in a manner that ensures fairness in trade and the protection of consumer welfare.” The unfair trade practices are deceptive and cause harm to the consumers. The deceptive practices outlawed by the Act in the course of business include passing off goods or services as those of another, causing likelihood of confusion or misunderstanding as to source, sponsorship, approval or certification of goods or services, using deceptive representations or designations of geographic origin in connection with goods or services, representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or second-hand, disparaging the goods, services or business of another by false or misleading representation of fact, and advertising goods or services with no intention to sell them as advertised.

### **Regulation of Advertisement under the Act**

It is a requirement under the Act that advertisements should conform to the rules of decency, sincerity and truth and should not exploit superstition, ignorance or fear. Section 12(2) of the Act provides that any false or misleading offer or advertising of goods or services should be subject to investigation and prosecution. It is also a violation of the Act to be involved in abusive advertising. Abusive advertising include unfair or discriminatory advertising, advertising likely to incite violence, advertising exploiting fear, advertising exploiting children, advertising infringing environmental values or advertising capable of leading consumers to behave in a manner detrimental or hazardous to their health or safety. A supplier should 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.

### **Warnings about Harmful Technology, Goods and Services**

The producer or supplier should give noticeable warnings about harmful technology, goods and services so that they could be used under the strongest possible safety conditions. The warnings provided by the supplier or provider of dangerous goods or services should be clearly visible and prominent. If a material hazard, risk or defect is detected in a good or service, the supplier or provider should withdraw them from the market and substitute or replace them at his or her own expense. If 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 require a recall of goods from the market. Once a notice is in force, the supplier should cease trading in the dangerous or defective goods.

### **Functions of the Commission under the Act**

The Act also elucidates the functions of the Commission in addition to its functions under the Competition Act 2007. The functions of the Commission under the Act are to establish a directorate responsible for consumer protection, conduct investigations into consumer complaints, appoint officers who should receive and process complaints for submission to the Tribunals, deploy its officials at all Tribunals to receive and process complaints from consumers, build the capacities of the members of the Tribunals through training, monitor and evaluate the activities of Tribunals, advocate and facilitate the mainstreaming of consumer protection issues in national policies and programmes, formulate policy and legislative proposals in respect of consumer welfare issues, undertake consumer education and information programmes, conduct or commission research on consumer protection issues, sensitise and provide advice to consumers on their rights and duties under the Act, provide information on any dangerous goods and services that might harm consumers to the competent authorities for appropriate action, provide funding for the functioning of the Tribunals and formulate rules for the submission and treatment of complaints.

### **Powers of the Commission under the Act**

In addition to its powers under the Competition Act 2007, the Commission has the following powers under the Consumer Protection Act 2014: serve a written notice on an enterprise or any person who appears to be in possession of relevant information or documents, and may in the notice require the enterprise or person on whom it is served to do all or any of the following: 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 and 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.

### **Complaints to the Commission**

A consumer may bring a complaint to the Commission in writing if he or she alleges that an unfair trade practice or unfair term has been adopted by a supplier, goods which are hazardous to life and safety are being offered for sale in violation of standards and the supplier should have known that the goods were unsafe to the public, 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 he or she should have known with due diligence to be injurious to life and safety and a provision of this Act has been breached. It is clearly stated in section 18(4)(a)-(d) of the Act that a complaint may be filed by a consumer who purchased or agreed to purchase goods or services, a recognized consumer association, one or more consumers, for the benefit of all consumers having the same interest or the state. The complaint should be accompanied by fees in the amount and manner prescribed by the Commission.

## **Establishment of Consumer Protection Tribunals**

The Consumer Protection Tribunals will be established which should sit in every administrative region of The Gambia. Each Tribunal should consist of three persons and should be chaired by a person with a legal background. The members of the Tribunal should be appointed by the Minister responsible for Trade and Industry in consultation the Chief Justice. The members of the Tribunal should be entitled to receive fees and allowances to be determined by the minister responsible for trade and industry.

## **Powers of a Tribunal**

A Tribunal may hear complaints in respect of a breach of this Act, summon and enforce the attendance of the parties to any complaint and witnesses, request the Commission to investigate any complaint, impose any sanction, penalty, or remedy provided for in the Act, and do anything necessary to address consumer complaints.

## **Hearing by a Tribunal**

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. A Tribunal should not hear a complaint unless the Commission's officer attached to the Tribunal vets and forwards the complaint for a hearing. A person who is dissatisfied with the decision of an official of the Tribunal to forward his or her complaint for hearing may appeal to the Executive Secretary of the Commission.

## **Attendance at Hearing**

A Tribunal may require the attendance of a person at a hearing and may require the production of documents and other material. A person who fails to attend a hearing or to produce a document or other material when required to do so commits an offence. The person is liable on conviction, in the case of an individual, to a fine of not less than one hundred thousand Dalasi or imprisonment for a term not exceeding five years, or to both the fine and imprisonment or a body corporate, to a fine of not less than five hundred thousand Dalasi. A Tribunal should not impose a penalty on an enterprise or give a direction unless it has held a hearing. However, 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.

## **Appeals**

A person or entity aggrieved by the decision of a Tribunal may appeal to the High Court within thirty days of the notification of the decision. On appeal, the Court may confirm the decision of the Tribunal, order the Tribunal to vary its decision or such part of it as the Court may specify, order the Tribunal to revoke its decision in whole or in part or 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.

## **Financial Penalties**

A Tribunal may in addition to, or in place of giving a direction, make an order imposing a financial penalty on an enterprise. A Tribunal should not impose a financial penalty unless it is satisfied that the breach of the prohibition was committed intentionally or negligently. The amount of the penalty must not exceed ten percent 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. An order imposing financial penalty should be in writing and specify the date before which the penalty is required to be paid.

### **Civil Liability**

Suppliers or providers of goods or services should be subject 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 services. Producers, importers, dealers, suppliers, providers and all persons involved in the distribution chain should be jointly liable under civil law for 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 the damage occurs. Parties in the distribution chain are contributorily liable under civil law for damages and harm caused if they fail to comply with the request to identify the supplier or manufacturer of the harmful product or knew or had reason to know that the product could be dangerous to consumers and failed to take reasonable remedial actions or inform the authorities so the product could be removed.

### **Criminal Liability**

Suppliers or providers may also be criminally liable under applicable provisions of the penal or criminal law. A person who contravenes any provision of the 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 term not exceeding five years or both.

### **Remedies for Consumers**

Sanctions, penalties or remedies for consumers include cancellation, rescission or revision of a contract or its clauses, the obligation to pay damages and interests as well as the obligation to pay fines. A Tribunal may grant relief either on an application for relief or on its own initiative or at the instance of a party to proceedings unless the party has waived his or her rights at any stage in the proceedings. A Tribunal may, at the consumer's request, order the replacement of the goods or services refund the contract price or any consideration paid in excess of the contract price. Consumers may request cancellation or reduction of price without prejudice to being indemnified for injury or loss when the goods or services of a contract have concealed faults, defects, or deficiencies that diminish its quality or usefulness below expected standards.

### **Defence**

A supplier may have a defence against liability under the Act if it can be proved that the action complained against was a mistake, due to reliance on information from another source, the act or

default of another person, accidental or caused by some other cause beyond control and the supplier took reasonable precautions and exercised due diligence to avoid contravention of the provisions of this Act.

## **Conclusion**

The application and the enforcement of the Consumer Protection Act, 2014 will inevitably lead to the enhancement of consumer welfare in The Gambia. It will also promote responsible consumer and supplier behavior. The imposition of sanctions, penalties or remedies for consumers will have the effect of forcing suppliers or providers of goods and services to bring their business activities into conformity with the provisions of the Act. If the provisions of this Act are not compatible with the provisions of any other written law with regards to matters concerning consumer welfare and the powers or functions of the Commission or a Tribunal under this Act, the provisions of this Act should prevail.