

AN ACT

To provide better protection for consumers and to establish a Profiteering Division of the Supreme Court

ENACTED by the Parliament of Mauritius, as follows--

PART I--PRELIMINARY

1. Short title

This Act may be cited as the Consumer Protection (Price and Supplies Control) Act
1998

2. Interpretation

In this Act -

"authorised officer" means a person designated by the Permanent Secretary under section 22;

"certificate" means a certificate of registration granted under section 10;

"Code of Practice" means the Code of Practice relating to the methods to be adopted in connection with the determination of maximum recommended retail prices and including –

- (a) the terms and conditions, including the maximum recommended retail price, on which or subject to which goods are supplied;
- (b) the manner in which those terms and conditions are communicated to consumers;
- (c) the way in which goods are packed, bottled, canned, labelled, marked or otherwise prepared for the purpose of being supplied;

"consumer" means a person to whom goods are supplied

"controlled goods" means the goods specified in the First and Second Schedules;

"cost price" means the price of any controlled goods calculated in such manner as shall be prescribed;

"Court" means the Profiteering Division of the Supreme Court established under

section 29;

"information" includes accounts, estimates, returns, records, books, documents whether kept by electronic or other means;

"mark-up" means such amount or percentage added to the cost price of any controlled goods;

"Minister" means the Minister to whom responsibility for the subject of consumer protection is assigned;

"Permanent Secretary" means the Permanent Secretary of the Ministry to which responsibility for the subject of consumer protection is assigned;

"supply", in relation to goods-

(a) means any transaction by way of trade whether for money or for money's worth;

(b) includes supply by way of sale, lease, hire, hire purchase or credit sales;

(c) includes offer to supply, expose for supply or be in possession for supply;

"trade" means the manufacture, production, distribution, sale, transfer, import, export, use or other dealing in goods;

"trader" –

(a) means a person engaged in any trade;

(b) includes the employee or agent of any such person; "VAT" has the same meaning as in the Value Added Tax Act 1998.

PART II-PRICE CONTROL

3. **Maximum price**

(1) The Minister may, by regulations, fix the price of any goods specified in the First Schedule.

(2) A trader who sells or supplies any controlled goods at a price higher than that which has been fixed shall commit an offence.

4. **Maximum mark-up**

(1)

- (2) The Minister may, by regulations, determine the maximum mark-up of any goods specified in the Second schedule.
- (3) A trader who sells or supplies any controlled goods at a price which includes a mark-up which exceeds the maximum mark-up shall commit an offence.

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5. Maximum recommended retail price

- (1) The Minister may establish a Code of Practice to provide for the method to be adopted for the determination of the maximum recommended retail price of goods other than controlled goods and, where he intends to do so, he shall give notice of the code of Practice by its publication in the Gazette.
- (2) Where a Code of Practice has been established under subsection (1), no trader shall act in breach of the Code of Practice.
- (3) A trader who sells or supplies any goods for which there is a maximum recommended retail price shall affix a label in a conspicuous place on a specimen of any such goods indicating the maximum recommended retail price.
- (4) A trader who affixes, in relation to goods referred to in subsection (1), a maximum recommended retail price which is higher than the maximum recommended retail price provided for in the Code of Practice shall commit an offence.

6. Illegal charging of VAT

A trader who, whilst selling or supplying any goods -

- (a) charges VAT where VAT is not chargeable by him;
- (b) charges a higher rate or amount of VAT than is lawfully chargeable, shall commit an offence.

7. Price label

- (1) Where VAT is chargeable by a trader in respect of any goods, the trader shall affix a label in a conspicuous place on a specimen of the goods indicating the total selling price of the goods inclusive of VAT.
- (2) Where VAT is not chargeable by a trader on any goods, the trader shall affix a label in a conspicuous place on a specimen of the goods indicating -
 - (a) the selling price, and

- (b) that the amount of VAT is nil.
- (3) A trader who fails to comply with subsection (1) or (2) shall commit an offence.
- (4) For the purpose of this section, the Minister may prescribe the form or colour of a label or any distinctive mark which such label shall bear.

8. Selling a price higher than that displayed

- (1) No trader shall sell any goods at a price which is higher than the price shown on a label affixed pursuant to section 7.
- (2) A person who fails to comply with subsection (1) shall commit an offence.

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9. Misleading price indication

A trader who gives (by any means whatever) to any consumer an indication which is misleading as to the price at which any goods are sold or supplied shall commit an offence.

PART III - PREVENTION OF HOARDING

10. Registration of warehouses

- (1) A trader who wishes to store any goods specified in the Third Schedule in any warehouse shall apply in writing to the Permanent Secretary for a certificate of registration of the warehouse.
- (2) An application under section (1) shall be made in a prescribed form and shall specify -
 - (a) the name of the applicant;
 - (b) the private address of the applicant;
 - (c) the trading name of the applicant;
 - (d) the address of his trading premises;
 - (e) the nature of his trade;
 - (f) the class of goods to be stored in the warehouse
 - (g) the exact location of the warehouse.
- (3) The Minister may require an applicant to submit such additional information as he considers necessary.

- (4) The Minister may, on receipt of an application under subsection (1) grant a certificate of registration on such terms and conditions as he thinks fit.

11. Certificate of registration

- (1) A certificate -
- (a) shall be valid for a period of 3 years from the date of issue;
 - (b) may be renewed for any further period of 3 years.
- (2) An application for the renewal of a certificate shall be made -
- (a) not less than 30 days before the date of expiry of the certificate;
 - (b) in the manner specified in section 10(2).
- (3) Every certificate shall be -

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- (a) kept by its holder on his trading premises;
- (b) produce on demand to an authorised officer;
- (c) valid only in respect of the warehouse specified in the certificate.

12. Registration on storage

- (1) Subject to subsection (2), no holder of a certificate shall keep in his warehouse any goods other than goods pertaining to the class of goods specified in his certificate.
- (2) The Minister may by regulations, prescribe the manner in which the certificate may be amended or varied so as to include any additional class of goods to be kept in the warehouse.
- (3) A person who fails to comply with subsection (1) shall commit an offence.

13. Prohibition on storage

- (1) A trader who keeps any goods specified in the Third Schedule on any premises other than
- (a) his trading premises; or
 - (b) a registered warehouse,
- shall commit an offence.

14. Restriction on removal

- (1) No trader shall remove any goods from his warehouse except for-
 - (a) sale in the normal course of his trade; or
 - (b) transfer to his trading premises.
- (2) A person who fails to comply with subsection (1) shall commit an offence.

15. Notice of warehouse

- (1) Every holder of a certificate shall, within 10 days from the date of issue of his certificate, affix a signboard at the main entrance of his warehouse bearing conspicuously the serial registration number of his certificate.
- (2) A person who fails to comply with subsection (1) shall commit an offence.

16. Closure of premises

- (1) No trader shall, without sufficient cause and justification, close his trading premises at any time when the premises ought by virtue of any enactment, to be normally open for the purpose of his trade.

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- (2) A person who fails to comply with subsection (1) shall commit an offence.

17. Duty to expose

- (1) A trader shall display in that part of his trading premises to which the public has access -
 - (a) a specimen of every goods kept for sale;
 - (b) a specimen of every goods stored in the registered warehouse.
- (2) A trader who fails to comply with subsection (1) shall commit an offence.

18. Goods that cannot be exposed

- (1) Notwithstanding section 5,7 and 17, where the nature of the goods is such that it would not be reasonably practicable to expect a trader to expose a specimen of the goods in that part of the trading premises to which the public has access, the trader shall put up a notice which is accessible to the public and conform with subsection (2).
- (2) A notice under subsection (1) shall -
 - (a) be in English or French;
 - (b) be in the prescribed form;
 - (c) set out the goods which have not been exposed for sale;
 - (d) set out the price of the goods.
- (3) A person who fails to comply with subject (1) or (2) shall commit an offence

19. Refusing to sell

A trader who refuses to sell -

- (a) any goods exposed or kept for sale on his trading premises;
- (b) goods, other than goods referred to in paragraph (a), kept in his warehouse,

at a price which is displayed for the goods, shall commit an offence.

20. Register

- (1) A trader shall, in respect of such goods as may be prescribed, keep a register in which he shall enter-

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- (a) particulars of every purchase made in connection with his trade;
 - (b) the price paid for such goods;
 - (c) particulars of the sale or supply effected;
 - (d) particulars relating to the stock of the goods.
- (2) For the purposes of subsection (1), a trader shall enter the particulars of sale and the particulars of the stock at a weekly interval.

- (3) Every sheet of a register shall be -
 - (a) in duplicate;
 - (b) signed and dated;
 - (c) numbered consecutively.
- (4) All entries in a register kept under this section shall be made in chronological order and consecutively without leaving any blank.
- (5) The register kept under this section shall be -
 - (a) numbered and initialed; and
 - (b) visaed every yearby a Magistrate, free of charge.
- (6) A trader who fails to comply with this section shall commit an offence.

21. Duty to produce register

- (1) Every trader shall at all times keep the register available for inspection on his trading premises.
- (2) Every trader shall produce on demand the register to an authorized officer.
- (3) Every trader who fails to comply with subsection (1) or (2) shall commit an offence.
- (4) Any person who, unlawfully -

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- (a) alters the contents of the register;
- (b) makes any false or misleading entry;
- (c) omits to make an entry,

shall commit an offence.

PART IV - Powers of Authorised Officers

22. Authorised Officers

The Permanent Secretary may designate any public officer to be an authorized officer for the purpose of ensuring that the provisions of this Act are being complied with.

23. Powers of Search

For the purpose of ensuring that the provisions of this Act are being complied with, an authorized officer may at all reasonable times enter any premises or place where any trade is carried on or anything is done in connection with the trade and examine any goods.

24. Inspection of Documents

(1) Where VAT is chargeable by a trader in respect of any goods, the trader shall keep a price list indicating:-

- (a) the price of the goods exclusive of Vat
- (b) the amount of VAT chargeable;
- (c) the total selling price of the goods,

and shall produce, on demand, the price list to an authorized officer.

(2) An authorized officer may -

- (a) require the trader or any person present on the premises to produce any information and may require any person, who has in his possession or custody or under his control any document, to produce that document;
- (b) examine, make copies of, or take extracts from, any document which relates to the trade of such person.

- (3) The Permanent Secretary may order any trader to furnish any information or produce any document in his custody or control that the Permanent Secretary may require in connection with this Act.

25. Seizure

An authorized officer may seize and detain any goods –

- (a) which he has reasonable cause to believe may be the subject matter of an offence under this Act;
- (b) in respect of which any representation which is false or misleading has been made;
- (c) in respect of which any document which is false or misleading has been delivered or produced.

26. Warrant

The Magistrate may issue to an authorized officer for the discharge of his functions under this Part, a warrant in the prescribed form for –

- (a) the inspection of any premises, in relation to which there is reasonable cause to suspect that an offence under this Act is being committed;
- (b) the seizure of any goods or documents.

27. Return of Goods and Documents

No goods or documents shall be seized under section 25 or 26 unless such seizure is reasonably necessary for any examination or investigation and any goods or documents so seized shall be returned to the person from whom they were seized when no longer required.

28. Protection from Liability

No liability, civil or criminal, shall attach to the Permanent Secretary or an authorized officer in respect of anything done in good faith in the exercise of his powers under this Act.

PART V – PROFITEERING COURT

29. Establishment of the Court

- (1) There is established for the purposes of this Act a division of the Supreme Court to be called the Profiteering Division of the Supreme Court and which shall have exclusive jurisdiction to try any person charged with an offence under this Act and the Fair Trading Act.
- (2) All proceedings taken before the Court shall be heard and determined before such Judge without a jury as the Chief Justice may from time to time designate.
- (3) The Judge shall be assisted in the conduct of the business of the Court by officers and staff designated by the Chief Justice.
- (4) The Judge and the officers and the staff of the Court shall, for administrative purposes, be subject to the direction and control of the Chief Justice.

30. Procedure of the Court

- (1) Subject to the other provisions of this section, all proceedings before the Court shall be conducted in the same manner as proceedings for an offence taken before a Judge without a jury.
- (2) An information filed before the Court may contain any number of counts.
- (3) The provisions of the District and Intermediate Courts (Criminal Jurisdiction) Act relating to preliminary inquiries shall not apply to any proceedings before the Court.
- (4) The Court shall hold sittings at, and adjourn its proceedings to, such time and place as the Judge thinks fit.

31. Offences and Penalties

- (1) Subject to subsection (2), any person who -
 - (a) contravenes this Act or any regulations made under this Act;
 - (b) for the purpose of, or in connection with this Act -

- (i) furnishes any information or produces any document which he knows or ought to have known to be false or misleading;
- (ii) obtains or retains a document to which he is not entitled;
- (iii) personates or falsely represents himself to be a person entitled to a document;

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- (iv) makes or causes to be made, or without reasonable excuse has in his possession, any writing which so closely resemble a document as to be likely to deceive;
 - (v) fraudulently alters a document;
 - (vi) with intent to deceive, produces or makes use of a document which is false or misleading in a material particular or has been fraudulently altered;
 - (vii) sell or otherwise transfers or lends a document issued to him under this Act;
 - (viii) delivers, produces, furnishes, sends or otherwise makes use of, for the purpose of determining the price of any goods, any document required under this Act which is false or misleading in a material particular or which has been fraudulently altered;
- (c) is knowingly concerned in, or takes steps with a view to, the evasion or contravention by him or any other person, of any provision of this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100 000 rupees and to imprisonment for a term not exceeding 3 years.
- (2) Notwithstanding section 152 and 153 of the Criminal Procedure Act, any person convicted of an offence in breach of section 3, 4, 6, 8, 13 or 19 shall be liable in the case of –
- (a) a first conviction, to a fine of not less than 10 000 rupees and not more than 100 000 rupees and to imprisonment for a term not exceeding 3 years;
 - (b) a second or subsequent conviction to a fine of not less than 25 000 rupees and

not more than 100 000 rupees together with imprisonment for a term which shall not be less than 7 days and not more than 3 years, and the Court shall, in addition to any penalty imposed, order the closure of the premises in relation to which the offence was committed or part of the premises for a period of not less than 7 days and not more than 3 months.

- (3) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to any conviction under this Act.

32. Powers of Court

Where a person is convicted of an offence under this Act, the Court may, in addition to any penalty imposed, order –

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- (a) the forfeiture of any goods seized;
- (b) the person to repay to the purchaser of any goods any amount paid in excess by the purchaser in respect of the goods;
- (c) the suspension or revocation of any trading licence held by or issued to the person under any enactment.

33. Appeal

An appeal from a final judgement of the Court shall be subject to the same conditions and shall be conducted in the same manner as an appeal to the Court of Criminal Appeal.

34. Rules

The Chief Justice may make rules to regulate the practice and procedure of the Court and of appeals from its decisions.

PART VI - MISCELLANEOUS

35. Regulations

- (1) Notwithstanding any other enactment, the Minister may make such regulations as he thinks fit for the purposes of this Act and for the purpose of regulating trade, supply and prices.

(2) Any regulations made under subsection (1) may -

(a) provide for -

- (i) the issue of licences and permits;
- (ii) the fixing of prices;
- (iii) the establishment of amendment of the Code of Practice;
- (iv) the form, colour and contents of a label;
- (v) the levying of fees and charges;
- (vi) the registration of householders and traders;

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- (vii) the giving of information, the inspection of premises or articles and the production and inspection of such documents as the Minister may require.

(3) The Minister may, by regulations, amend the Schedules.

36. Powers of Minister

The Minister may disregard any document where he is satisfied that the value of any article as stated in the document is not the true value of the article at the time and place of exportation.

37. Consequential Amendments

(1) The Trades and Industries Classification Act is amended in section 6 -

(a) by numbering the existing provision as subsection (1);

(b) in subsection (1) as renumbered by inserting immediately after the words

“Subject to” the words “subsection (2) and”;

- (c) by adding the following new subsection -
- (2) No application for the transfer or the issue of a licence, in respect of any trading premises in relation to which an offence has been committed under the Consumer Protection (Price & Supplies Control) Act 1998, shall be granted except with the approval of the Permanent Secretary.
 - (3) The Fair Trading Act is amended in section 2 by deleting the definition of "Court" and replacing it by the following definition -

"Court" has the same meaning as in the Consumer Protection (Price & Supplies Control) Act 1998.

38. Repeal and Savings

- (1) The Supplies Control Act is repealed.
- (2) Any act or thing done, or document executed under the Supplies Control Act shall be deemed to have been done under this Act and shall not be invalidated by reason of the repeal.

39. Commencement

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This Act shall come into operation on a day to be fixed by Proclamation and different days may be fixed for the coming into operation of different sections.

Passed by the National Assembly on the twenty-eighth day of July one thousand nine hundred and eighty-eight.

ANDRE POMPON
Clerk of the National Assembly

