

SAINT LUCIA**No. 14 of 2021****ARRANGEMENT OF SECTIONS***Section*

1. Short title
2. Interpretation
3. Amendment of section 2
4. Amendment of section 4
5. Substitution of Part I
6. Substitution of Part II
7. Substitution of Part III
8. Amendment of section 62
9. Amendment of Part VI
10. Amendment of section 126
11. Amendment of Part IX
12. Amendment of Part XII
13. Substitution of Schedules 2, 3 and 4
14. Insertion of new Schedule 5

I Assent

[L.S.]

ERROL CHARLES,
Deputy to the Governor-General.

September 23, 2021.

SAINT LUCIA

No. 14 of 2021

AN ACT to amend the Consumer Protection Act, Cap.13.24.

[27th September, 2021]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the Consumer Protection (Amendment) Act, 2021.

Interpretation

2. In this Act, “principal Act” means the Consumer Protection Act, Cap. 13.24.

Amendment of section 2

3. Section 2 of the principal Act is amended —

(a) by deleting the definition of “authorized officer” and by substituting the following —

“ “authorized officer” has the meaning assigned under the Distribution and Price of Goods Act, Cap. 13.09;”;

(b) by deleting the definition of “Chairperson” and by substituting the following —

“ “Chairperson” —

(a) in relation to the Council, means the Chairperson of the Council;

(b) in relation to the Tribunal, means the Chairperson of the Tribunal;”;

(c) by deleting the definition of “consumer” and by substituting the following —

“ “consumer” —

(a) means a person who —

(i) buys goods under an agreement or transaction,

(ii) hires or avails a service under an agreement or transaction;

(b) includes —

(i) any other user of goods under an agreement or transaction not referred to under subparagraph (a)(i), when use is made with the consent of the person who buys the goods,

- (ii) any other beneficiary of a service under an agreement or transaction not referred to under subparagraph (a) (ii), when the service is hired or availed with the consent of the hirer;
- (c) does not include a person who —
 - (i) obtains goods for resale or for a commercial purpose,
 - (ii) hires or avails the service for a commercial purpose,
 - (iii) uses goods bought or avails a service exclusively for earning a livelihood by means of self-employment;”;
- (d) by deleting the definition of “commercial purpose” and by substituting the following —
 - “ “commercial purpose” in relation to a consumer —
 - (a) means the purchase of goods for use in an activity directly intended to generate profit;
 - (b) does not include —
 - (i) goods bought by a person for personal use, or
 - (ii) a service that is provided exclusively for a charitable purpose;”;
- (e) by deleting the definition of “negligence” and by substituting the following —
 - “ “negligence” includes —
 - (a) the breach of an obligation, arising from the express or implied terms of a contract, to take reasonable care and to exercise reasonable skill in the performance of the contract;
 - (b) the breach of a common law duty to take reasonable care;
 - (c) a delict;”;
- (f) by deleting the definition of “Secretary” and by substituting the following —

“ “Secretary” —

- (a) in relation to the Council, means the Secretary of the Council;
- (b) in relation to the Tribunal, means the Secretary of the Tribunal;”;
- (g) by deleting the definition of “member” and by substituting the following —
 - “ “member” —
 - (a) in relation to the Council, means a member of the Council;
 - (b) in relation to the Tribunal, means a member of the Tribunal;”;
- (h) by deleting the definitions of “Board” and “Appeals Tribunal”;
- (i) by inserting in the correct alphabetical sequence the following new definitions —
 - “ “alternative dispute resolution” —
 - (a) means the process, method or technique employed by a party to a dispute to resolve a dispute with regard to goods and services;
 - (b) includes mediation and conciliation;
 - “Council” means the Consumer Protection Council established under section 21;
 - “delict” has the meaning assigned to it under the Civil Code of Saint Lucia, Cap. 4.01;
 - “Deputy Chairperson” means the Deputy Chairperson of the Council under section 23(2);
 - “investigation report” means an investigation report under section 17;
 - “Tribunal” means the Consumer Protection Tribunal established under section 48 ;”.

Amendment of section 4

4. Section 4 of the principal Act is amended —

(a) by deleting the section heading and by substituting the following —

“**Application and non-application of this Act**”;

(b) by deleting subsection (2) and by substituting the following —

“(2) In determining whether this Act applies to a person or transaction, the Tribunal or a court shall consider the real substance of the person or transaction.”.

Substitution of Part I

5. The principal Act is amended by deleting Part I and by substituting the following —

**“PART I
CONSUMER AFFAIRS DEPARTMENT**

*Division 1
Consumer Affairs Department*

Administration of this Part

5.—(1) The Consumer Affairs Department shall administer this Part.

(2) Notwithstanding subsection (1), the Minister may, in a case where the Consumer Affairs Department no longer exists, by Order published in the *Gazette*, designate another body to carry out the functions of the Department under section 6.

(3) Where the Minister designates a body under subsection (2), the functions and powers assigned to the Consumer Affairs Department under this Act are transferred to that body.

Functions of the Department

6. The functions of the Department are —

(a) receiving and recording a complaint under section 11;

(b) investigating a complaint under section 12;

(c) preparing an investigation report under section 17;

- (d) educating the public, through the dissemination of information relating to consumer affairs;
- (e) promoting and protecting the welfare and interests of consumers;
- (f) conducting research on matters relating to consumer affairs.

Powers of the Department

7. For the purpose of carrying out the functions conferred on it under section 6, the Department has the power to —

- (a) make a test purchase under section 13(3)(a);
- (b) enter a business place to inspect goods and premises relating to a complaint under section 13(3)(b);
- (c) request and take a sample of goods under section 13(3)(c);
- (d) inspect documents relating to the investigation and make copies of, or take extracts from, the documents under section 13(3)(d);
- (e) request documents, information or evidence under section 13(3)(e);
- (f) inspect equipment used in the manufacturing, processing or storing of goods under section 13(3)(f).

Division 2 *Complaints*

Persons making a complaint

8.—(1) A person who has reasonable grounds to believe that a supplier is in breach of this Act, may, subject to section 9, make a complaint to the Department within one month of the expiration of the warranty, expressed or implied, or within the time period provided under section 90.

(2) The National Consumers Association (Saint Lucia) Inc. may make a complaint to the Department on behalf of a consumer.

(3) Notwithstanding this section, a person who makes a complaint about the actions of a supplier may seek redress in the civil or criminal courts having jurisdiction to hear the matter.

(4) A person shall not make a complaint to the Department where a determination has been made by a court on the same subject matter.

Form and procedure for making a complaint

9.—(1) A complaint under section 8 must —

- (a) be made in the consumer complaint form as set out in Schedule 2;
- (b) specify whether the person making the complaint —
 - (i) at the time of making the complaint, has commenced an action before a civil or criminal court,
 - (ii) after making a complaint, intends to commence an action before a civil or criminal court.

(2) A complaint to the Department may be made orally and must be produced in writing by the person receiving the complaint and the complainant shall confirm the contents of the written complaint with his or her signature or other identifying mark.

Protection of persons making a complaint

10. Where a complaint is made to the Department under section 8, a person is not liable for any loss caused to a supplier, if the complaint was made —

- (a) in good faith;
- (b) reasonably believing that the allegations made in it are substantially true; and
- (c) in the circumstances it is reasonable for the person to make the complaint.

Receipt and record of complaint

11. On receiving a complaint, the Department shall —

- (a) ensure that the consumer complaint form, when received by the Department, is stamped with the stamp of the Department and provide the person making the complaint with a stamped copy of his or her consumer complaint form;
- (b) make a record of the date and relevant details relating to the complaint.

Power to investigate not precluded

12. The Department is not precluded from carrying out an investigation where —

- (a) subject to section 13(2), a complaint has not been made under section 8;
- (b) an action is commenced in a civil or criminal court in connection with such investigation, unless the court otherwise directs.

Division 3
Investigations

Investigations

13.—(1) After receipt of a complaint under section 11, an authorized officer shall conduct an investigation.

(2) Notwithstanding subsection (1), where the Department has reasonable grounds to believe that a supplier is in breach of this Act, an authorized officer shall conduct an investigation.

(3) Where an authorized officer conducts an investigation under subsection (1) or (2), he or she may enter, during business hours, the premises of a place of business to —

- (a) make a test purchase;
- (b) inspect goods and premises;
- (c) request and take a sample of goods;
- (d) inspect documents relating to the investigation and make copies of, or take extracts from, the documents;

- (e) request information, documents and evidence;
 - (f) inspect equipment used in the manufacturing, processing or storing of goods.
- (4) Where a sample of goods or a document is removed from the premises of the business place during an investigation, the owner, operator or person in charge of the business must sign a document to acknowledge removal of the sample of the goods or the document.
- (5) In a case where the owner, operator or person in charge of a business denies an authorized officer entry into the premises of a business place under subsection (3), section 15 applies.
- (6) Where the person making a complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the Department shall, in the prescribed manner —
- (a) obtain a sample of the goods from the complainant;
 - (b) seal the sample and authenticate it; and
 - (c) subject to subsection (7), submit the sealed sample to an appropriate laboratory along with a direction to the laboratory to —
 - (i) make an analysis or test of the goods, whichever may be necessary,
 - (ii) determine whether the goods have a defect alleged in the complaint,
 - (iii) determine whether the goods have a defect that is not alleged in the complaint,
 - (iv) determine whether the goods have a defect that poses a health risk.
- (7) Before a sealed sample of the goods is submitted to an appropriate laboratory, the Department shall require the person making the complaint to pay the prescribed fee, to enable the laboratory to carry out the necessary analysis or tests.

(8) The Department shall remit the amount paid under subsection (7) to the laboratory for carrying out the necessary analysis or test in relation to the goods in question.

(9) On completion of the analysis or tests, the laboratory shall submit to the Department its findings in the prescribed form within a period of forty-five days of receiving the sealed sample or within such extended period as may be granted by the Department.

(10) After completing an investigation under this section, an authorized officer shall prepare and submit an investigation report to the Director in accordance with section 17.

Notice to obtain information, documents and evidence

14. Where an authorized officer conducts an investigation under section 13(3)(e) and the supplier, consumer or any other person agrees to furnish information, documents or evidence relating to the complaint, the authorized officer may, by notice in writing served on the supplier, consumer or other person, require the supplier, consumer or person to —

- (a) furnish the information to the authorized officer in writing, in the manner and within the time period specified in the notice;
- (b) produce the document in a manner specified in the notice; or
- (c) cause the supplier, the consumer or other person to appear before the authorized officer at a time and place specified in the notice to give the evidence, orally or in writing, and to produce the documents.

Application for warrant

15.—(1) The Department shall, if necessary under section 13(5) make an application to a magistrate on behalf of an authorized officer for a warrant to exercise the powers under section 13.

(2) Where an application for a warrant is made under subsection (1), the magistrate may issue a warrant to an authorized officer who is named in the warrant, to enter and carry out

an investigation at the premises of a business place as specified in the warrant.

(3) A magistrate shall not issue a warrant under subsection (2) unless —

- (a) an affidavit has been furnished by the authorized officer to the magistrate setting out the grounds on which the issue of the warrant is being sought;
- (b) the authorized officer or some other person has given to the magistrate such further information, if any, on oath as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) A warrant issued under subsection (2) must specify —

- (a) the purpose for which the warrant is issued;
- (b) the hours within which entry is authorized;
- (c) the type of documents, goods or samples of goods authorized to be inspected or taken; and
- (d) the date, not being less than seven days after the day on which the warrant is issued, after which the warrant ceases to have effect.

Entering premises with a warrant

16.—(1) An authorized officer shall, before entering the premises under a warrant issued under section 15(2) —

- (a) announce that he or she is authorized to enter the premises;
- (b) give a person at the premises an opportunity to allow entry to the premises; and
- (c) give a copy of the warrant to the supplier or in the absence of such a person on the premises to a person who appears to be employed by the supplier.

(2) A person who interferes with an authorized officer in the execution of a warrant under this section commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or imprisonment for a term not exceeding one year.

(3) Any information or document furnished or produced by a person, and any information or document obtained by an authorized officer under this section, may only be used by an authorized officer or a person assisting an authorized officer in proceedings against the supplier for contravention of this Act.

Investigation report

17.—(1) An investigation report prepared under section 13(10) must be —

(a) supported by —

- (i) a copy of the consumer complaint form,
- (ii) information, documents, evidence obtained by the Department under section 13,
- (iii) laboratory findings received by the Department under section 13(9),
- (iv) recommendations of the Department.

(b) submitted to the Director for review.

(2) The Director shall, within 14 days following receipt and after review of an investigation report under subsection (1), send a copy of the investigation report to the complainant and the supplier.

Transmission of investigation report to the Council

18. The Director shall transmit to the Council the investigation report and other supporting documents specified under section 17(1)(a) for its consideration.

Directives by the Director

19. The Director may give directives to officers of the Department for receiving, recording or investigating complaints.

Protection of the Department

20. The Department is not liable for an act or default of the Department done or omitted to be done in good faith in the course of the operations of the Department.”.

Substitution of Part II

6. The principal Act is amended by deleting Part II and by substituting the following —

**“PART II
CONSUMER PROTECTION COUNCIL**

Division 1

Establishment of the Council

Establishment of the Consumer Protection Council

21. There is established a body to be known as the Consumer Protection Council.

Composition of Council

22.—(1) The Council consists of seven persons appointed by the Minister —

- (a) a person nominated by the Saint Lucia Bar Association who is an attorney-at-law with at least seven years experience in practising law;
- (b) a person nominated by the Saint Lucia Chamber of Commerce, Industry and Agriculture;
- (c) two persons nominated by the National Consumer Association (Saint Lucia) Inc.;
- (d) three persons nominated by the Minister with experience in —
 - (i) consumer protection,
 - (ii) public administration,
 - (iii) business,
 - (iv) industry.

(2) The Minister shall, by Notice published in the *Gazette*, publish the names of the members of the Council as first constituted and every change in membership of the Council.

Chairperson and Deputy Chairperson

23.—(1) The Minister shall appoint the Chairperson of the Council.

(2) The members of the Council shall, at its first meeting, elect a Deputy Chairperson from amongst its members.

Tenure of the Council

24.—(1) The Council is appointed for a period of two years.

(2) A member of the Council is eligible for reappointment.

Functions of the Council

25. The functions of the Council are —

- (a) considering an investigation report and supporting document submitted under section 17;
- (b) facilitating, through an alternative dispute resolution proceedings, the resolution of a dispute between a consumer and a supplier in relation to goods and service;
- (c) preparing a binding written agreement, if the parties to the dispute resolution proceedings have reached an amicable solution under section 43(a);
- (d) if the parties to the dispute resolution proceedings are unable to reach an amicable solution, referring the dispute to the Tribunal for its consideration under section 43(b);
- (e) on receipt of information that a person making a complaint has commenced or intends to commence an action before a criminal or civil court, determining whether the result of that action may be duplicitous in nature, and suspend or discontinue alternative dispute resolution.

Powers of the Council

26. The powers of the Council are —

- (a) requiring the parties to a dispute to attend dispute resolution proceedings;
- (b) requiring attendance at dispute resolution proceedings of —

- (i) a person with an interest in a matter,
- (ii) any other person;
- (c) requesting further information from —
 - (i) the Director,
 - (ii) a person making a complaint,
 - (iii) the supplier against whom a complaint is made,
 - (iv) any other person;
- (d) requesting the Department to conduct a further investigation;
- (e) preparing a binding or non-binding written agreement and issuing a notice for fixed penalty in accordance with section 44.

Disqualification of a member

27. A person is disqualified from being a member of the Council if he or she is —

- (a) declared by a court to be a bankrupt;
- (b) declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
- (c) convicted of a criminal offence, except where the offence is a minor traffic offence or has been spent in accordance with the Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.13; or
- (d) convicted of an offence under this Act.

Leave of absence of a member and alternate member

28.—(1) The Minister may approve a leave of absence for a member of the Council for a period not exceeding three months.

(2) The Minister may appoint an alternate member to act in the office of a member of the Council while the member is on an approved leave of absence under subsection (1).

(3) Without prejudice to subsection (2), the Minister may appoint an alternate member in accordance with the constitution of the Council as specified under section 22.

Resignation

29.—(1) The Chairperson of the Council may resign by submitting a written notice of resignation to the Minister.

(2) A member of the Council may resign by submitting, through the Chairperson, a written notice of resignation to the Minister.

Revocation

30.—(1) The Minister may revoke the appointment of a member of the Council if satisfied that the member —

(a) is disqualified from being a member of the Council under section 27;

(b) is unable to perform the functions of his or her office;

(c) is guilty of misconduct;

(d) has failed to attend three consecutive meetings of the Council without presenting a medical certificate or without being excused —

(i) in the case of the Chairperson, by the Minister in writing,

(ii) in the case of any other member, by the Chairperson in writing;

(e) has failed to act in the best interest of the Council.

(2) Where the Minister revokes the appointment of a member of the Council or the Chairperson, the Minister shall state the reasons for the revocation.

Vacancy

31. The office of a member of the Council is vacated —

(a) on the death of the member;

(b) if the member becomes disqualified under section 27;

(c) if the member resigns under section 29;

(d) if the Minister revokes the appointment of the member under section 30;

(e) on the expiry of the member's term of appointment.

Remuneration and other expenses

32.—(1) A member of the Council must be paid remuneration for his or her services as determined by Cabinet.

(2) The expenses of the Council are to be paid out of the Consolidated Fund.

Secretary of the Council

33.—(1) The Council shall appoint a person on terms and conditions as the Council determines to perform the functions of Secretary to the Council.

(2) The Secretary shall perform the functions assigned to him or her by the Council.

Confidentiality and oath of secrecy

34.—(1) A member and the Secretary of the Council shall at all times preserve and aid in preserving confidentiality with regard to all matters coming to his or her knowledge in the performance of his or her functions under this Act.

(2) Except with the written consent of the Council or for the performance of his or her duties or under a legal obligation, a member, the Secretary of the Council shall not communicate confidential matters to a person or permit a person to have access to records in the possession, custody or control of the Council.

(3) A member and the Secretary of the Council must take the oath of secrecy set out in Schedule 5.

Independence of the Council

35. The Council shall act independently and impartially in performing its functions and exercising its powers.

Protection of members and the Secretary

36. A member and the Secretary of the Council is not personally liable for any act or default of the Council done or omitted to be done in good faith in the course of the operations of the Council.

Official seal

37.—(1) The Council must have an official seal.

(2) The official seal of the Council under subsection (1) shall be kept in the custody of the Secretary.

(3) The affixing of the official seal of the Council must be witnessed and signed by the Chairperson or the Deputy Chairperson.

(4) A document and a decision of the Council, except a document or decision required by law to be under seal, shall be signed by —

- (a) the Chairperson or a member authorized in writing by the Chairperson to act on his or her behalf; and
- (b) the Secretary.

Division 2
Meetings of the Council

Meetings of the Council

38.—(1) The Council shall meet on the dates and time as the Chairperson determines.

(2) Notwithstanding subsection (1), the Chairperson may call an emergency meeting of the Council —

- (a) where a written request for that purpose is addressed to him or her by three members;
- (b) where the Minister directs; or
- (c) if he or she determines that a meeting is necessary.

(3) The Council shall meet at least once every month or at a time as may be necessary or expedient for the transaction of business, and the meetings are to be held at a place and time and on a day as the Council determines.

(4) The Chairperson and any other member are deemed to be present at a meeting of the Council if that Chairperson or member participates by telephone, video link or other electronic means, and all members participating in the meeting are able to hear and speak to each other.

(5) The Chairperson, or in his or her absence the Deputy Chairperson, shall preside at meetings of the Council, and in the absence of both the Chairperson and the Deputy Chairperson from any meeting, the members present at that meeting shall elect one of their number to preside at that meeting.

(6) The quorum at a meeting of the Council is a majority of the members of the Council, including the member presiding at the meeting.

(7) The decision of the Council is by a majority of votes and, in any case in which the voting is equal, the Chairperson or other member presiding at the meeting has a casting vote in addition to an original vote.

(8) Minutes in proper form of each meeting shall be kept by the Secretary and shall be confirmed by the Chairperson, Deputy Chairperson or other member presiding as soon as practicable at the next meeting.

(9) The Council may, co-opt a person to attend a particular meeting of the Council at which it is proposed to deal with a particular matter, for the purpose of assisting or advising the Council.

(10) The acts of the Council are authenticated by the signature of the Chairperson of the Council.

(11) The validity of any meeting of the Council is not affected by any vacancy amongst the members or by a defect in the appointment of a member.

(12) Subject to this section, the Council may regulate its own procedure.

Rejection of a complaint by the Council

39.—(1) The Council may, on the recommendation of the Department, reject a complaint if the Council is of the opinion that —

- (a) the complaint is frivolous or vexatious or not made in good faith;
- (b) the complainant has delayed for more than six months from the day the grounds for complaint

arose or a period expressed in relation to the goods or services, whichever is greater;

- (c) having regard to all the circumstances of the case, no investigation or further investigation is necessary;
- (d) the complaint does not pertain to a matter within the function of the Council.

(2) Where the Council rejects a complaint under subsection (1), the Secretary shall give written notice to the person making the complaint of the reasons for rejecting the complaint.

Committees of the Council

40.—(1) The Council may delegate in writing to a committee of the Council its functions or powers.

(2) The Chairperson of a committee established under subsection (1) shall be a member of the Council.

(3) The Council shall decide the terms and conditions of a committee established under subsection (1).

(4) A committee under subsection (1) shall advise and make recommendations to the Council with respect to matters within the functions of the Council.

(5) A committee appointed under subsection (1) shall keep a record of a decision it makes when exercising a power delegated to it by the Council.

(6) A member of a committee appointed under subsection (1) is entitled to be paid such fees and allowances as determined by Cabinet.

Declaration of interest and abstention from voting

41.—(1) A member of the Council shall, as soon as is practicable, make a declaration to the Chairperson of a matter in which he or she has, directly or indirectly, personally or by his or her relative, partner, business associate or company, a pecuniary or business interest and that member shall not take part, directly or indirectly in a meeting of the Council on that matter.

(2) Where a member declares an interest under subsection (1), the member of the Council shall depart the meeting on the matter coming up for discussion and shall not receive any other communication on the matter.

(3) A declaration and the departure of a member of the Council from the meeting in accordance with subsections (1) and (2) shall be noted in the minutes of the meeting.

(4) A member of the Council is guilty of misconduct and section 30(1)(c) applies if he or she —

- (a) contravenes subsection (1) or (2);
- (b) votes in respect of a matter before the Council in which he or she is interested, whether directly or indirectly;
- (c) seeks to influence the vote of any other member of the Council in relation to a matter before the Council in which he or she is materially interested, whether directly or indirectly.

Division 3

Alternative Dispute Resolution

Notice for alternative dispute resolution proceedings

42.—(1) The Council may, by sending a notice for alternative dispute resolution proceedings to the person making a complaint and the supplier who is the subject of the complaint, conduct alternative dispute resolution at a time and place as is necessary to carry out its functions under section 25(b).

(2) The Council shall conduct alternative dispute resolution proceedings within three weeks of receipt of an investigation report and supporting documents transmitted to it under section 18.

(3) A notice for alternative dispute resolution proceedings under subsection (1) must —

- (a) specify the complaint and purpose of the alternative dispute resolution proceedings;
- (b) specify the place and time for the alternative dispute resolution proceedings ; and

(c) be in such form as determined by the Council.

(4) The person making the complaint and the supplier concerned shall attend the alternative dispute resolution proceedings.

(5) Where the person making the complaint does not attend the alternative dispute resolution proceedings, having had due notice of the time and place of alternative dispute resolution proceedings, the Council may dismiss the complaint, unless having received a reasonable excuse for the non-appearance of the person making the complaint the Council thinks it fit to adjourn the matter.

(6) Where a person who —

(a) refuses or neglects without reasonable cause, to attend dispute resolution proceedings in compliance with the requirements of a notice under subsection (1); or

(b) departs from alternative dispute resolution proceedings without the authority of the person holding the alternative dispute resolution proceedings,

the Council may proceed with the alternative dispute resolution proceedings and make a decision in his or her absence in accordance with this Act.

Resolution of dispute

43. Where a dispute with regard to goods and services —

(a) is resolved with the consent of the parties to the dispute, the parties are bound by the agreement reached;

(b) is unresolved, the Council shall, on the request of the parties, refer the dispute with regard to goods and services to the Tribunal for its consideration.

Binding written agreement and notice of fixed penalty

44.—(1) Where a dispute is resolved in the case of section 43(a), the parties to a dispute shall sign, a binding written agreement.

(2) The Secretary shall send a signed copy of the written agreement under subsection (1) to —

- (a) the person who made the complaint;
 - (b) the supplier concerned;
 - (c) the Tribunal.
- (3) A binding written agreement under subsection (1) may —
- (a) require the supplier to —
 - (i) remove the defect from the goods in question,
 - (ii) replace the goods with new goods of a similar description which must be free from any defect,
 - (iii) return to the person making a complaint the price, or charges paid by that person,
 - (iv) remove the deficiencies in the services in question,
 - (v) desist and discontinue the unfair trade practice or the restrictive trade practice,
 - (vi) refrain from offering the hazardous goods for sale,
 - (vii) withdraw the hazardous goods from being offered for sale,
 - (viii) cease the manufacture of hazardous goods and to desist from offering services which are hazardous in nature,
 - (ix) issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the supplier responsible for issuing such misleading advertisement, or
 - (x) provide for prescribed costs to parties in addition to the fees paid to the laboratory for analysis or testing under section 13(8);
 - (b) be accompanied by a notice to pay fixed penalties as set out under Schedule 4.

Fixed penalties

45.—(1) The Council shall give written notice to a person of his or her liability to pay a fixed penalty, if the Council believes that an offence specified under Schedule 4 has been committed.

(2) If a person that is given written notice under subsection (1) does not wish to have the alleged offence heard and determined by a court, the person may, after the giving of the notice, pay the amount of money specified in Schedule 4 with regard to the alleged offence.

(3) A notice under subsection (1) must state —

- (a) the section of this Act of which the Council believes that the supplier has breached;
- (b) the fixed penalty for the alleged offence to which the notice relates, which at the date of giving the notice is believed to have been committed;
- (c) the time period within which the fixed penalty under paragraph (b) must be paid;
- (d) that the fixed penalty is payable to the Government;
- (e) a warning that failure to pay the fixed penalty specified in the notice, may give rise to prosecution for an offence under this Act.

(4) A notice under subsection (1) must be —

- (a) signed by the Chairperson of the Council;
- (b) served on the person that is the subject of the notice.

(5) A person on which a notice is given may decline for an alleged offence to be dealt with under this section and, if the fixed penalty is not paid within the period specified in the notice or within such further time as may, whether before or after the expiry of that period, be allowed by the Council, is deemed to have declined to be so dealt with.

(6) The Council may, whether the fixed penalty has been paid, withdraw a notice under subsection (1) at any time after it was giving notice that the has been withdrawn.

(7) An amount that has been paid by way of a fixed penalty under a notice under subsection (1) that has been withdrawn under subsection (6) must be refunded.

(8) The amount of a fixed penalty paid under a notice under subsection (3)(b) is subject to subsection (7) as specified in Schedule 4.

(9) Where the fixed penalty specified in a notice under subsection (3) is paid in accordance with the notice and the notice is not withdrawn under subsection (6), proceedings shall not be brought or imposed if the person to which the notice was given has been found liable by a court of, and punished for the alleged offence.

Transmission of written agreement or dispute to the Tribunal

46.—(1) The Council shall transmit to the Tribunal —

- (a) in the case of a binding written agreement under section 44(1), for its ratification;
- (b) on the request of the parties under section 43(b), the unresolved dispute for its consideration.

(2) Where a binding written agreement is ratified under subsection (1)(a), the Tribunal shall register the agreement within seven days of receipt of the agreement.

Directions from the Minister

47.—(1) The Minister may give the Council a written direction in relation to a matter relevant to the performance of its functions under this Act, if the Minister is satisfied that it is necessary to give the direction in the public interest.

(2) Without limiting subsection (1), the direction may be —

- (a) to give a report and information;
- (b) with regard to the concept of sustainable consumption for the provision of goods or services; or
- (c) to comply with a policy.”.

Substitution of Part III

7. The principal Act is amended by deleting Part III and by substituting the following —

**“PART III
CONSUMER PROTECTION TRIBUNAL**

Establishment of Tribunal

48. There is established a Tribunal to be known as the Consumer Protection Tribunal.

Constitution of Tribunal

49.—(1) The Tribunal comprises three persons appointed by Cabinet —

- (a) an attorney-at-law with at least ten years of experience;
 - (b) two persons, one of whom must be a senior public officer, having experience in —
 - (i) industry,
 - (ii) public administration, or
 - (iii) consumer protection.
- (2) Cabinet shall appoint the Chairperson of the Tribunal.
- (3) The Tribunal is appointed for a period of two years.
- (4) A member of the Tribunal is eligible for reappointment.

Functions of the Tribunal

50. The functions of the Tribunal are —

- (a) ratifying a binding written agreement transmitted to it under section 46(1)(a) by signing the written agreement;
- (b) considering a non-binding written agreement transmitted to it under section 46(1)(b) by conducting a hearing into the subject matter to make a final determination;
- (b) deciding on costs and such other matters as may be prescribed.

Powers of the Tribunal

51.—(1) The Tribunal has the power to —

- (a) summon a person to attend and give evidence or to produce a document before the Tribunal;
- (b) subject to section 45, impose a fixed penalty specified under Schedule 4;
- (c) make an Order under section 59.

(2) A person summoned under subsection (1)(a) has, in respect of his or her attendance, the giving of evidence, the disclosure of any communication or the production of any document, the same rights and privileges as a person summoned before a court of law.

(3) A person who —

- (a) without sufficient cause, fails or refuses to obey a summons issued by the Tribunal;
- (b) being a witness before the Tribunal, without sufficient cause —
 - (i) leaves the hearing without the permission of the Tribunal, or
 - (ii) refuses to answer any question put to him or her by or with the permission of the Tribunal; or
- (c) without sufficient cause, obstructs or interrupts the hearing of the Tribunal,

commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or to both.

(4) In all legal proceedings, a document produced under subsection (1)(a) must be received as *prima facie* evidence of the truth of the statements contained in the document.

Resignation

52.—(1) A member of the Tribunal, may resign from office by giving written notice to Cabinet through the Chairperson, and the resignation takes effect as from the date specified in the notice and if a date is not specified, the date of receipt of that notice Cabinet.

(2) The Chairperson may resign from his or her office, by giving written notice to Cabinet, and such resignation takes effect as from the date specified in the notice and if a date is not specified, the date of receipt of that notice by Cabinet.

Revocation

53.—(1) Cabinet may at any time revoke the appointment of a member of the Tribunal, including the Chairperson, if the member or Chairperson —

- (a) neglects his or her duty as a member;
- (b) engages in misconduct; or
- (c) is absent from three consecutive meetings without an excuse.

(2) Where Cabinet revokes the appointment of a member of the Tribunal or the Chairperson, Cabinet shall state the reasons for the revocation.

Appointment of temporary members

54.—(1) Cabinet may appoint another person to act temporarily in place of the Chairperson or a member where the Chairperson or a member of the Tribunal —

- (a) is unable to perform the functions of the office of Chairperson or member of the Tribunal;
- (b) is absent;
- (c) dies;
- (d) resigns under section 52; or
- (e) is no longer a member as a result of his or her appointment being revoked under section 53.

(2) A person appointed under subsection (1) shall be appointed in a manner that complies with section 49 for the constitution of the Tribunal and holds office —

- (a) in the case of the absence or inability of the Chairperson or member to perform his or her functions, only for the portion of the term of the absence or inability;
- (b) in the case of the death, resignation or revocation of appointment of the Chairperson or member, the unexpired portion of the term of the former member.

Publication

55. The appointment of a member of the Tribunal and any change in the constitution of the Tribunal, whether by death, resignation, removal or otherwise, shall be published in the *Gazette*.

Recording Secretary

56.—(1) The Tribunal shall appoint a Recording Secretary of the Tribunal who has no voting rights.

(2) The Recording Secretary shall keep a written record of all proceedings of the Tribunal, which shall be confirmed by the Chairperson.

Remuneration and allowances

57. A member of the Tribunal must be paid remuneration and allowances as Cabinet determines.

Hearings of the Tribunal

58.—(1) Subject to subsection (2) and section 49, a hearing of the Tribunal shall be conducted by the Chairperson of the Tribunal and two other members.

(2) Where a member of the Tribunal, other than the Chairperson, is unable to conduct hearings to completion, the Chairperson and the other member shall continue the hearings from the stage at which it was last heard by the previous member and conclude the hearing.

(3) The Tribunal may convene a hearing within thirty days of receipt of a matter transmitted to it under section 46.

(4) The Tribunal shall convene a hearing under subsection (3) at a time, place and on a day as may be necessary or expedient for the discharge of its functions.

(5) The quorum for hearings of the Tribunal shall comprise an attorney-at-law.

(6) At least fourteen days before the date fixed for a hearing, the Tribunal shall by notice in writing advise the consumer, the supplier and the Department of the date, time and place for the hearing.

(7) A notice under subsection (6) must be sent to the consumer and the supplier personally to his or her given address for service or by sending the notice by registered mail.

(8) At least seven days before the hearing, the Tribunal, shall, whenever practicable, cause the notice referred to under subsection (6) to be published in the *Gazette*.

(9) Where the person making a complaint does not attend the hearing, having had due notice of the time and place of hearing, the Tribunal may dismiss the complaint, unless having received a reasonable excuse for the non-appearance of the person who made the complaint the Tribunal thinks it fit to adjourn the hearing.

(10) Where a person —

- (a) refuses or neglects without reasonable cause, to attend a hearing in compliance with the requirements of a notice under subsection (6); or
- (b) departs from a hearing without the authority of the person holding the hearing,

the Tribunal may proceed with the hearing and make a decision in his or her absence in accordance with the provisions of this Act.

(11) At a hearing of the Tribunal the consumer and supplier may appear in person or by a representative.

(12) A hearing by the Tribunal must be in private.

(13) A member of the Tribunal shall, as soon as is practicable inform the Chairperson of a matter in which he or she has, directly or indirectly, personally or by his or her relative, partner, business associate or company, any pecuniary or business interest and that member shall not take part, directly or indirectly, in any hearing by the Tribunal on that matter.

(14) The validity of a hearing of the Tribunal is not affected by a vacancy in its membership or by a defect in the appointment of a member.

Orders of the Tribunal

59.—(1) The Tribunal may make an order —

(a) to require the supplier to —

- (i) remove the defect from the goods in question,
- (ii) replace the goods with new goods of a similar description which must be free from any defect,
- (iii) return to the person making a complaint the price, or charges paid by that person,
- (iv) remove the deficiencies in the services in question,
- (v) desist and discontinue the unfair trade practice or the restrictive trade practice,
- (vi) refrain from offering the hazardous goods for sale,
- (vii) withdraw the hazardous goods from being offered for sale,
- (viii) cease the manufacture of hazardous goods and to desist from offering services which are hazardous in nature,
- (ix) issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the supplier responsible for issuing such misleading advertisement; or
- (x) provide for prescribed costs to parties in addition to the fees paid to the laboratory for analysis or testing under section 13(8);

(b) subject to section 45, to impose a fixed penalty as specified in Schedule 4.

(2) An Order of the Tribunal must be —

- (a) by a majority of votes of those members present and voting and, in addition to an original vote, the Chairperson has a second or casting vote in any case in which the voting is equal;
- (b) authenticated by the signature of the Chairperson;

(c) sent to the Council and consumer in writing.

(3) Where the Tribunal makes an Order under subsection (2), the Tribunal shall keep a record of its decision.

Application to the Commercial Court

60. A person aggrieved by a decision of the Tribunal may make an application to the Commercial Court.”.

Amendment of section 62

8. Section 62 of the principal Act is amended —

- (a) in subsection (2), by deleting the words “the Board or Appeals Tribunal” and by substituting the words “the Tribunal”;
- (b) in subsection (5), by deleting the words “the Board or Appeals Tribunal” and by substituting the words “the Tribunal”.

Amendment of Part VI

9. Part VI of the principal Act is amended —

- (a) under section 101, by deleting subsection (1) and by substituting the following —
 - “(1) A supplier shall —
 - (a) pursuant to an agreement under Part II; or
 - (b) on presentation by the consumer of a decision from the Tribunal —
 - (i) pay the consumer the sum awarded,
 - (ii) initiate payment of compensation within seven days after the decision is received by the supplier,
 - (iii) make an application to the Commercial Court under section 60;”;
- (b) in section 102(1)(c), by deleting the word “Board” and by substituting the word “Tribunal”;

- (c) in section 103(4), by deleting the word “Board” and by substituting the word “Department”;
- (d) in section 114, by deleting the word “Board” and by substituting the word “Council”.

Amendment of section 126

10. Section 126 of the principal Act is amended, in subsection (6), by deleting the word “Board” and by substituting the word “Department”.

Amendment of Part IX

11. Part IX of the principal Act is amended —

- (a) in section 145, by deleting the word “Board” wherever it appears in that section and by substituting the word “Council”;
- (b) in section 146 —
 - (i) in the section heading, by deleting the word “Board” and by substituting the word “Council”,
 - (ii) by deleting the word “Board” wherever it appears and by substituting the word “Council”;
- (c) in section 147 —
 - (i) in the section heading, by deleting the word “Board” and by substituting the word “Council”,
 - (ii) by deleting the word “Board” wherever it appears and by substituting the word “Council”;
- (d) in section 151, by deleting the words “Appeals Tribunal” and by substituting the word “Tribunal”;
- (e) in section 152, by deleting the word “Board” and by substituting the word “Council”.

Amendment of Part XII

12. Part XII of the principal Act is amended —

- (a) in section 168, by deleting the word “Board” and by substituting the word “Council” wherever it appears;

(b) in section 171 —

(i) by deleting the word “Board” and by substituting the word “Council”,

(ii) by inserting immediately after the word “investigation” the words “by the Department”;

(c) in sections 172 and 174, by deleting the word “Board” and by substituting the word “Department” wherever it appears;

(d) in section 173, by deleting the word “Board” and by substituting the word “Council”.

Substitution of Schedules 2, 3 and 4

13. The principal Act is amended by deleting Schedule 2, Schedule 3 and Schedule 4 and by substituting the following —

“SCHEDULE 2

(Section 9)

CONSUMER COMPLAINT FORM

FORM NUMBER: _____

TIME: _____

The Director
Consumer Affairs Department
C/o Ministry of Commerce, International Trade, Investment
Enterprise Development and Consumer Affairs

Micoud Street

Castries

Telephone Number

Fax Number

Email

Form Number: _____

Time: _____

SECTION 1 - INFORMATION ON THE CONSUMER

Christian Name: _____ Middle Name: _____

Surname: _____

Address: _____

Occupation: _____

Phone Number: Home: _____ Work: _____ Cell _____

Facsimile Number: _____

Sex: Male FemaleAge Group: 18 – 30 31 – 45 46 – 59 60 and Over

Electronic Mail Address: _____

National Identification Number: _____

Social Security Number: _____

SECTION 2 – INFORMATION ON BUSINESS

Name: _____

Address: _____

Sector Code: _____

Phone Number: _____

Contact Number(s): _____

Business Code: _____

Facsimile Number: _____

Electronic Mail Address: _____

SECTION 3 – INFORMATION ON GOODS OR SERVICE

Goods or Service: _____

Model or Serial Number: _____

Category: _____

Date of Purchase: _____

Price or Value in Eastern Caribbean Dollars: _____

Warranty or Guarantee: _____

Brand: _____

Brand Code: _____

Invoice/Receipt/Bill Number: _____

SECTION 4 – TECHNICAL INFORMATION ON PRODUCT

Manufacturing Date: _____

Standard: _____

Electrical Frequency Rating: _____

Voltage Required: _____

SECTION 5 – COMPLAINT IN A COURT OF LAW

State whether the complaint has been lodged in a Court or any intention to lodge in a Court of law [] YES [] NO

If yes, please state details:

SECTION 6 – REDRESS SOUGHT

What form of redress would you consider a satisfactory solution?

Refund: Exchange: Repair: Credit Note: Other:

If other, please state: _____

SECTION 7 – WILLINGNESS TO ATTEND AND TESTIFY AT PROCEEDINGS

I certify the above information to be truthful and accurate to the best of my knowledge and belief. I am willing to testify to the same at any proceedings directly related to this complaint if required to do so.

Signed: _____

Date: _____

Witnessed by: _____

SCHEDULE 3

(Section 50(a))

SUMMONS TO WITNESS

To: (name of person summoned and his or her occupation and address, if known).

You are hereby summoned to appear before the Tribunal at (place) on the day of _____ at o'clock and to give evidence respecting (state the matter). (If the person summoned is to produce documents, add):

You are required to bring with you (specify the papers, books, records and documents required). Therefore, fail not at your peril.

Given under the hand of (Chairperson or his delegated member of the Tribunal) this [] day of [] 20____.

SCHEDULE 4(Sections 44, 59, Part V, Part VI, Part VII,
Part VIII, Part IX and section 170)**FIXED PENALTIES**

Offence	Section/Part	Fixed Penalty
1. Loss or injury suffered by consumers due to defective goods sold or services provided	Section 44, 59	25% of the value of the defective goods or service provided up to \$10,000
2. Failure to observe consumer rights	Part V	\$750
3. Non-compliance with suppliers duties	Part VI	\$750
4. Engaging in unfair trade practices	Part VII	\$1000
5. Failure to observe consumer safety requirements	Part VIII	\$1500
6. Non-compliance with recall of goods and services directions	Part IX	\$2000
7. Failure to observe the promotions provisions	section 170	\$750".

Insertion of new Schedule 5

15. The principal Act is amended by inserting immediately after Schedule 4 the following new Schedule 5 —

“SCHEDULE 5

(Section 34(3))

OATH OF SECRECY

I, _____, do solemnly swear that I will faithfully, truly and to the best of my judgement, skill and ability, execute and perform the duties required of me as a member of the Consumer Protection Council and unless ordered so to do by a Court will not disclose, communicate or convey or allow to be disclosed, communicated or conveyed directly or indirectly to any person, any private or confidential information obtained by virtue of the performance of my duties with the Consumer Protection Council.

I further promise and swear that I will not allow any person to inspect or have access to any documentation or record over which I have control, care or custody and I will conscientiously endeavour to prevent any person from inspecting, or having access to any such information or documentation.”

Oath taken at _____, this
day of _____.

Before: _____”.

Passed in the House of Assembly this 14th day of September, 2021.

CLAUDIUS J. FRANCIS,
Speaker of the House of Assembly.

Passed in the Senate this 16th day of September, 2021.

STANLEY FELIX,
President of the Senate.