

CONSUMER PROTECTION IN THE 21ST CENTURY

THE WAY FORWARD

DRAFT POLICY PAPER

October 12, 2007

Table of Contents

I. Executive Summary.....	v
A. Background to the Development of the Policy Paper	v
B. The Need for Reform.....	vi
1. Areas for Reform in Current Legislation.....	vi
2. Need to Strengthen Existing Institutions.....	vii
C. Guiding Principles for Reform	vii
D. Key Reform Proposals.....	viii
1. New Role for the Minister	viii
2. New Role for the Director	viii
3. Reducing Unfairness in the Marketplace	ix
4. Consumer Guarantees for Goods and Services	ix
5. Increased Consumer Protection for Distance Selling.....	ix
6. Reducing Problems after Sales	x
7. Marking of Prices	x
8. Truth in Lending: Transparency in the Granting of Credit	x
9. New Powers for the Courts.....	x
10. Offences and Defences	xi
11. The Consumer Tribunal: A Fair and Accessible Process.....	xi
E. Planning for the Proposed Legislation	xi
1. The Proposed Legislation	xi
2. Institutional Renewal.....	xii
3. Enactment and Promulgation of the New Legislation.....	xii
4. The Consumer Tribunal.....	xii
II. Reform of Consumer Protection in Trinidad and Tobago	1
A. Drivers of reform.....	1
1. Changing needs in a developing country.....	1
2. Regional trends	2
3. International developments	2
4. Demand for international co-operation	2
5. Growth of services.....	2
6. Increased use of credit.....	3
7. New opportunities for scams	3
8. Filling gaps in current legislation	3
9. Strengthening legal and institutional capacity.....	3
10. Need for a fast and expert body to settle consumer disputes	4
11. Opportunity for renewal	4
B. Guiding principles of reform	4
C. Background to reform initiatives.....	5
1. Green Paper: “Consumer Protection in the Information Age”	5
2. Consultation and Post-Consultation Report	5
3. Intensive reviews by the Ministry of Legal Affairs.....	6

III. Overview of Consumer Protection in Trinidad and Tobago.....	7
A. Scope of reform	7
B. Legislation administered by the Ministry of Legal Affairs	8
1. The Sale of Goods Act, 1895	8
2. The Hire Purchase Act, 1957.....	9
3. The Misrepresentation Act, 1983	10
4. The Unfair Contract Terms Act, 1985.....	10
5. The Trade Descriptions Act, 1984.....	12
6. The Consumer Protection and Safety Act, 1985	13
C. Consumer policies	14
1. The 1992 Draft Consumer Policy.....	14
2. The 1996 Consumer Policy	15
3. The 2003 Draft Consumer Policy and Action Plan.....	15
D. Consumer Guidance Council.....	16
E. Minister responsible for Consumer Affairs	16
F. Director of Consumer Guidance.....	16
G. Consumer Affairs Division.....	17
H. Consumer Affairs Unit—Tobago	19
I. Ministries and Agencies with consumer-related responsibilities	19
1. Consumer protection is a government-wide concern	19
2. Ministry of Health	20
3. Telecommunications Authority of Trinidad and Tobago.....	20
4. Regulated Industries Commission.....	20
5. Financial Services Regulation	20
6. Ministry of Trade and Industry.....	21
IV. Legislative Models	22
A. Approaches to legislative design.....	22
B. Use of international models and best practices	23
1. Countries, legislation and models examined.....	23
2. Best practices: Sources of proposed legislation	27
C. Proposed Structure.....	29
1. A Comprehensive model	29
2. Objectives of the structure.....	30
3. Relationship to existing legislation	30
D. Focus of the Policy Paper	31
V. Proposed Consumer Protection Legislation.....	33
A. Scope and Definitions.....	33
B. The role of the Minister	38
C. The Director.....	40
D. Role of the Director	40
E. Consumer Protection Registry.....	44
F. Monitoring, inspection and investigation powers	45

G. Enforcement powers	50
H. Protection against unfair and deceptive business practices	55
I. Delayed delivery	61
J. Restocking fee	62
K. Repairs	64
L. Price marking.....	64
M. Protection against unfair terms in contracts	65
N. Distance selling and e-commerce	73
O. Consumer guarantees for goods	76
P. Consumer guarantees for services	84
Q. A transparent and efficient market for credit	87
R. Codes of practice	91
S. Offences.....	93
T. Defences	95
U. Other enforcement actions: injunctions and orders to hold assets	96
V. Sanctions.....	97
W. The Consumer Tribunal.....	99
VI. Preparation for the New Consumer Legislation.....	104
A. The legislative process	104
1. The Policy Paper and consultation	104
2. Cabinet approval.....	104
3. Drafting and approvals	104
4. Introduction into Parliament.....	104
5. Enactment of the new legislation	105
6. Proclamation of the new legislation	105
B. Creating the Prices Advisory Council & Consumer Advisory Board..	105
C. Organisational Renewal.....	105
1. Risk-based enforcement	106
2. Development of a Compliance Policy and enforcement manuals..	107
3. Development of the Consumer Protection Registry	108
4. Strengthening the Consumer Affairs Division mediation system ..	108
5. Co-ordination with other Ministries and Agencies	108
6. Development of a Call Centre to handle complaints.....	109
7. Strengthening of regional and international co-ordination.....	109

CONSUMER PROTECTION IN THE 21ST CENTURY

THE WAY FORWARD

CONSUMER PROTECTION IN THE 21st CENTURY

THE WAY FORWARD

POLICY PAPER

I. Executive Summary

A. Background to the Development of the Policy Paper

When Trinidad and Tobago last enacted major legislation to protect the interests of consumers, it was in the forefront of international reform efforts. The *Consumer Protection and Safety Act, 1985*, the *Unfair Contract Terms Act, 1985*, the *Trade Descriptions Act, 1984* and the *Misrepresentation Act, 1983* were all forward-thinking for their time.

Over the past twenty years, however, the commercial and social environment of Trinidad and Tobago has changed and people have new expectations. Trinidad and Tobago is now guided by a comprehensive Vision 2020 development strategy, as well as other key strategies such as the National Information, Communications and Technology (ICT) Strategy, *fastforward*. The country is committed to an ambitious agenda of development and growth by enhancing social, economic and technical strengths.

The citizens of Trinidad and Tobago are living in an era of greater globalisation, stronger international influences, greater use of credit and the growth of services in the marketplace. One of the most important and exciting challenges—and opportunities—facing the nation is the country’s membership in CARICOM and the CARICOM Single Market and Economy. Greater co-operation and the development of harmonised approaches to social policy, law-making and law enforcement drive many reforms within the Region.

To meet all these new challenges, the Government has been examining the current state of consumer protection in the country and consulting with citizens about their concerns. In April 2005, the Government issued a Green Paper, “Consumer Protection in the Information Age,” to provide a basis for consultation with the public about needed reforms. Between July and September 2005, the Government conducted 18 public information and consultation sessions across Trinidad and Tobago to hear from the public about needs to improve consumer protection.

In the Green Paper, the Government had identified distance selling, e-commerce, credit disclosure (“truth in lending”), after-sale service and repairs, growth of

services, growth of “scams,” the need for clear rules, and consumer guarantees as issues. In particular, the Government identified the need for an accessible and practical means of settling disputes as a matter deserving early attention. In the consultation sessions, citizens agreed that these were important issues that they wanted the Government to address.

The Ministry of Legal Affairs, as part of a further review, examined the current consumer protection regime in place in Trinidad and Tobago, looked at what was happening in other countries (particularly common law and Commonwealth countries) and identified international “best practices” dealing with the same kind of issues that people face in Trinidad and Tobago. Finally, the Ministry reviewed the commitments and obligations facing the country arising from international and regional treaties and agreements.

In this regard, the Revised Treaty of Chaguaramas requires member countries to protect their citizens against unfair contract terms and unfair business practices. With this Policy Paper and the introduction of a Bill into Parliament, the Government will be taking critical steps to meet its regional commitments.

Further, the Government recently announced in the Budget Speech of August 20, 2007 that it intended to establish a Prices Advisory Council. The Council has a mandate to address comprehensively, from a supply side perspective, the level of prices in the economy. The Government also committed to establish a Consumer Advisory Board to advise the Minister on matters relating to prices and consumerism.

B. The Need for Reform

Consultations with the public and a careful review of consumer protection legislation and programmes identified areas where reform was needed. Among these were the following:

1. Areas for Reform in Current Legislation

- Current legislation does not fully cover the supply of both goods and services to consumers.
- The principles for consumer guarantees for goods are fairly well established, but are not widely known to consumers or suppliers. Consumer guarantees for services, however, are not covered in existing legislation.
- The existing legislation does not deal with the problems that may arise in distance selling, including e-commerce.
- While consumers are using credit more and more often to finance consumer purchases, in many cases they are not being given information

that would allow them to compare credit offerings so they can choose what best suits their needs.

- The Government has recognised that certain terms in contracts are always unfair to consumers. Over the years, however, other contract terms are increasingly seen as being unfair to consumers and there is increasing worldwide agreement that their use should be prohibited or limited.
- The Government has also recognised that certain unfair commercial behaviours or unfair business practices should not be permitted. As with unfair contract terms, however, there is a need to amend legislation to prohibit other practices that are widely considered to be unacceptable.

2. Need to Strengthen Existing Institutions

The existing legislation has a number of strengths—for example, sections dealing with corporate liability. The Consumer Affairs Division has been devoted to strengthening protection for consumers. Time and experience have shown, however, that officials need additional tools to achieve the objectives of consumer protection. Other provisions in the legislation can be strengthened or clarified. Among the improvements that should be made include the following:

- Citizens need an accessible, low cost and fast way to settle disputes between consumers and suppliers.
- The statutory Director should be given more responsibilities and tools to promote compliance and enforce the law, which would also allow him to respond to widespread or systemic problems.
- Enhancing consumers' self-help remedies would add to the likelihood of consumers being treated fairly.
- Transparency and accountability should be strengthened through public reporting.

C. Guiding Principles for Reform

In preparations to develop the new legislation, the Government has been guided by four key principles. The new legislation must be:

- Balanced and fair to both consumers and suppliers
- Clear, accessible, practical and enforceable
- Flexible and responsive to change
- Respectful of unique needs of Trinidad and Tobago

The Government intends to choose a model for the new legislation that will comply with these principles and will provide a comprehensive and integrated structure for consumer protection legislation. The proposed legislation will draw from a number of jurisdictions, including the United Kingdom, the European Union, Australia, New Zealand, Barbados and Canada. In general terms, the comprehensive legislative approach used in Australia will be followed, with specific statutory provisions being taken from best practices in common law jurisdictions that are consistent with the guiding principles.

This Policy Paper will focus on the areas of change, but the intention is to ensure that existing protections for consumers and businesses will continue.

D. Key Reform Proposals

The following sections highlight the key elements of the proposed legislation. Together, these proposals will provide stronger protection for consumers, greater clarity for businesses, improved enforcement powers for officials, and establish a Consumer Tribunal to provide for quick, inexpensive and final settlement of consumer disputes.

1. New Role for the Minister

The Minister will continue to be a strong advocate for consumers' rights and will promote fair business practices in the marketplace. Under the proposed legislation, the Minister will be able to make a number of Orders. This power will ensure that the legislation remains flexible and up-to-date.

2. New Role for the Director

The Director will also continue to play a strong role in protecting consumers. He will have additional powers and duties, particularly related to enforcement. For example:

- The Director will be able to issue Consumer Protection Compliance Orders to bring a supplier who is not obeying the law into compliance. The supplier will be able to appeal the order to the Consumer Tribunal.
- The Director will be able to demand information in an investigation.
- The Director will be able to apply to the court directly for an injunction where he reasonably believes that a supplier should not be allowed to continue conduct that violates the law.
- The Director will be able to ask the court to “freeze” assets that represent the gain that a supplier has apparently made from illegal conduct when the

Director reasonably believes that the assets would be spent or removed from the country.

- The Director will continue to promote industry codes of conduct, but the new legislation will strengthen this role.
- The Director will have a new role representing classes of unnamed consumers before either the Consumer Tribunal or the courts.

3. Reducing Unfairness in the Marketplace

Consumers in Trinidad and Tobago are already protected against many unfair practices in the marketplace. The proposed legislation will strengthen this protection. Among the key provisions would be the following:

- The legislation will prohibit a number of unfair and misleading business practices, such as “bait and switch” advertising, pyramid selling, dual pricing or offering a prize without intending to provide it.
- The law in Trinidad and Tobago currently protects consumers who sign contracts that are unfair because of how they were negotiated. The existing prohibited unfair terms in contracts will continue in the proposed legislation as a “Black List.”
- A new “Grey List” will include terms that are found in standard form contracts that may be unfair to consumers in most circumstances.
- The Minister will be able to add new terms to the “Black List” or the “Grey List” if it appears to be needed for the continued protection of consumers.

4. Consumer Guarantees for Goods and Services

The new legislation will create new guarantees for both goods and services, which will be in a single statute to improve transparency and accessibility.

5. Increased Consumer Protection for Distance Selling

Consumers who buy goods or services at a distance, such as on the Internet, are at a disadvantage. Distant suppliers will have to provide more information to consumers, such as the up-front cost and a clear description of the goods or services.

6. Reducing Problems after Sales

Late deliveries, restocking fees, and problems with repairs are all matters that can cause difficulties for consumers.

- If a delivery is delayed more than 30 days beyond the promised date, the consumer will have the choice to cancel the order.
- A supplier will not be able to charge a restocking fee if the consumer has a right to return the goods (for example, because they are defective), and receive a full refund.
- A supplier in other cases will only be able to charge a reasonable restocking fee, but must bring the fee to the consumer's attention by a sign or other means before he makes his purchase.
- Repairmen will have to give information in writing to the customer about the item being repaired, the estimated cost of repair, and the date on which the item will be ready. If the actual cost of repair will be more than the estimate, the repairman must contact the consumer and get his agreement to continue with the repair.

7. Marking of Prices

Suppliers will have to provide consumers with clear and legible prices on or near the goods being offered for sale.

8. Truth in Lending: Transparency in the Granting of Credit

Consumers today are using credit for more and more of their purchases. The costs of borrowing will have to be clearly disclosed and expressed in a way that will allow the consumer to compare the offers of credit from several different lenders.

9. New Powers for the Courts

- The courts will continue to have their traditional powers to deal with offences under the new legislation. They will, however, be provided with some new options, such as corporate probation, to address more directly the need to prevent future offences.
- The courts will also be given a list of factors they should consider in sentencing, including past history, the harm caused and, importantly, the profits made from the illegal behaviour.

- The courts will be able to order the convicted offender to “give up” profits gained from the offence and may order this money to be returned to the offender’s victims.

10. Offences and Defences

- Many of the offences in the new legislation will be strict liability offences, where the Government only has to prove that the defendant violated the law. The defendant will have a defence of proving due diligence and that all due care was taken to avoid the offence.
- Criminal offences will be confined to behaviour that has an element of wrongdoing, such as misrepresentation or obstructing an authorised officer.

11. The Consumer Tribunal: A Fair and Accessible Process

Possibly the most important reform proposed by the Government is the creation of a Consumer Tribunal. The Tribunal, which will be a quasi-judicial body bound by the rules of fairness and natural justice, will be able to provide fast, expert and final resolution of disputes between consumers and suppliers.

- The Tribunal’s jurisdiction over disputes will be limited to claims with a value of \$100,000 or less (which may be varied by the Minister by Order). The Tribunal will be able to make orders involving higher amounts, where appropriate.
- The Members of the Tribunal (one of whom will be the Chairman) will be appointed by the President. They will be expected to have expertise in law, commercial practices, dispute resolution and other matters as necessary to the work of the Tribunal and that will benefit the Tribunal.

E. Planning for the Proposed Legislation

1. The Proposed Legislation

Considerable work will be needed to implement a statute of the breadth and importance of the one being proposed. After a thorough consultation on this Policy Paper, the Government intends to start drafting the new legislation. This will be completed by mid-2008 for possible introduction in Parliament later in the year.

2. Institutional Renewal

The Ministry of Legal Affairs is already reviewing its operations and examining options to improve the effectiveness of the Consumer Affairs Division. It is examining institutional options, including the creation of a separate executive agency or ministry responsible for consumer affairs. The proposals in this Policy Paper, however, would be compatible with a variety of institutional arrangements.

3. Enactment and Promulgation of the New Legislation

The Government does not intend to immediately promulgate the new legislation in its entirety, if enacted. Additional work will be needed to publicise the new Act and to educate suppliers and consumers on their new duties and responsibilities. The intention is to promulgate the legislation when it can be immediately implemented.

4. The Consumer Tribunal

The legislative provisions relating to the new Consumer Tribunal, however, will be proclaimed immediately to allow for appointments, training of members, and development of Rules of Procedure and case management systems. The Consumer Tribunal will then be able to open its doors the day the new legislation is proclaimed—there will be no delay in providing services to consumers and suppliers who wish to settle their disputes in a fair and open forum.

II. Reform of Consumer Protection in Trinidad and Tobago

A. Drivers of reform

1. Changing needs in a developing country

Reform of consumer protection legislation is timely. The last major reform initiative was over twenty years ago and the social and economic climate in Trinidad and Tobago has changed considerably. While the consumer protection legislation of the 1980's was forward thinking for its time, needs have changed. Trinidad and Tobago is now guided by a comprehensive Vision 2020 development strategy, as well as other key strategies such as the National Information, Communications and Technology (ICT) Strategy, *fastforward*.

These plans have committed the country to an ambitious agenda of development and growth by enhancing social, economic and technical strengths. Both strategies recognise the need to modernise legislation and remove barriers to innovation, investment, and commercial development.

VISION 2020

The Government's Vision 2020 sets out a clear path for Trinidad and Tobago's transformation into a developed nation.

"By the year 2020, we will be a united, resilient, productive, innovative and prosperous nation with a disciplined, caring, fun loving society comprising healthy, happy and well-educated people and built on the enduring attributes of self-reliance, respect, tolerance, equity and integrity...."

The vision identifies five main pillars for the country's development efforts:

1. Developing Innovative People
2. Nurturing a Caring Society
3. Enabling Competitive Business
4. Investing in Sound Infrastructure and Environment
5. Promoting Effective Government

In the 2007-2010 Vision 2020 Operational Plan, the Government made a commitment to the development of new consumer legislation that provides a clear mandate for these reform efforts:

"Trinidad and Tobago's consumer laws vary in age from statutes drafted in the late 19th Century to others brought into force approximately 20 years ago. While the laws afforded the consumer some degree of protection in the past, the marketplace has changed rapidly in the last 20 years leaving gaps in the protection afforded by today's consumer laws. All relevant legislation will be reviewed and a needs analysis for the institutional strengthening of the Consumer Affairs Division will be undertaken."

2. Regional trends

At the regional level, Trinidad and Tobago is committed to participation and leadership in CARICOM and the CARICOM Single Market and Economy (CSME). The Revised Treaty of Chaguaramas requires harmonisation of several key areas of consumer protection, including dealing with unfair terms in contracts and misleading and unfair business practices.

The proposed reforms and new legislation described in this Policy Paper will meet commitments under the Treaty. The proposed legislation will be consistent with newly enacted consumer protection legislation in the region and will be a move towards the harmonisation that will assist trade liberalisation.

3. International developments

In the quarter century since Trinidad and Tobago last intensively reviewed its consumer protection laws, the world has moved forward with new consumer protection legislation and new approaches to designing legal institutions. There is now greater knowledge about the reasons why consumers and suppliers behave in various ways, why people obey the law, and how consumers can be protected while ensuring wide market choices and promoting a vibrant economy. The European Union has been taking an active role in promoting consumer protection. A number of countries—either in response to EU Directives or recognising that they represent new norms for behaviour—have amended their legislation to reflect these standards.

By taking into account the developments and legal approaches taken in major common law jurisdictions and internationally recognised standards of effective consumer protection, Trinidad and Tobago will ensure that it remains in the forefront of consumer protection reform. However, care will be taken to ensure that proposed reforms will be compatible with Trinidad and Tobago's legal traditions and the realities of the country's developing marketplace.

4. Demand for international co-operation

The local, regional and international pressures for modern and harmonised consumer protection legislation are also reflected in plans to strengthen regional and international co-operative arrangements, particularly for enforcement of laws dealing with cross-border consumer protection. Distance selling, including e-commerce, will highlight this need. The legislative and institutional framework must be in place to allow for effective co-operation.

5. Growth of services

The growth of services in the modern economy demands new legislation to protect consumers when they purchase services, such as repairs, holidays,

accommodation, construction, or personal care services. The new legislation will apply to both goods and services. It will strengthen consumers' guarantees for services and will be a valuable tool to ensure their satisfaction with their use of services.

6. Increased use of credit

Consumers are also making more frequent use of credit to take advantage of growing choices for goods and services. The wise use of credit will be important to maintaining a vibrant economy, and the new legislation will provide tools for the consumer. Consumers will be able to compare different options to determine where and how they will obtain credit and will have more information about their loans and leases.

7. New opportunities for scams

Economic growth, wider choices, new goods and services, a globalised economy and the growth of credit have their downsides, however. Prosperity can attract "scam artists" who mislead or cheat consumers. Consumers will need more protection against unfair and deceptive practices and must have stronger remedies against unfair terms in contracts.

8. Filling gaps in current legislation

The existing legislation does not fully meet the needs of today's consumers and suppliers. Some of the gaps in the consumer protection regime were identified in the sections above. These include coverage of services in the law; the need for transparent credit information; broader protection against unfair terms in contracts and strengthened protection against scams and deceptive business practices. There is no easily accessible and inexpensive way for consumers to settle their disputes with suppliers. The gaps in the current legislation are discussed in more detail in the descriptions of the existing statutes below (Part III, Section B) and in the background sections of each area where the Government is proposing reform.

9. Strengthening legal and institutional capacity

The legal and institutional capacity of Government to protect consumers needs to be strengthened. Authorised officers need a greater range of enforcement tools to respond effectively to suppliers who refuse to obey the law. Much more is known today compared to twenty years ago about how to promote compliance and encourage or require businesses to operate fairly and within the law. A new approach to imposing sanctions is also required so that the most appropriate action will be taken to deal with offenders.

10. Need for a fast and expert body to settle consumer disputes

The creation of a fast, inexpensive, fair and expert body to deal with consumer disputes is of critical importance to both consumers and businesses. This is a need that must be met if Trinidad and Tobago is to have the efficient and workable marketplace that its citizens deserve.

11. Opportunity for renewal

Reform of the consumer protection legislation and examination of the Consumer Affairs Division also provide a timely opportunity for renewal and building institutions and relationships. Consumer protection crosses a number of Ministries and Agencies within Government. Improved co-ordination will be required to harvest the rewards of reform, and officials are making strong progress in this area.

While the protection available to consumers will be broadened and strengthened by the proposed legislation, one must not forget that honest businesses also rely on a healthy marketplace, fair competition, and consumers who will work with trusted businesses to build lasting commercial relationships. As the UK Government's Consultative Paper on a strategy for consumer protection noted, "Confident, well-informed consumers are good for business and help stimulate a more competitive and innovative economy."^{*}

B. Guiding principles of reform

In developing these proposals for reform, the Government has kept in mind several important principles. New legislation, new institutions and strengthened relationships must be based on a balance of fairness to consumers and suppliers. Consumers must have clear rights and remedies and suppliers must operate under accessible, practical and enforceable rules.

Clear rights and accessible rules will be reflected in the structure of the proposed legislation, which will be written in clear, simple language that will be accessible to people outside of government and the legal community. It will also bring together most of the rules of the consumer marketplace in one piece of legislation.

The legislation and institutions must also be flexible and responsive to changing needs. To accomplish this, the Minister will be able to issue Orders. For example, if new unfair business practices or unfair contract terms are identified as being

* "Extending Competitive Markets: Empowered Consumers, Successful Business: A consultative document," June 2004, statement of the Secretary of State for Trade and Industry, the Rt. Hon. Patricia Hewitt, p. iii.

harmful to consumers in Trinidad and Tobago, a Ministerial Order can be made to prohibit them.

The unique needs of consumers and businesses in Trinidad and Tobago will drive the content of the reforms and proposed legislation, although international “best practices” have been reviewed and considered (particularly in island jurisdictions such as New Zealand). In an island economy, for example, many goods are imported and consumers will increasingly be using distance contracts to meet their needs for goods and services. This can cause certain problems, such as late deliveries or goods and services that fail to meet expectations. Consumers are often concerned about the availability of spare parts for goods, the time it takes for repair, and the skill of repairmen. The proposed legislation will specifically address these issues.

THE NEW LEGISLATION MUST BE:

- Balanced and fair to both consumers and suppliers
- Clear, accessible, practical and enforceable
- Flexible and responsive to change
- Respectful of unique needs of Trinidad and Tobago

C. Background to reform initiatives

1. Green Paper: “Consumer Protection in the Information Age”

The Government has been examining the marketplace and the needs of consumers and businesses in Trinidad and Tobago for several years. In April 2005, the Government issued a Green Paper, “Consumer Protection in the Information Age,” to provide a basis for consultation with the public about needed reforms. The Green Paper is available on the Ministry of Legal Affairs’s website at www.legalaffairs.gov.tt

The Government identified distance selling, e-commerce, credit disclosure (“truth in lending”), after-sales service and repairs, growth of services, growth of scams, the need for clear rules, and consumer guarantees as issues. In particular, the Government noted the need for an accessible and practical means of settling disputes as a matter deserving early attention.

2. Consultation and Post-Consultation Report

Between July and September 2005, the Government held 18 public consultation sessions across Trinidad and Tobago. In the consultation sessions, citizens agreed

that the issues identified in the Green Paper were important ones that they wanted the Government to address.

Following the consultation on the Green Paper, the Government prepared a Post-Consultation Report, which is also available on the Ministry's website (www.legalaffairs.gov.tt). The Report identified new activities that the Government should undertake to strengthen consumer protection. These included developing a new legislative framework; developing strong sector specific standards; and taking leadership in the Region. This Policy Paper is the outcome of these activities and will allow the Government to complete the steps in the creation of a new legislative framework.

3. Intensive reviews by the Ministry of Legal Affairs

In determining priorities for action, the Ministry has been guided by the needs identified by citizens in the consultations following publication of the Green Paper, "Consumer Protection in the Information Age."

To further prepare for the Government's development of new policy proposals and legislative reform, the Ministry of Legal Affairs has carried out an intensive review of the existing legislation in Trinidad and Tobago, international trends and best practices in consumer protection, and obligations of Trinidad and Tobago relating to consumer protection. This review has formed the basis of the proposed reforms.

III. Overview of Consumer Protection in Trinidad and Tobago

A. Scope of reform

Many laws in Trinidad and Tobago protect consumers and honest businesses. This Policy Paper deals with reform of only the consumer protection statutes for which the Minister of Legal Affairs is responsible. These statutes are:

- *The Sale of Goods Act, 1895*
- *The Hire Purchase Act, 1957*
- *The Misrepresentation Act, 1983*
- *The Unfair Contract Terms Act, 1985*
- *The Trade Descriptions Act, 1984*
- *The Consumer Protection and Safety Act, 1985*

Ministry officials are responsible for enforcing the *Trade Descriptions Act, 1984* and the *Consumer Protection and Safety Act, 1985*. The others are enforced through private actions in the courts for damages and other remedies, such as a declaration that a contract is cancelled and cannot be enforced.

The scope of the proposed reforms set out in this Policy Paper is limited to the statutes that are administered by the Ministry of Legal Affairs. There are, however, consumer-oriented laws administered by other Ministries and Agencies. Some of these regulate specific industries, such as banks and telecommunications service providers. There are also strong laws and programmes to protect consumers from tainted food or dangerous drugs and many established standards to protect consumers and improve safety. In addition, competition legislation benefits consumers by prohibiting anti-competitive conduct and abuse of market power and the Government is committed to early implementation of the new *Fair Trading Act*. These are discussed further below (Part III, Section I). All these laws and programmes work together to protect the consumer.

The current reform initiative aims to preserve the rights consumers (and businesses) enjoy today and further enhance consumer rights by addressing new challenges and gaps in protection in the laws administered by the Ministry of Legal Affairs. The proposed legislation will also allow for the flexibility to respond to areas where protection will be required in the future.

B. Legislation administered by the Ministry of Legal Affairs

The Minister of Legal Affairs is accountable to Parliament for the operation of the consumer protection legislation for which he is responsible. In most cases, enforcement by private citizens and by government officials complement each other.

This section discusses this legislation, and it is possible to see how consumer protection evolved. The early legislation set out what was at the time a comprehensive code for the sale of goods to both businesses and individual consumers. Over time, new legislation gave specific protections to consumers by recognising their unique needs and their potential inequality of bargaining power. The section also examines areas where experience has shown that either the legislation or the institutional arrangements that support the legislation, such as the means to settle disputes, require reform.

1. The Sale of Goods Act, 1895

Description

The *Sale of Goods Act, 1895* governs the sale of goods in Trinidad and Tobago. Derived from British legislation, it is the foundation of today's consumer protection regime. The intention of the original Act was to impose a minimum level of "fairness" on contracts for the sale of goods to both businesses and consumers (that is, it applies generally to sales of goods whether the purchaser is a consumer or a business).

The Act provides a substantial and carefully structured code that addresses nearly every aspect of a sale of goods. It states that there are implied terms in a sale of goods contract. Some of these terms are:

- a condition that the seller has the right to sell the goods;
- a warranty that the buyer's possession of the goods will not be disturbed; and
- a warranty that the goods are free from any charge or encumbrance in favour of a third party (that is, that no one else has a valid claim on the goods).

Some of the terms could be explicitly excluded or varied in the contract, but others could not.

There are further warranties that:

- goods being sold by description or sample will match their description or the sample;
- goods will be of merchantable quality;

- goods will be “fit for their purpose” if the purpose was made known to the seller.

Amendments passed in 1983 added that goods bought for a particular purpose must be durable as well as being fit for that purpose.

The *Sale of Goods Act, 1895* did not address, however, the issue of inequality in bargaining power between the buyer and the seller. Although consumers were not the focus of the Act, the implied terms generally were to their benefit. However, the ability to create contracts that expressly excluded the terms generally operated to the detriment of consumers. Until the *Unfair Contract Terms Act, 1985* was passed, exclusion clauses in a contract could significantly reduce the level of the consumer protection provided by the *Sale of Goods Act, 1895*.

Matters for reform

There are two important gaps in the protection for consumers provided by the legislative regime of the *Sale of Goods Act, 1895*.

First, the guarantees, warranties and conditions of the *Sale of Goods Act, 1895* apply, of course, only to goods. Services are not covered by the legislation, creating a gap for guarantees regarding the provision of services.

Second, the average consumer does not have ready access to the remedies provided by the Act. The remedies for a dissatisfied consumer are damages or a declaration that the contract is void. However, these remedies are enforceable only through the courts. In practical terms, access to the courts (and hence the remedies) may be expensive and slow. Unless the claim is substantial, it will not be worth the investment of time, energy and money to litigate.

In relation to claims of \$15,000 or less that fall under the Petty Civil Court jurisdiction, there is the additional difficulty that the costs of the legal action that may be awarded to a successful party are limited to \$600. The actual cost of going to court will almost certainly exceed that amount, leaving the successful party out-of-pocket.

2. The Hire Purchase Act, 1957

Description

Hire purchase is a common method of financing consumer purchases in Trinidad and Tobago. The supplier continues to own the goods until all payments have been made. The consumer will own the goods after making all the payments, but enjoys the use of the goods while making the payments.

The *Hire Purchase Act, 1957* attempts to balance the interests of the supplier and the consumer by requiring the supplier to give information to the consumer, particularly the price for which the item can be acquired immediately for cash.

The consumer and supplier must sign a written note or agreement that clearly identifies the goods and states the cash price, the hire-purchase price, and the amount and dates of each instalment. The agreement must inform the consumer about his rights, and this information must not be in smaller print than the rest of the agreement. If the supplier does not give the consumer the required information, he may not be able to enforce the agreement.

Matters for reform

The Act covers hire-purchase agreements where the price (that is, the total cost including interest) is less than \$15,000. In practice, consumers often want to purchase over time goods that have a higher value. Hire-purchase agreements for higher amounts are only regulated as the sale of goods.

The Government will be examining whether the current ceiling on hire-purchase agreements is appropriate, particularly in light of proposed legislation dealing with the establishment of a registry for security on personal property and the limit that will be proposed for the dollar value of matters that may be heard by the new Consumer Tribunal (discussed below at Part V, Section W).

3. The Misrepresentation Act, 1983

Description

The *Misrepresentation Act, 1983* provides that damages may be awarded to the consumer if a supplier of goods or services misrepresents innocently or negligently an important matter. A misrepresentation is an untrue statement of fact (as compared to an opinion) that influences someone to enter into a contract. If the consumer never knew of the false statement, or did not allow it to influence his decision, or knew it was untrue, the false statement will have no legal consequences. This Act does not focus on deliberate misrepresentations, since the law already provides that a contract can be cancelled for fraud.

Matters for reform

The consumer can recover damages in court for innocent or negligent misrepresentation and the contract can be cancelled. The same difficulties for consumers pursuing remedies in the courts that were identified with respect to the *Sale of Goods Act, 1895* (for example, expense and access) apply in this situation, as well.

There is no specific role identified for Government officials, including officials responsible for consumer protection, in the *Misrepresentation Act, 1893*.

4. The Unfair Contract Terms Act, 1985

Description

The *Unfair Contract Terms Act, 1985*, together with the *Misrepresentation Act, 1983*, protects the consumer even at the stage of negotiating a contract for goods

or services. Before the *Unfair Contract Terms Act, 1985* was passed, many suppliers routinely used contracts that said that the protections given to consumers by the *Sale of Goods Act, 1895* would not apply.

The *Unfair Contract Terms Act, 1985* deals with this problem. The Act protects consumers against the unreasonable exclusion or limitation of liability in contracts for the sale of goods and in service agreements and hire-purchase agreements. Generally the Act goes a long way to even the balance between the consumer and the supplier. For example, it stops the practice of a supplier saying he would not be responsible for negligently causing death or personal injury. It introduces a reasonableness test and any limits of liability for other loss or damage caused by negligence must also be reasonable. The reasonableness test protects the consumer against a supplier who wants to do something under the contract that is significantly different from what the consumer reasonably expects. The Act also sets out criteria for determining reasonableness.

Contracts relating to insurance, land transactions, copyright, creation of companies and transfer of securities are exempted. Sales through auction and competitive tender are also excluded. While this legislation does not protect consumers from all the terms that are now considered to be unfair in standard form contracts, it has almost certainly eliminated some questionable terms from standard form contracts in Trinidad and Tobago.

Matters for reform

There are several issues that should be considered in dealing with this statute and consumer protection reform.

First, this statute may be too narrow in that there are now other terms that are considered to be always or often unfair when put into consumer contracts, particularly standard form contracts.

Second, this statute, as with the *Sale of Goods Act, 1895* and the *Misrepresentation Act, 1983*, was written at a time when the usual recourse for the consumer was to seek damages or other remedies through the courts or possibly through private arbitration. Again, the expense and delay make using the courts practical for only a few consumers.

Third, the statute does not provide any authority for a Government official, such as the Director of Consumer Guidance, to deal with broader or systemic issues. For example, the Director cannot require a supplier to stop using an unfair term in a standard form contract that affects large numbers of consumers. Nor does the Director have any basis on which to act to promote the use of fairer terms in contracts and improve relationships between suppliers using standard form contracts and their customers.

5. The Trade Descriptions Act, 1984

Description

The *Trade Descriptions Act, 1984* ensures that labels and advertising aimed at consumers and businesses are true. The Act was passed to ensure certain minimum standards for the information available to buyers of goods or services, and the accuracy of the information. False information about quantity, method of manufacturing, reconditioning, composition, strength, performance, testing, place or date of manufacture, or history of a product is prohibited. No one may falsely declare that a product meets an established standard.

The *Trade Descriptions Act, 1984* authorises the Minister to make Orders to deal with misleading trade descriptions. The Act prohibits false or misleading statements about services—which is particularly important in the tourism and hotel services industries.

The *Trade Descriptions Act, 1984* moves from private remedies (that is, the consumer applying to the court for a remedy) to Government regulation designed to ensure protection for the consumer and enforced by Government officials. Officials have powers to investigate, seize goods, and search premises. The Act establishes a series of offences with criminal sanctions. The penalties prescribed are intended to have a deterrent effect.

It is a defence to a charge that the offence was due to a mistake or to reliance on information supplied by someone else, an accident, or other cause outside the control of the accused, provided that he took all reasonable precautions and exercised due diligence to avoid committing the offence. Ignorance of the fact that goods did not conform to the description is a defence if the person charged is able to show that he could not with reasonable diligence have learned this. Innocent publication of an advertisement is also protected.

Matters for reform

The statute provides a strong regime for consumer protection to be enforced by the Government. Nonetheless, the Director or authorised officers may lack some enforcement tools that would make enforcement more effective, such as the power to demand that a person promoting a product substantiate a claim.

Other enforcement tools, such as the proposed Consumer Protection Compliance Orders (which will be discussed below in Part V) would also make it possible for the Director to demand that suppliers put in place arrangements to avoid illegal action in the future.

The statute also does not in itself directly provide a right for a consumer to take action to recover damages or other compensation caused by a violation of the Act. The fact of a violation, however, might create grounds for a civil action for damages, but this would have all the difficulties that were identified above with respect to the cost and delay of private court action by a consumer.

6. The Consumer Protection and Safety Act, 1985

Description

The *Consumer Protection and Safety Act, 1985* provides an overall structure for consumer protection. As with the *Trade Descriptions Act, 1984*, it provides for Government action on behalf of the consumer. The Act authorises the Minister to make Orders for the greater protection of the consumer in a number of areas; in particular, an Order may be made where a consumer trade practice:

- misleads consumers;
- withholds information from consumers;
- confuses consumers;
- subjects consumers to undue pressure to enter into transactions, or
- causes the terms of consumer transactions to be so adverse to consumers as to be inequitable.

To date, one Order has been made, the Adverse Trade Practices Order, 2000. The Order requires suppliers to give consumers the information they need before buying goods or services. Consumers must be informed of their rights under the *Sale of Goods Act, 1895* or the *Hire Purchase Act, 1957*.

A contract for the supply of goods must contain information about all the guarantees that apply, including information about costs of servicing the goods. The amount of the Value Added Tax must be displayed prominently, if it is not included in the price of the goods. Ministry officials enforce the Order and a person who does not obey the Order may be prosecuted.

Part IV of the *Consumer Protection and Safety Act, 1985* deals with consumer safety in the context of supplying goods. It allows for Safety Regulations prescribing quality standards and Prohibition Orders in relation to goods and components that are considered to be unsafe. To date, there are none in place.

There is also the power to serve a Prohibition Notice on persons to stop them from supplying unsafe goods. A Notice to Warn requires publication of a warning about unsafe goods. Additionally, the Minister has wide powers to seek information, which may only be used for specified purposes.

Further, the Act establishes the Consumer Guidance Council, which is discussed at Section D below, and creates the office of the Director of Consumer Guidance, which is discussed below at Section F.

Matters for reform

The legislation, while modern when it was enacted, has become outdated in several ways.

Firstly, the legislation does not deal directly with several emerging and important areas, such as distance selling and truth in lending.

Secondly, the Act relies on Government enforcement and consumers cannot generally seek their own remedies under the legislation when they have been harmed except for violations of Prohibition Orders and Prohibition Notices dealing with safety.

Thirdly, the structure of the Director's enforcement powers is cumbersome and does not encourage a measured escalation of responses or quick response to serious problems. For example, the Director may bring criminal prosecutions in the courts, "after seeking a written assurance to desist." Where conduct is particularly harmful to consumers, it may be more appropriate to allow the Director to act immediately. Heavy reliance on prosecution as an enforcement response also means that the Director must compete with other Government priorities for the resources of the Director of Public Prosecutions.

Fourthly, the Order-making powers have not been used to their full potential. There is no clear process to initiate Order-making, set priorities, or use Orders to create rights and remedies for consumers. Interestingly, similar provisions in the UK *Fair Trading Act 1973* were widely viewed as a failure as its legal powers were considered to be too narrow and the procedures too cumbersome. Only three Orders were made under it.

C. Consumer policies

1. The 1992 Draft Consumer Policy

In the 1980's, a strong push by the Government to improve consumer protection in Trinidad and Tobago resulted in new legislation, including the *Consumer Protection and Safety Act, 1985* and the *Trade Descriptions Act, 1984*. By the early 1990s, however, the Government recognised a need for an integrated approach that went beyond the scope of the legislation to include many areas of public life. The result was the creation of a draft national consumer policy. The 1992 Draft Consumer Policy had several objectives:

- Protecting the health and safety of consumers against hazardous products;
- Protecting consumers' economic interests and well-being by encouraging the development of proper manufacturing and retail practices;
- Creating an effective means for consumers to protect their rights and settle disputes; and
- Improving information about markets and educating consumers.

2. The 1996 Consumer Policy

In 1996 a new Consumer Policy affirmed the 1992 objectives and stated that effective consumer protection must take place in a wider context of sustainable national development. The 1996 Consumer Policy built on the draft 1992 policy and further aimed to:

- Promote environmentally sound practices and processes in the production of consumer goods;
- Promote alternate and renewable energy sources;
- Improve the operation of public utilities; and
- Eliminate discriminatory practices in the marketplace, particularly social stereotyping in advertisements.

The Policy also stressed the importance of consulting with consumers, other Ministries and Agencies, and regional and international bodies. Once again, the importance of a well-informed consumer was seen as being critical to the success of a consumer protection programme.

3. The 2003 Draft Consumer Policy and Action Plan

The 2003 Draft Consumer Policy was created to update the older policies and generally contained similar objectives. The new Draft Consumer Policy also had a regional focus, largely due to the impact of the Revised Treaty of Chaguaramas, which was signed by Trinidad and Tobago in 2001. The 2003 Draft Consumer Policy identified Principles, Strategies and Objectives that recognised the importance of consumer protection.

The Action Plan set out a list of proposals to implement the Policy. One proposal required the Law Commission to update and simplify existing consumer legislation. Another was for the Consumer Affairs Division to strengthen existing administrative measures.

The 2003 Draft Consumer Policy and accompanying Action Plan reinforced the need for a Government-wide approach to the protection of consumer interests. For example, safety standards for household products were the task of the Trinidad and Tobago Bureau of Standards, while the Ministry of Health regulated the herbal products industry. A common outcome of these and other actions would be increased consumer protection.

The Ministry of Legal Affairs recognises the need to keep a national Consumer Policy up-to-date and the proposals being put forth in this Policy Paper will be a critical component of a strengthened national policy.

D. Consumer Guidance Council

The Consumer Guidance Council was established by the *Consumer Protection and Safety Act, 1985*. Its purpose was to monitor and advise Cabinet on the implementation of the Consumer Policy.

To reflect the range of Ministries with a role in consumer protection, Council membership included Ministries with responsibilities in health, agriculture, trade and industry, consumer protection, communications, and education and training. There were also members from consumer organisations, non-governmental organisations and the general public.

Over time, the Council became less active and has been completely inactive in recent years. Along with the reforms planned for consumer protection laws, however, the Government is creating two new bodies (the Prices Advisory Council and the Consumer Advisory Board) that will provide a continuous source of expert and practical advice to the Government about matters of critical concern to consumers today in Trinidad and Tobago.

E. Minister responsible for Consumer Affairs

The Minister responsible for administering the current *Consumer Protection and Safety Act, 1985* and the *Trade Descriptions Act, 1984* has a strong and active role to play in protecting consumers.

An important part of the Minister's role is to make Orders to prohibit or limit activities that would harm consumers. A number of types of Orders may be issued under the *Consumer Protection and Safety Act, 1985*. Under the *Trade Descriptions Act, 1984*, the Minister may help consumers make informed decisions by making Orders that require information be put on labels, in advertisements or in instructions accompanying an item to be sold. Much of this Order-making power will be continued in the new legislation, particularly powers relating to consumer safety.

F. Director of Consumer Guidance

The *Consumer Protection and Safety Act, 1985* creates the position of Director of Consumer Guidance. The Director plays a key role in protecting consumers in Trinidad and Tobago. The Director monitors commercial activities and gathers information about practices that may harm consumers. He assists the Minister, provides information, and may recommend that the Minister make an Order expanding the protection of consumers.

The Director is also responsible for the enforcement of the Act and may bring criminal prosecutions against those who violate the Act or Orders. He may warn

suppliers to stop activities that harm consumers or may ask for written assurances that suppliers will obey the law. He may even publish the names of “recalcitrant traders” to warn consumers. He is also responsible for encouraging the development of codes of practices by industry associations.

The Director has been operating in an environment with limited enforcement staff and an array of legislation that has become increasingly complex—likely due to its piecemeal development over more than a century. This may have contributed to a lack of use of certain legislative provisions, such as Ministerial Orders.

Clarification of the powers and responsibilities of the Director and the process for creating Ministerial Orders is needed. In addition, the proposed legislation will clarify and strengthen his role and authority, including providing a power to impose Consumer Protection Compliance Orders. The courts will also have access to a wider range of sanctions following convictions for offences. These proposals will be discussed in greater detail in Part V.

G. Consumer Affairs Division

The Consumer Affairs Division (CAD) was established following a national consultation that was held to address issues of rising food prices. On July 24, 1994 the Ministry of Consumer Affairs was formed with a mandate that included consumer education and protection, and weights and measures verification.

The CAD has since been part of several different ministries and structures. Presently the CAD is part of the portfolio of the Ministry of Legal Affairs. The CAD personnel perform a variety of duties and provide a number of key services to the public as shown below.

Major CAD Services Today:

Complaint Management: complaint handling, advising members of the public about consumer rights and responsibilities, and dispute resolution services;

Enforcement: conducting inspections, monitoring compliance, investigating possible violations of the law and taking enforcement action;

Prices, Weights and Measures Inspection: conducting inspections, collecting fees and ensuring compliance with the Weights and Measures Ordinance;

Research & Monitoring: product testing, compiling and analysing price statistics, compiling and analysing complaints and demographic statistics, project management support;

Consumer Education: internal and external communications, development of educational materials, event management, handling press inquiries and similar communication responsibilities.

Administratively, a number of units help to support these services. Each of the units is briefly described below:

- *The Consumer Protection Services Unit (CPSU)* is the core unit of the CAD, responsible for interacting with the public to promote and enforce fair and consumer-friendly business practices. Its primary duties include:
 - Handling consumer complaints;
 - Enforcing laws regulating consumer transactions;
 - Providing advice to consumers and businesses;
 - Monitoring commercial activities in Trinidad and Tobago; and
 - Advocating and promoting the rights and responsibilities of consumers by, for example, sitting on standards-development committees of the Trinidad and Tobago Bureau of Standards.
- *The Research and Project Management Unit* gathers data and researches emerging trends in consumer behaviour, commercial practices and developments in the supply of consumer goods and services. A key service provided by this Unit is the monitoring of prices of goods, such as food prices and hardware prices, and the publication of weekly, monthly and quarterly reports on prices to inform customers and encourage competitive pricing in the marketplace.
- *The Prices, Weights and Measures Inspectorate* is responsible for inspecting and monitoring weighing and measuring devices used in commercial transactions.
- *The Corporate Communications Unit* promotes awareness of issues and concerns affecting consumers in the marketplace and educates consumers regarding their rights and responsibilities.
- *The General Administration Unit* provides administrative services necessary to support all the units of the Division.
- *The Legal Unit* is responsible for providing legal advice to the Director of Consumer Guidance on consumer protection issues.
- *The Information Technology Unit* is responsible for ensuring the availability of network services, the provision of helpdesk support services, the continuous upgrade of existing hardware and software and the implementation of new technologies to meet the Division's changing needs.

H. Consumer Affairs Unit—Tobago

Prior to 1996, officers from the Ministry of Consumer Affairs in Trinidad would visit Tobago monthly to deal with consumer complaints. As the number of complaints grew, the Tobago House of Assembly and the Ministry of Consumer Affairs agreed that it was necessary to establish a Consumer Affairs Unit in Tobago to assist consumers on a daily basis and promote consumer awareness on the island. A Memorandum of Understanding was signed to formalise this arrangement.

Today, consumers in Tobago are assisted by a seven-person Unit operating out of the Bob-Tail Building in Scarborough. As part of its ongoing work in fulfilling its mandate, the Unit conducts educational outreach programmes, carries out research relevant to consumer issues, and handles consumer complaints. One of its most important objectives is to assist consumers to become more knowledgeable and assertive about their rights as they participate in the modern marketplace.

I. Ministries and Agencies with consumer-related responsibilities

1. Consumer protection is a government-wide concern

Consumer protection is a wide-ranging activity. In fact, many of the activities of Government are ultimately aimed at protecting consumers. The consumer protection activities of the Ministry of Legal Affairs are complemented by the work of other Ministries and Agencies.

In the consultations following the publication of the Ministry's Green Paper, "Consumer Protection in the Information Age," consumers expressed concerns about matters that are the responsibilities of other Ministries and Agencies. For example, many consumers were dissatisfied with service in air travel (such as lost luggage), and particularly the air-sea bridge between Trinidad and Tobago (such as delays, stranded and bumped passengers). There were also concerns about delays in completing home construction and the quality of new homes.

Matters that are the responsibility of other Ministries or Agencies, such as the Ministry of Works and Transport (air travel), will not be covered in this Policy Paper. The proposals will deal with consumer protection reform within the mandate of the Ministry of Legal Affairs. The following sections, however, provide an indication of the wide range of consumer protection activity within the Government.

2. Ministry of Health

The Ministry of Health is responsible for the quality, purity and safety of food and drugs imported into or manufactured in Trinidad and Tobago. The *Food and Drugs Act* prohibits misrepresentations and false claims about drugs and food. The Chemistry, Food and Drugs Division monitors all aspects of the import, manufacture, storage, distribution, sale, labeling, marketing, and disposal of food and drugs.

3. Telecommunications Authority of Trinidad and Tobago

Several regulatory authorities also protect the interests of consumers. The Telecommunications Authority of Trinidad and Tobago (TATT) oversees the liberalisation of the telecommunications and broadcasting sectors. Consumers who are dissatisfied with how their complaints are handled by their carrier may lodge a complaint with TATT, which will approach the carrier on behalf of the consumer to try to resolve the complaint.

4. Regulated Industries Commission

The Regulated Industries Commission (RIC) is a statutory body with strong regulatory powers and responsibilities. It has been established to ensure that good quality and efficient utility services (water and electricity) are provided at a fair and reasonable cost in Trinidad and Tobago. The RIC provides information to consumers, negotiates service standards with utilities to protect consumers, and handles consumer complaints.

5. Financial Services Regulation

The Minister of Finance is responsible for a number of agencies that play an important role in protecting consumers in the area of financial services. For example:

- The Central Bank oversees prudential regulation of banks and insurance companies;
- The Office of the Financial Services Ombudsman can mediate disputes between customers and the banks or insurance companies;
- The Trinidad and Tobago Securities and Exchange Commission indirectly protects consumers and investors by ensuring an orderly securities market and protecting the interests of customers.

The Ministry of Finance itself is also responsible for regulating government and approved private pension fund plans and the Ministry of Labour and Small and Micro-Enterprise Development regulates co-operative societies.

6. Ministry of Trade and Industry

The Minister of Trade and Industry is accountable for two important Agencies: the Trinidad and Tobago Bureau of Standards (TTBS) and the new Fair Trading Commission. The primary role of the TTBS is to develop, promote and enforce standards to improve the quality and performance of goods produced or used in Trinidad and Tobago. It also aims to ensure industrial efficiency and development, promote public and industrial welfare, health and safety, and protect the environment.

The new Fair Trading Commission, which is in the process of being established, will be responsible for enforcing competition legislation that promotes a competitive marketplace that benefits consumers and businesses alike.

The Ministry is also in the process of developing legislation on the importation of used vehicles, which is a matter of critical concern to consumers today.

IV. Legislative Models

A. Approaches to legislative design

Different countries adopt different legislative structures and institutional models in their efforts to protect consumers. The influences of legislation and institutional arrangements across the Commonwealth can often be traced back to the United Kingdom. The importance of the United Kingdom as a source of law in the Commonwealth and its influence on legal institutions indicate that its legislation and institutions should be examined. In addition, adaptations of the UK approach in such jurisdictions as Australia and Barbados provide other models that are worth reviewing when considering the legislative and institutional approach that should be taken in the reform of consumer law in Trinidad and Tobago.

The countries whose legislation was examined have structured their legislative regimes in different ways. While there is a trend towards comprehensive legislation, history and drafting preferences have meant that the structure of legislation can be placed on a spectrum.

At one end, there are highly comprehensive statutes encompassing a number of areas of consumer protection. At the other end, an array of statutes will deal with specific issues or commercial sectors.

The United Kingdom currently can be seen as being closer to the end of the spectrum with multiple statutes dealing with particular consumer issues. The United Kingdom is committed to restructuring its legislation into a more unified regime, and the *Enterprise Act 2002* established a comprehensive enforcement regime for a large number of statutes. Nonetheless, there are over 200 statutes dealing with consumer protection in that country.

In contrast, many of the Australian states have a relatively integrated legislative regime supplemented by some legislation dealing with certain industries or sectors, such as motor vehicle dealers. For example, the *Victoria Fair Trading Act 1999* deals in a single statute with unfair practices, implied conditions and warranties, unfair terms in consumer contracts, safety and information requirements, off-business-premises sales, telephone marketing agreements, lay-by sales, codes of practice, dispute settlement, enforcement, remedies and sanctions, the Tribunal and administration.

Barbados has also taken an integrated approach in its *Consumer Protection Act (2002)*, complemented by a *Consumer Guarantees Act (2002)*. The *Consumer Protection Act*, for example, deals with unfair contract terms, unfair trade practices, control of distance selling, product liability, consumer safety, recall of goods, industry codes, and administration and enforcement.

In all the countries that were reviewed, regulations or orders provide flexibility and allow for the detailed elaboration of the more general legislative provisions. In fact, the degree to which regulations or orders are used to complement statutory provisions is also a matter of drafting and political preference.

B. Use of international models and best practices

1. Countries, legislation and models examined

The proposed reforms respond to international developments and draw upon “best practices” and models developed in several countries. The proposed legislation will be developed with an awareness of reforms in other common law countries (Australia, Barbados, Canada, New Zealand, and the United Kingdom) and in the European Union. Indeed, the actions of the European Union have had an important effect on current approaches to consumer protection. It has been instructive to review how general EU Directives are incorporated into the domestic law of the European member countries, only one of which has a common law tradition. Models developed by the Organisation for Economic Co-operation and Development (OECD) and the United Nations have also been examined. The legislation, models and policies that were examined and considered as potential alternative models for Trinidad and Tobago are described below.

Australia

The Australian federal *Trade Practices Act, 1974* is the model for much of the state consumer protection legislation in Australia, as well as for significant provisions in the legislation in New Zealand. It is an extensive piece of legislation that deals not only with consumer protection and fair business practices, but also with competition policy and sectoral regulation in such areas as telecommunications and electricity. The regulator is the Australian Competition and Consumer Commission. The federal government’s jurisdiction is related to corporations, but the state consumer legislation is of general application and more similar to that found in Trinidad and Tobago. The comprehensive nature of state fair trading legislation is described above in the example of the *Victoria Fair Trading Act, 1999*.

The legislatively established position of Director of Consumer Affairs Victoria plays a strong role in promoting consumer protection and ensuring compliance with the legislation. In addition to being responsible for the administration of the *Fair Trading Act 1999*, the Director may investigate and prosecute breaches of other consumer acts set out in a schedule. These include the *Estate Agents Act 1980*, the *Motor Car Traders Act 1986*, and the *Retirement Villages Act 1986*. The Director is therefore the primary enforcer of consumer legislation, with secondary compliance activities being undertaken by industry organisations enforcing codes

of conduct. The Director must submit a report to the Minister annually and the Minister must lay the report before the State Parliament.

Victoria has also taken the lead in the development of legislation dealing with credit. The other Australian states are examining the implementation of new credit legislation, which will supersede hire-purchase legislation. Their credit legislation would likely be based on the Victorian model. There is a strong momentum for harmonised legislation in Australia, which is promoted by the Ministerial Council on Consumer Affairs.

The Australian experience provides several important points for consideration in Trinidad and Tobago. The legislation is relatively comprehensive and up-to-date, particularly in more active jurisdictions, such as Victoria. The language used in drafting the legislation is often very clear and straightforward and the concerns and issues addressed at the state level are often very similar to those that require attention in Trinidad and Tobago.

Barbados

The legislative experience and design of institutions to protect consumers in Barbados deserve close attention in Trinidad and Tobago. The consumer protection legislation is relatively modern, with a new *Consumer Protection Act* and *Consumer Guarantees Act* being passed in 2002. Two other important pieces of legislation were passed at the same time: the *Fair Competition Act* and the *Fair Trading Commission Act*. Together, the four statutes create a comprehensive legislative package to protect consumers.

Barbados retained the familiar regime of commercial practices found in sale of goods legislation. Its consumer guarantees legislation drew heavily from New Zealand (which in turn was based on Canadian legislation), and creates enforceable rights for consumers. The most notable matter in the Barbados approach, however, is the institutional arrangements which have much in common with the Australian Commonwealth approach of bringing together in one organisation a number of regulatory functions.

The Barbados Fair Trading Commission is responsible for enforcing competition law and policy, and consumer protection. It also regulates several economic sectors, thereby ensuring that the consumer and competition aspects of economic regulation are being given due weight. This creates a critical mass of expertise that includes lawyers, economists and sectoral specialists.

Barbados also has an Office of Public Counsel that can assist consumers in seeking redress for wrongs done to them and has established an administrative adjudicative tribunal, the Consumer Claims Tribunal, which was established in 2002 by the *Consumer Guarantees Act*.

Canada

Like Australia, Canada is a federal jurisdiction with authority over consumer protection being shared between the federal government and the provinces. The federal legislation deals with competition law, including unfair business practices, weights, measurements, and textile and precious metal marking. The provincial legislation deals with the majority of consumer issues, including sale of goods and services, contracts, consumer guarantees, distance selling, remedies, information disclosure and business licensing. The province of Ontario, for example, has a relatively new *Consumer Protection Act*, passed in 2002. Following a trend for more comprehensive legislation, the new Act consolidated six other statutes: the *Business Practices Act*, the *Consumer Protection Act*, the *Consumer Protection Bureau Act*, the *Loan Brokers Act*, the *Motor Vehicle Repair Act*, and the *Prepaid Services Act*.

The Saskatchewan *Consumer Protection Act, 1997* has had an influence on legislation in New Zealand and Barbados. Like Ontario's statute, the Saskatchewan Act was a consolidation of a number of other consumer protection statutes, including the former *Consumer Products Warranties Act*. In addition to the guarantees found in older sale of goods legislation, the Saskatchewan *Consumer Protection Act, 1997* requires that spare parts and repair facilities be available for a reasonable period of time. The court can also award damages for losses that occur to the consumer due to a defective product. The Act is limited, however, to dealing with guarantees on products and does not cover services.

New Zealand

The New Zealand consumer protection legislation includes the *Commerce Act 1986*, the *Fair Trading Act 1986* (which is essentially based on the Australian *Trade Practices Act*), the *Consumer Guarantees Act 1993* (which is essentially based on the Saskatchewan Act and New Zealand case law), and the *Credit Contracts and Consumer Finance Act 2003*. The *Sale of Goods Act*, dating from 1908, is also in force.

Consumers are expected to seek their own remedies under New Zealand legislation, but there are institutional arrangements in place that make this feasible. There is a Disputes Tribunal that deals with disputes between both private individuals and consumers and suppliers. There is also a special tribunal devoted to motor vehicle cases. A Citizen's Advice Bureau or a Community Law Centre can help with the preparation or defence of a claim. Appeals are heard by a District Court Judge only on grounds of unfairness in the conduct of the hearing.

United Kingdom

The United Kingdom has traditionally been an important source of legislation and policy for Trinidad and Tobago—as it has for many Commonwealth countries. In

recent years, the UK has responded to a number of EU Directives and developed new legislation, often in the form of regulations, to deal with an emerging consensus about approaches to consumer protection. Although, as noted above, the UK has a large number of statutes that deal with specific issues relating to consumer protection, it is working toward consolidating and rationalising its existing legislation.

The *Enterprise Act 2002*, for example, sets out a modernised enforcement and compliance regime that applies to a large number of consumer statutes, including the *Cancer Act 1939*, the *Charities Act 1992*, the *Consumer Credit Act 1974*, the *Weights and Measures Act 1985*, the *Trade Descriptions Act 1968*, the *Tobacco Advertising and Promotion Act 2002*, the *Hallmarking Act 1973*, and the *Lotteries and Amusements Act 1976*.

In terms of institutional models, the UK places a strong reliance on quasi-private sector institutions to achieve protection for consumers. For example, the *Enterprise Act 2002* allows for the designation of consumer protection organisations that will play a role in enforcement by making “super-complaints.” The extensive network of industry ombudsmen organisations is also considered as an important segment of the enforcement and compliance regime, as are other government regulators (e.g., those dealing with telecommunications and public utilities) and their associated consumer “watchdogs.”

Reflecting the strong role of these complementary organisations and the private sector, the legislation continues the emphasis on industry codes of practice that have existed for over twenty-five years. Recent administrative action by the Office of Fair Trading (OFT), however, has indicated that a more rigorous attitude will be taken in dealing with industry codes of practice before they can be approved by OFT. This is based on experience that has shown that codes must be more than simply statements of good intentions and must include “teeth” and monitoring for compliance. A similar review and more rigorous approach are currently being taken in Australia and New Zealand.

European Community

The European Community has been promoting consumer protection and harmonisation of domestic legislation in the Community through a series of Directives. In many cases, these are now creating international standards for the appropriate levels and forms of protection. Among these are the Directive on unfair terms in commercial contracts (1993); the Directive on distance selling (1997); the Directive on price indications (1998); the Directive on the sale of consumer goods and guarantees (1999); and the Directive on unfair commercial practices (2005). The EU has recently published a Green Paper, “A Review of the Consumer Acquis,” for consultation that proposes a review of some of the older directives in order to achieve “better regulation” goals by simplifying and completing the existing regulatory framework.

Organisation for Economic Co-operation and Development (OECD)

The OECD, which is an international organisation with members from thirty developed countries and associated members from developing countries across the globe, has taken an active interest in consumer protection and in matters that can benefit consumers, such as competition policy and development. The OECD has issued several Guidelines that have influenced government action, including the Guidelines on Protection of Privacy and Cross-Border Data Flow of Personal Information (1980) and the Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders (2003).

United Nations

The United Nations Guidelines for Consumer Protection, last updated in 1999, created a wide-ranging policy framework that provided internationally recognised objectives endorsed unanimously by member nations. Key objectives included achieving adequate protection for consumers, curbing abusive business practices, encouraging high levels of ethical conduct, and facilitating the development of independent consumer groups.

2. Best practices: Sources of proposed legislation

Trinidad and Tobago will be able to benefit from relatively recent consumer law reforms in other jurisdictions. It is important to note that while there are minor differences in the application of general principles and the institutional support given to consumer protection regimes, there is widespread agreement on the basic principles of how to deal with emerging problems. In reviewing the approaches taken in other jurisdictions, the Government has kept several factors in mind when deciding where to draw on international experience in the design of the proposed consumer protection legislation.

One important consideration is how the implementation of generally recognised best practices would be carried out in the specific circumstances of Trinidad and Tobago. The relevant circumstances include the developing country status of Trinidad and Tobago; the need to use resources efficiently, the need to develop or improve the institutions that will support an effective regime of consumer protection, and the marketplace conditions. The intention is to create an effective regime that is also practical and realistic.

In some cases, this has meant adapting internationally accepted principles to less complex institutional arrangements. The flexibility that will be built into the proposed statute through order-making and regulation-making powers will allow for increasing complexity and scope in such areas as consumer disclosure, for example. The proposals will improve consumer information without putting undue burdens on the business community.

Similarly, while the proposed consumer protection legislation will recognise institutional arrangements that have been successful in other countries, such as the use of industry codes of practice, it also takes into account the practical experience in Trinidad and Tobago. In the UK and Europe, for example, there is a long history of self-regulation and there is a range of organisations that can play relatively active and sophisticated roles in complementing government action. Australia and New Zealand also have a strong background in the use of industry codes of practice. There is little similar history or experience in Trinidad and Tobago. While the proposed legislation will be structured to promote the development of the capacity for self-regulation, it will not place the same reliance on private sector players as is found in other countries.

In developing the legislative policy dealing with consumer guarantees for goods and services, the Government has closely examined the recent legislation in New Zealand, which in turn, has formed the basis for legislation in Barbados. The institutional arrangements to enforce these guarantees, however, will be tailored to the needs of Trinidad and Tobago.

Provisions dealing with “truth in lending” and comparability of information about the costs of borrowing and credit agreements draw on experience in a number of countries. Both the United Kingdom and New Zealand have recently undertaken extensive studies in the areas of consumer credit and New Zealand has created new legislation in this area. The UK is also responding to an EU Directive on consumer credit that sets an international standard for treatment of the issue. In a number of Australian states, hire-purchase legislation is being replaced by broad consumer credit legislation that deals with the granting of credit to consumers in a number of arrangements. The North American approach to maintaining a common methodology for calculation of costs of credit has also had an influence in the development of the Government’s proposals.

The European Directive on Unfair Terms in Contracts and the responses in EU countries, particularly the UK, and the legislation in several Australian states have had an influence on the approach taken in this area in these proposals. There is common agreement on what terms can be considered as being unfair in most circumstances, as well as on what terms should not be allowed at all.

Countries across the world have enacted prohibitions against unfair business practices, which are sometimes found in the competition laws (such as in Canada and New Zealand). There is wide agreement, however, that certain practices should not be permitted. Although some of these are already dealt with in the laws of Trinidad and Tobago (for example, in the *Misrepresentation Act, 1983* and the *Trade Descriptions Act, 1985*), the decision was made that the proposed legislation should provide a comprehensive list of prohibited conduct. This is consistent with the legislation in Canada, Australia and New Zealand and in the EU Directive.

Distance selling is also a matter that has drawn worldwide attention. The EU and the UK response to the EU requirements in its regulations dealing with distance selling have had an influence on the approach taken in these proposals. As well, the Government has taken account of several codes of practice, studies and guidelines dealing with consumer protection in e-commerce. These include Guidelines issued by the OECD and work done in Canada, Australia and New Zealand.

Particular attention has been paid to jurisdictions that must import quantities of their goods and even rely on services from suppliers outside the country. The treatment of manufacturers and the proposals that deem importers to be manufacturers when there is no manufacturer within the country are drawn from legislation in New Zealand and Barbados—both island economies.

The approach to promoting compliance and the powers that will be given to the Director to promote compliance and respond to non-compliance in a reasoned and effective manner are drawn from recent legislation in the UK, Canada and Australia, as well as from recommendations developed by numerous studies, including those of the Australian Law Reform Commission and the Better Regulation Council in the UK.

A number of jurisdictions make use of tribunals or special courts to settle disputes between consumers and suppliers. A number also create the capacity for easy appeal of selected enforcement decisions of senior compliance officials outside of the courts. Examples are found in Canada, the UK, New Zealand, Australia and Barbados. The approach taken in these proposals draws from all and is intended to provide a comprehensive regime to deal with disputes that respects the rights of consumers and suppliers alike. The proposed Consumer Tribunal will also ensure that certain enforcement powers of the Director will be exercised fairly and will allow the Director to deal with widespread or systemic problems with unfair terms in contracts.

Quite clearly, the Government has had access to expertise and models in other countries. The objective, however, has been to create a comprehensive regime of consumer protection that learns from best practices. The new legislation will not only respect the best practices internationally but will also be harmonised with the newest legislation in the CARICOM Region, such as that of Barbados.

C. Proposed Structure

1. A Comprehensive model

The proposed structure of the new Trinidad and Tobago consumer protection legislation will be relatively comprehensive and integrated. In general terms, it will follow the Australian model with separate Parts in a single statute that deal

with different areas of consumer protection, such as consumer guarantees, unfair terms in contracts or unfair business practices.

2. Objectives of the structure

In choosing to structure the new legislation as a comprehensive legislative code of consumer protection, the Government wants to achieve several objectives.

- First, a new comprehensive statute will place the major consumer protection legislation in one place—it will not be necessary to search among a number of statutes to determine the rights and responsibilities of consumers and businesses in Trinidad and Tobago.
- Second, introducing new provisions into existing legislation will provide an opportunity to streamline or clarify current legislation in order to create a workable and effective regime of consumer protection.
- Finally, reviewing and restructuring existing legislation will ensure that the language of the statute is clear and readable. The Government believes that when consumers and businesses understand their rights and obligations, a healthy marketplace is created in which informed consumers deal with honest and reliable suppliers of goods and services.

The Government believes that these objectives and the structure chosen for the drafting of the proposed legislation are consistent with the principles that have guided the reform efforts generally. As was noted above, the new legislation must be:

- Balanced and fair to both consumers and suppliers
- Clear, accessible, practical and enforceable
- Flexible and responsive to change
- Respectful of unique needs of Trinidad and Tobago

While these principles relate primarily to the substance of the proposed legislation, the Government also intends that they be reflected in its structure and the “plain English” approach that will be taken to drafting.

3. Relationship to existing legislation

The proposed legislation will incorporate many of the existing provisions of the *Consumer Protection and Safety Act, 1985*, the *Misrepresentation Act, 1983*, the *Unfair Terms in Contracts Act, 1983*, and the *Trade Descriptions Act, 1984*. It will add new provisions that:

- ensure that consumers of services receive the same protections as consumers of goods;

- expand existing legislation dealing with unfair business practices, unfair contract terms and codes of practice;
- enlarge and strengthen the powers and duties of the Director;
- expand existing provisions dealing with consumer guarantees to include guarantees for services;
- improve protection for consumers purchasing goods or services at a distance;
- ensure that credit arrangements are transparent and that consumers can compare different offers of credit and leases; and
- provide new enforcement options, sanctions and remedies.

However, the existing protections governing business-to-business transactions will remain in place. For example, The *Sale of Goods Act, 1895* will remain essentially unchanged since it governs the sales of goods between businesses as well as sales to consumers. The provisions in that Act dealing with warranties and conditions will be replicated in the part of the new legislation dealing with consumer guarantees for goods and services. The commercial regime will continue unchanged, however.

The *Hire Purchase Act, 1957* will also remain essentially unchanged. The limit on the dollar value of hire-purchase transactions is being reviewed. A broader review of the Act in the context of consumer credit reform may occur at a later date.

There will also be no changes to the consumer-oriented legislation that is administered by Ministries or Agencies other than the Ministry of Legal Affairs.

This is the general legislative structure that will be used to create the full regime of consumer protection legislation. To maintain flexibility and ensure that the legislation will continue to serve the needs of the people of Trinidad and Tobago for the foreseeable future, the legislation will provide for the issuance of Ministerial Orders.

The consumer safety sections of the *Consumer Protection and Safety Act, 1985* will remain largely in their current form. The liability of corporations and corporate officers will continue to be important elements in the design of the provisions dealing with offences and sanctions. While the new legislation will prohibit misrepresentations or false statements that influence a consumer's choices in the marketplace, it will also incorporate the elements of the *Trade Descriptions Act, 1984* that govern labeling and information that must be given to the consumer.

D. Focus of the Policy Paper

The Policy Paper does not treat every issue that will be incorporated into the proposed comprehensive consumer protection legislation. It does not discuss, for example, provisions in existing legislation that will be repeated in the new

legislation. Instead, it sets out the elements of the proposed legislation that will be new (such as consumer guarantees for services or distance selling) or that will strengthen or clarify the existing legislation (such as new enforcement powers).

The Government also continues to stress that it remains committed to retaining all the protections that businesses enjoy under the current legislation. While the new legislation will focus on consumers and will affect the arrangement of legislation that protects both businesses and consumers, businesses will not have their protections reduced. The comprehensive statute that the Government will introduce into Parliament will combine these new elements with familiar rights and obligations to create the protection that citizens demand and deserve.

V. Proposed Consumer Protection Legislation

A. Scope and Definitions

1. Background

The proposed consumer protection legislation for Trinidad and Tobago will respond to the changing business environment, which includes such innovations as e-commerce, increased distance selling, and increased use of consumer credit. It will be a law of “general application,” that is, it will apply to suppliers operating in all sectors and to consumers of both goods and services.

Under the new legislation, there will be a senior official responsible for administering the consumer protection programme. This official will be known as the Director. The Director will not only have responsibilities similar to those of the existing Director of Consumer Guidance, but he will also have new responsibilities and enforcement powers. For example, he will have the power to issue Consumer Protection Compliance Orders that will allow him to demand that suppliers obey the law.

The new legislation will give more rights to consumers. Suppliers of goods and services will be required to provide more information to consumers. One result will be that consumers will be told more about the arrangements they make to purchase goods and services at a distance, whether by telephone, letter or on the Internet. Consumers will also have clear remedies when suppliers have not met their obligations. In some cases, they may be entitled to cancel a contract or demand repairs when goods or services are unsatisfactory. They may also be able to demand damages or the refund of deposits or payments in other situations.

The private law protection available to the consumer will expand and continue to be complemented by the powers and actions of the Director and other Ministry officials. The Director will continue to be able to deal with criminal offences by prosecution. Magistrates and the High Court will have new opportunities to impose community service and corporate probation orders on offenders. Fines will reflect the seriousness of offences and allow the courts to fashion remedies and ensure that “the punishment fits the crime.”

The new legislation will continue to encourage the development and use of codes of practice by industry associations and other groups of suppliers. New provisions, however, will allow for a stronger role for codes of practice by allowing the Minister to declare a code to be mandatory.

One of the new consumer protection legislation's most important and innovative provisions will be the establishment of a Consumer Tribunal. This will be a quasi-judicial tribunal with two important functions. First, it will settle disputes between suppliers and consumers. This will provide a much-needed quick and inexpensive means of dealing with disputes. Both consumers and suppliers will be able to take advantage of the expertise in consumer and commercial matters that can be developed by a specialised tribunal.

The Director may also enforce individual consumer's rights in the Tribunal in certain cases by, for example, seeking a declaration that a particular term in a widely used standard form contract is unfair.

The second important role of the Consumer Tribunal will be to hear appeals of the Director's decisions to issue Consumer Protection Compliance Orders. Suppliers may appeal to the Tribunal, which will provide a fair, unbiased and independent hearing of the issues.

2. Legislative Proposals

This section sets out the broad principles and approaches that will be used to provide the framework for the new consumer protection legislation. The framework for the new legislation will be established by setting out to whom it will apply—that is, who will be required to comply and who is given rights and remedies—and the types of transactions that will be covered by the new legislation.

Who will be required to comply with the new legislation?

The new legislation will be a law of “general application.” The proposed legislation will deal with the provision of goods and services to consumers in Trinidad and Tobago.

Who will be a “consumer”?

A consumer will be an individual or business who buys goods or services for his own use from a supplier who regularly supplies the goods or services. The person selling or supplying goods or services must be in business of doing so—if someone sells his friend his old couch, he will not be selling to a consumer unless he is in the furniture business.

If the person resells the goods or services or uses them in his own business to manufacture a new product, he will not be a consumer. For example, if a person buys fabric to make draperies that are sold to the public, that person is not a consumer when he buys the fabric. If, however, the fabric is bought to make draperies for someone's own home or a friend's home, then the buyer will be a consumer.

There is one exception in this definition of “consumer.” The provisions dealing with consumer credit in Section Q, below, are limited to individual consumers. A business will not be considered a consumer for the purposes of consumer credit.

WHO WILL BE A CONSUMER?

Examples:

- A woman answers an ad in the paper and buys a used car from a family that needs a van to accommodate their new twins. She is not a consumer because the seller of the car is not in the business of selling cars.
- A woman buys a used car from a dealer. She is a consumer because selling cars is the dealer’s business.
- A woman offers to exchange babysitting with a friend for a new slipcover. Unless her friend is in the business of making slipcovers, she is not a consumer.
- A car dealer buys paper for the photocopier from a stationery store; he is a consumer because the store is in the business of selling paper and his business is selling cars.
- A car dealer buys motor oil to use for oil changes in the cars he services; he is not a consumer since the oil is being directly used to supply services in his business.

What will be “goods”?

Goods will include most personal property, although there will be some exceptions. Goods will not include money or the right to recover money in court. It will include, however, boats, aircraft and vehicles. Animals, birds and fish will be goods and so will trees and crops, whether or not they have been harvested. So both a living tree and lumber would be considered goods—a mango tree bought to plant in a yard and teak for a home deck.

A residence will not be goods. A building on land will not be considered to be goods unless it is easily removable and not designed to be used as a residence. Thus a house would not be considered “goods,” but a garden shed would be. Although it can be moved, a house trailer would not be “goods” since it is designed to be someone’s home.

WHEN DOES A CONSUMER BUY GOODS?

When she buys, for example:

- A new dress from her dressmaker
- A used car from a dealer
- Flowers for the dining table from a florist
- A computer for her daughter over the Internet
- A cell phone for her son at the mall
- A painting from an artist or gallery
- New tiles for the roof
- A dog from a breeder

What will be “services”?

Services will have a broad meaning. Generally, services will include carrying out work; providing accommodation or entertainment; taking care of people, animals or things; and offering credit. One exception will be employment contracts so employees will not be offering services to their employers. Labour legislation and the laws dealing with employment contracts govern employment relationships. However, employment agencies who find employment for people will be a service.

EXAMPLES OF SERVICES

- A contractor builds a patio.
- A tour operator rents a kayak to tourists.
- A hotel rents rooms.
- A singer entertains in a nightclub or appears at a fete.
- A kennel boards cats and dogs.

Who will be a “supplier”?

A supplier carries out an activity for gain or reward as a matter of course. A supplier will be regularly paid for supplying goods or services. If someone who does not cut hair for a living gives a free haircut to a friend, he will not be a supplier. A barber, however, is a supplier. A supplier does not have to be incorporated or registered or licensed under a statute. If someone offers a regular supply of goods or services—even if part-time or from a home—he will be a supplier.

Who will be a manufacturer for the purposes of imported goods?

The person who imports or distributes the goods will be considered to be the manufacturer where goods are manufactured outside of Trinidad and Tobago and the manufacturer does not have an ordinary place of business in Trinidad and Tobago. This person must ensure that adequate spare parts and repair facilities are available.

What will it mean to supply goods or services?

Supply and supplier will also have broad meanings in the new legislation. A business will be considered to supply goods—and be considered a supplier of goods—when he sells or leases the goods or provides them to the consumer through a hire-purchase agreement or exchange of goods. A business will supply services when they are provided to the consumer.

EXAMPLES OF DOING BUSINESS IN TRINIDAD AND TOBAGO?

- A man in Port of Spain decides to buy his wife a birthday present from a Victoria's Secret catalogue. He phones in his order and arranges to have the lingerie sent to him. Victoria's Secret is doing business in Trinidad and Tobago.
- A woman in Scarborough orders a book from Amazon on the Internet, pays online and receives the goods in Tobago. Amazon is doing business in Trinidad and Tobago.
- A woman in San Fernando returning from a holiday mails a cheque to a small shop in Barbados where she saw a dress she liked. She asks them to send her the dress, which is mailed to her home. The Barbados shop is doing business in Trinidad and Tobago.

Will the new legislation protect consumers dealing with suppliers outside of Trinidad and Tobago?

Suppliers of goods and services from outside Trinidad and Tobago will have to follow the local law in many cases. The Government intends that the proposed consumer protection legislation will deal with actions outside of Trinidad and Tobago if the actions relate to the supply of goods and services within Trinidad and Tobago. To establish this connection, arrangements will have to be made in Trinidad and Tobago to supply the goods and services.

WHEN ARE GOODS OR SERVICES SUPPLIED?

EXAMPLES of a supplier supplying goods or services:

- When he leases a car to a consumer.
- When he provides the consumer with a refrigerator through a hire-purchase agreement.
- When he sells the consumer shoes.
- When he provides another pair of shoes to the consumer in exchange for a returned pair.
- When he allows a consumer to download his computer software from the Internet.
- When he plans a new kitchen for the consumer.
- When he prepares a consumer's tax return.
- When he tailors a new suit for a consumer.
- When he repairs electronic equipment from a home-based shop.

Arrangements made in Trinidad and Tobago may be oral (for example, by telephone to or from Trinidad and Tobago) or in writing (for example, a letter sent to or from an address in Trinidad and Tobago or an email sent to or from a computer or correspondent in Trinidad and Tobago). Enactment of the proposed legislation will mean that any supplier who intends to supply goods or services to

consumers in Trinidad and Tobago should be aware of his legal obligations and be prepared to comply.

B. The role of the Minister

1. Background

The Minister responsible for consumer affairs will continue to play a pivotal role to provide accountability for the Government's activities. The Minister, for example, will report to Parliament on the operation and administration of statutes for which he is accountable. The Minister will be able to respond to the needs of the consumers in Trinidad and Tobago by making Orders. He will continue to be a strong advocate for the interests of consumers. He will also promote honest and fair business practices to gain the trust that will attract investment and boost confidence in the market.

2. Legislative proposals

This section sets out the responsibilities and duties of the Minister who will be responsible for consumer protection. The Minister will be accountable for actions authorised by the new legislation and will be responsible for making Orders that will allow the legislation to meet the evolving needs of consumers in Trinidad and Tobago.

How will accountability be ensured?

The proposed legislation will require the Director to prepare an annual report on the operation of the new legislation. The report should be made within three months after the end of the year in which the Director acted. The Minister will be responsible for laying the report of the Director before both Houses of Parliament and making the report public. The annual report will be placed on the Consumer Protection Registry and may be made public in other ways. The Minister will also be responsible for laying the annual report of the Consumer Tribunal before Parliament.

How will the Minister make sure the legislation is up-to-date?

The Minister will be able to make Orders that will have the effect of adapting the law to meet new needs and concerns.

What kinds of Orders will the Minister be able to make?

The Minister will be able to make the following Orders:

- An Order to prohibit a specific unfair or deceptive business practice. The new legislation will include a list of prohibited deceptive business practices, some of which are found in existing legislation. This provision will allow the Minister to respond to any new practices that may harm consumers in Trinidad and Tobago.

- An Order to expand the “Black List” of prohibited terms in contracts by adding a term that is not to be used in consumer contracts in Trinidad and Tobago because it is inherently unfair to consumers. Prohibiting a contract term means that the Minister does not consider the term to be fair to consumers in any circumstance.
- An Order adding a contract term to the “Grey List” of terms that may be unfair to consumers in standard form contracts. These are terms that are not unfair in all circumstances but that should generally not be used by suppliers.
- An Order to declare a code of practice or part of a code to be mandatory.
- An Order to declare a methodology to be used to calculate the cost of borrowing that must be disclosed according to the proposed provisions dealing with transparency in the provision of credit.
- An Order to recall goods from the marketplace that are unsafe or pose a risk to the public in Trinidad and Tobago.
- An Order to declare additional information that a distance seller must provide to a consumer in Trinidad and Tobago.
- An Order that requires contracts relating to certain consumer transactions or classes of transactions to include specified terms or conditions.
- An Order prohibiting specified consumer transactions unless carried out at particular times or places.
- An Order requiring that contracts or other documents relating to specified consumer transactions or a class of transactions comply with requirements to ensure clarity and accessibility for the consumer.
- An Order amending the dollar value of the jurisdiction of the Consumer Tribunal.

Will the Minister also be able to make regulations?

The Minister will be able to make regulations dealing with such matters as the protocols for testing samples. The regulation-making powers found in the *Consumer Protection and Safety Act, 1985* regarding safety will continue in the new legislation.

How will the Minister receive advice?

The Minister will be able to establish advisory bodies to deal with consumer matters generally or a specific matter of interest to consumers. This is intended to

add to and not replace the advice the Minister receives from his officials, particularly the Director, and from other sources, including from members of the public.

C. The Director

1. Background

The Director of Consumer Guidance, whose position is created by the *Consumer Protection and Safety Act, 1985*, is a key player in consumer protection in Trinidad and Tobago. The new legislation may change the Director's title to reflect the breadth of his new role, although the Director will continue to guide consumers and businesses on their rights and responsibilities under the law and advise the Minister.

The new legislation will also create the position of a Deputy Director to assist the Director and will allow for the delegation of specific duties.

2. Legislative proposals

This section deals with the creation of the position of Director and the appointment of the Director and Deputy Director.

What will be the position of Director?

The new legislation will create a position known as the Director. The position of the Director will be unlike most, since his job description will essentially be created by legislation.

The title itself will not necessarily imply that his position will be assigned a level equivalent to the civil service level of "director," but rather it will relate to his supervisory and decision-making responsibilities regarding consumer protection. By placing the position in the legislation, the Government intends that the Director will have an identified set of responsibilities assigned in the statute.

There will also be a Deputy Director who will assist the Director, act in his place when necessary, and carry out any duties delegated to him by the Director.

D. Role of the Director

1. Background

Some of the duties and responsibilities that will be assigned to the Director under the new legislation are already found in the *Consumer Protection and Safety Act, 1985*. Some are implicit in his role of providing assistance and advice to the Minister, such as gathering information about complaints and keeping up-to-date on emerging issues that concern consumers. Some of his responsibilities are

linked to ensuring that trade practices do not harm the interests of consumers in Trinidad and Tobago. These are all broad responsibilities that may need a more specific focus.

The new legislation, therefore, will clarify the existing role of the Director and will give him new duties. The intention will be to strengthen the Director's role, to give greater prominence to the needs of consumers, to highlight the benefits of honest business practices, and to create a framework within which disputes can be settled quickly and fairly. The Director's role in receiving and mediating complaints will work together with formal dispute settlement by the new Consumer Tribunal, which is discussed below at Section W.

2. Legislative proposals

The Director's assigned role in the proposed legislation will reflect the majority of the activities of the Consumer Affairs Division itself. The Director will have specific decision-making powers and duties—many of which are described in more detail in the next section dealing with Enforcement and Compliance—and he will be responsible for ensuring that other activities are carried out by him, the Deputy Director, or the officials assigned to the Division. The Director will not be expected, of course, to carry out all these functions personally, but he will be responsible and accountable for them.

What are the major roles that the new legislation will assign to the Director and the Consumer Affairs Division?

- *Promotion of compliance and enforcement of the legislation:* Promoting compliance, monitoring compliance through inspections, and taking enforcement action when non-compliance is identified will be necessary if the proposed legislation is to achieve its goals. The Director will be responsible for exercising the enforcement powers that will be provided in the proposed legislation and ensuring that a modern compliance and enforcement programme is put in place.
- *Advocacy:* The Director will be a focus of public attention on consumer matters. He will have a prominent role as a public advocate for consumer protection and the spread of good business practices. While the Director is not the only person who will speak out and lead in the area of consumer protection (the Minister, for example, will also be a strong advocate), his role will include bringing consumer issues to national attention. The advocacy role will be tied to his responsibilities to promote industry codes, to educate consumers and suppliers, and to represent the interests of consumers.
- *Promotion of industry codes of practice:* Industry codes of practice, which are discussed in more detail below at Section R, play an important role in improving protection for consumers. They set a standard for good business

behaviour. The Director will continue to encourage the development of industry codes of practice. This may be done through meetings with industry associations or urging members of an industry to lead in developing a code. He will be able to issue guidelines dealing with the process of developing codes and the matters that may be included in a code that safeguards and promotes the interests of consumers in Trinidad and Tobago and avoids any issues of anti-competitive conduct. The Director will also be responsible for advising the Minister on the development of Orders relating to codes of practice.

- *Handling complaints:* Handling consumer complaints will be one of the most important public roles of the Consumer Affairs Division or its successor. The Director will be responsible for ensuring that the existing consumer complaints programme continues to be responsive, promotes settlements, and aims to prevent future problems in consumer-supplier relationships. The information received through complaints could identify a need for inspections or a targeted education programme. In some cases, it could even highlight an emerging problem or identify areas where legislative action is needed.
- *Mediation:* A well-structured mediation programme will often settle a dispute to the satisfaction of both sides. In these cases, there will be no need to use a court or tribunal to deal with the dispute. The Director will work with the community to strengthen the options available to consumers and suppliers to use mediation. For example, the Director will co-operate with community mediation services so that mediators will know about the rights, duties and obligations of consumers and businesses under consumer protection legislation.
- *Education of consumers and suppliers:* Knowledgeable consumers and suppliers will create a vibrant and fair marketplace. The Director will continue to develop materials and programmes to educate consumers and suppliers about their roles, rights and responsibilities under the proposed legislation. Consumers who know their rights will insist that suppliers respect those rights. Suppliers who understand their legal duties will be more likely to follow the law and treat consumers with respect. The Consumer Affairs Division already has a strong education programme that will be expanded. The proposed legislation will highlight the importance of education and reinforce the Director's current responsibilities in this area.
- *Monitoring trends and emerging issues:* A well-designed consumer protection programme depends on accurate information about the marketplace, the risks facing consumers and suppliers, and matters that are worrying the public. The Director will continue to monitor commercial activities relating to the supply of goods and services to consumers.

Monitoring will be done to identify potential problems or problems before they become widespread or serious; determine whether Ministerial Orders may be required; assess whether new education programmes are needed; and make adjustments to enforcement priorities.

- *Conducting research:* Sometimes more information will be needed than can be gained from monitoring trends and issues. A targeted and thorough programme of research may be required. The Director will be responsible for conducting research into matters of concern to consumers in Trinidad and Tobago, including background studies to better understand the marketplace. He will examine practices that have an adverse effect on consumers, develop proposals for new legislation or Ministerial Orders and look at any other matters relevant to his duties.
- *Publication of information relevant to consumers:* Although the Director will be developing and providing educational materials to consumers and suppliers, the monitoring and research programmes will produce information that may benefit consumers and suppliers in Trinidad and Tobago. The Director will be able to publish this information in whatever form he believes is appropriate. For example, the information may be published on the website or in the Consumer Protection Registry, below.
- *Maintaining the Consumer Protection Registry:* The Registry (discussed below at Section E) will keep the public informed of activities within the Ministry relating to consumer protection. New information, such as annual reports or written undertakings from suppliers who have broken the law, will be added to the Registry from time to time as they become available.
- *Representing the interest of consumers:* The Director is uniquely positioned to understand the impact of the decisions of other government authorities on consumers or groups of consumers, such as the elderly or the poor. He can contribute to the understanding of consumer issues by other authorities that are making decisions affecting consumers. The Director will be able to present evidence and argument in a proceeding before a Government authority, such as the Regulated Industries Commission. This could be done whenever the Director's views are relevant and when the other authority is entitled to take such matters into account in its decision. This provision will not give the Director the authority to intervene in matters before a court or in private disputes.
- *Representing groups of consumers:* Consumers are hampered in seeking redress for damages when the damages they would recover are smaller than the costs of going to court. Where many consumers have suffered damage, however, the total amount may be large and consumers may need someone to take their group complaint to the courts. The Director will be able to bring an action before the Consumer Tribunal or in the courts on

behalf of an unnamed group of consumers who have a common interest and whose situation raises a common issue to be resolved. This is a variation on a class action suit, which is already available in Trinidad and Tobago.

DISAPPOINTED MUSIC FANS

Many fans have purchased tickets for a concert after ads said that a major artiste was appearing—although this was never the promoter’s intention. They will be unlikely to sue since the costs of the ticket will be less than the costs of going to court. But the combined losses of the fans may be large and the unscrupulous promoter will have made large “profits.” The Director will be able to bring an action on behalf of the fans to recover damages—and may also prosecute the promoter for misrepresentation.

- ▣ *Assisting consumers in their hearings before the Consumer Tribunal.* It is likely that many individual consumers will want assistance and advice about their cases before appearing before the Tribunal.
- ▣ *Responding to referrals by the Minister.* The Minister will be able to refer a matter to the Director to study and make recommendations on an issue relating to consumer protection. In this way, the Minister (and through the Minister, the Government) will be able to take advantage of the expertise and resources available to the Director.

E. Consumer Protection Registry

1. Background

Transparency, interaction with consumer and business stakeholders, and building trust are important Government objectives. The new consumer protection legislation will be structured with these objectives in mind. As part of this, the legislation will establish a Consumer Protection Registry that will put together in one place—in both electronic and written forms—important information and documents about consumer protection. This will allow for better public participation in the consultation process and increase public understanding of the new legislation. Information about the rights and obligations of consumers and business will be in the Registry, as well as information about enforcement actions, the content of written undertakings of compliance by businesses, proposed Orders by the Minister, and information about mandatory and voluntary industry codes.

2. Legislative Proposals

This section describes the provisions that would establish the Registry and its contents.

What will be the Director’s responsibilities regarding the Consumer Protection Registry?

The Director will set up a Consumer Protection Registry to provide easier access to documents and information relating to matters under the new legislation. The Registry will be available on the website of the Ministry responsible for consumer affairs, as well as in a non-electronic format in selected locations.

What information will be found in the Consumer Protection Registry?

The Consumer Protection Registry will contain notices or other documents. These will include, unless exempted from publication by the *Freedom of Information Act* and the proposed legislation dealing with data protection, the following:

1. Written undertakings obtained by the Director or required by a court;
2. Draft Orders published by the Minister for the purposes of consultation;
3. Annual reports of the Director and the organisation responsible for consumer affairs;
4. The consumer protection legislation’s Compliance Policy;
5. Educational documents, guides to legislation, brochures and other materials relating to the rights and obligations of consumers and businesses;
6. Information about the mediation programme within the Consumer Affairs Division and other reputable programmes across the country;
7. Identification of the industry codes of practice that have been made mandatory; and
8. Identification of voluntary industry codes of practice that have been registered with the Director.

F. Monitoring, inspection and investigation powers

1. Background

An active programme of monitoring and inspection is the foundation of the knowledge needed to protect consumers in the Trinidad and Tobago marketplace. Monitoring and inspection should be frequent, routine and risk-based. Even a supplier who obeys the law should understand that he might be inspected at any time. Inspections also provide a “presence” that alerts the public to the importance of consumer protection and reminds suppliers that obeying the law is important—even if they are not themselves being inspected at that time.

Monitoring can take the form of routine inspections and may also include gathering information from complaints, learning from market trends, and experiences in other jurisdictions. Monitoring may be market-wide or specific to one supplier.

When authorised officers have reason to believe that a supplier is not obeying the law, they should begin to conduct a more formalised and targeted investigation. In some cases, the officers who investigate suspected violations will be separate from those who deal with day-to-day inspections and monitoring. An investigation is specifically aimed at gathering information and evidence for some form of enforcement response—which may be prosecution or a less severe response, such as a Consumer Protection Compliance Order, which is discussed below at Section G.

During the course of an investigation, documents or samples of goods may be seized and analysed. Demands may be made for information or other documents. The Director may issue an order demanding that a promotional claim be substantiated. Investigators may interview various individuals, including consumers who have had dealings with the supplier being investigated. The Director will be authorised to administer oaths and take evidence under oath.

In general, an investigation is a serious matter and the powers that may be exercised in the course of an investigation are more intrusive and far-reaching. These reflect the greater seriousness of the potential consequences of an investigation, which may include imprisonment or substantial fines.

The proposed legislation will clearly structure the powers that will be given to authorised officers who are carrying out either routine inspections or conducting investigations. The intent is to clarify the use of these powers and they will be consistent with those used in democratic societies throughout the Commonwealth.

The public Compliance Policy, which is discussed below in Part VI, will also provide information on how enforcement discretion is to be structured, what criteria will apply to certain actions, and so on. The Compliance Policy will be accompanied by internal enforcement manuals, which will set out procedures—for example, how to conduct a search—and instruct authorised officers on their duties.

2. Legislative proposals

This section sets out how the Minister will designate authorised officers and identifies the powers that the Director and authorised officers will have to monitor compliance through inspections and to investigate suspected violations of the law.

How will suppliers know that government officials have the authority to enforce the legislation?

The Minister will be able to designate officials or groups of officials as authorised officers or analysts. To reflect the fact that consumer protection is wider than the mandate of the Ministry of Legal Affairs and to allow the Government to operate more efficiently, the Minister, with the approval of another relevant Minister, will also be able to authorise officials or groups of officials assigned to another Ministry as authorised officers or analysts.

Every authorised officer or analyst will have a certificate of authority that will be proof of designation by the Minister. Authorised officers must show the certificate (which may be a badge or laminated card) to the person in charge when entering any place of business or dwelling place when carrying out their official duties. No authorised officer will be able to act without being identified and each officer will be held accountable for his actions.

When will an authorised officer be able to enter a store or other business premises?

An authorised officer will be able to enter a place of business, such as a store or office, and inspect it at any reasonable time for the purposes of the proposed legislation. Generally, a reasonable time means regular business hours. This power of entry will most often be used during a routine inspection where the authorised officer's objective will be to monitor compliance and promote compliance through education and persuasion. For most suppliers, this will likely be their most common form of contact with an authorised officer.

Will an authorised officer be able to enter someone's home?

An authorised officer will not be allowed to enter a private residence except with the consent of the occupant or under the authority of a warrant issued by a Magistrate. The Magistrate will have to be satisfied that the entry into a residence is necessary for the enforcement of the proposed legislation before issuing the warrant.

The proposed consumer protection legislation will be targeted at the behaviour of suppliers and the need to enter a private home will be rare. In some cases, however, the business may be carried out from a home or crucial records and evidence may be found within a home. A warrant will be required before an authorised officer will be able to have access to these records or evidence. Where a supplier has a place of business other than the home, he will be required to keep his records there.

Will an authorised officer be able to use force for entry?

An authorised officer will not be allowed to use force to enter either a place of business or a home unless the use of force has been specifically authorised in the warrant issued by a Magistrate.

The Magistrate will have to be satisfied that there is a good reason to issue the warrant and that force is necessary. Forced entry is obviously highly intrusive and its use will be subject to careful safeguards. The Magistrate may also authorise police officers or other persons to accompany the authorised officer to assist in entry or in carrying out other actions specified in the warrant.

What will a person who controls a place to be inspected have to do when an authorised officer arrives?

A person who is in possession or control of a place being inspected will have to co-operate and permit the authorised officer to carry out his duties. Owners or managers must not instruct staff to refuse to co-operate with authorised officers. Co-operation will also be required if the authorised officer has been authorised by a Magistrate's warrant to do something, such as seize evidence.

What will the authorised officer be able to look at when he makes a routine inspection of a place of business?

The authorised officer making a routine inspection will be able to inspect the goods offered for sale or sold by the supplier and will be able to make test purchases or take samples for the purposes of expert appraisal or analysis.

The authorised officer will also be able to examine and make copies of business records. He will be able to use a supplier's copying equipment to make the copies. Business records would include registers, books, accounts, vouchers and other documents relating to the business.

Will the authorised officer be able to examine office computers?

The authorised officer making a routine inspection will be able to examine computer systems and copy electronic data or request that electronic documents relating to the affairs of the business be supplied to him. Today many suppliers keep their records in electronic form. Computers, rather than filing cabinets, are often where crucial information is found. "Computers" in the proposed legislation will refer not only to desktop or laptop computers, but also could include mobile devices, digital cameras, or portable wireless devices, such as a handheld pc.

Will an authorised officer be able to seize goods or records?

An authorised officer with a warrant will be able to seize and detain any goods or documents that are specified in the warrant. To obtain the warrant, the authorised officer will have to satisfy a Magistrate that it is reasonable to believe that there is an offence against the proposed legislation.

Generally, goods and records will be seized only when the monitoring and inspection phase has moved into the investigation phase. Items will be seized with an eye to using them as evidence either in court or to lay the foundation for an alternative enforcement action by the Director.

An authorised officer will be able to seize and detain goods or records without a warrant in urgent circumstances. Where there is some urgency, such as potential harm to the public or a reasonable belief that evidence will disappear, the authorised officer will be able to seize and detain goods or records.

An authorised officer who seizes any goods or records, including samples, will have to give notice of the seizure to the person from whom they were seized.

What will happen to goods or records seized by an authorised officer?

If an authorised officer seizes any goods or records, he will have to take reasonable care to preserve them until they are returned to the person from whom they were seized or until they are needed in an enforcement proceeding.

If seized goods or records that would otherwise have been returned to the supplier are damaged, the supplier will be able to ask for compensation.

Goods or samples may be analysed to determine if there is compliance with the law. An authorised officer who takes a sample may dispose of it according to existing law and standards. For example, he will have to obey environmental regulations or best practices dealing with disposal of any toxic material, such as motor oil or batteries.

Will a person be required to provide information or records to authorised officers?

The Director will be able to demand information or records (or copies of records) that are relevant to the performance of his duties.

What will the Director do if he believes a supplier is publishing a false or misleading statement promoting goods or services?

If the Director reasonably believes that a statement promoting goods or services is false or misleading, he will be able to issue a Substantiation Order. This would require the person responsible for the statement to provide written proof that substantiates the statement as being true or accurate. The Substantiation Order will identify a date on which the written proof is to be provided.

Information provided to the Director in response to a Substantiation Order will not be able to be used in a criminal prosecution. If, however, the information does not support the promotional statement, other action may be taken. The Director might decide, for example, to begin an investigation or issue a Consumer Protection Compliance Order.

Will a supplier have to furnish the demanded information or records or respond to a Substantiation Order?

Suppliers will be obliged to provide information when the Director demands it, whether as a general demand or in the form of a Substantiation Order.

A person will not be able to refuse to respond to the Director's demand because he is worried that the information or records may incriminate him. Information provided in response to the Director's demand will only be able to be used in a proceeding under the proposed legislation. That is, it cannot be used as evidence in another action, such as a prosecution by another government authority or in a private case.

What will be the responsibilities of authorised officers who are examining books, records and other commercial information?

Authorised officers will be prohibited from disclosing information that they receive in the course of their official duties except to authorised persons or in the course of a legal proceeding. Suppliers must be assured that their business records will be kept confidential.

G. Enforcement powers

1. Background

The new consumer protection legislation will provide the Government and in particular, the Director, with a full range of powers and tools to promote compliance with the law. It will allow for an appropriate range of responses to violations of the law by authorising several possible responses.

Experience has shown that a strong and *escalating* response to non-compliance is the most effective means of achieving compliance. A supplier who continuously fails to obey the law will be treated with increasing severity. This approach is strengthened when it is combined with a retreat to a more co-operative and lower key approach when the supplier starts to comply.

This movement toward more punitive responses when they are called for and then back to a more forgiving approach when compliance is achieved is called a “tit for tat” approach—good behaviour produces a gentle response while bad behaviour produces a strong response.

2. The enforcement pyramid

The legislative structure that provides for this escalating enforcement approach can be thought of as an “enforcement pyramid” with frequently used responses at the broad base of the pyramid and the more rarely used responses at the narrower end.

For serious cases of non-compliance, the Director will begin at a higher level on the pyramid, possibly even at the top with a prosecution. Authorised officers must be willing to use all levels of the pyramid, when appropriate. Suppliers must know that authorised officers are ready and willing to use more severe responses when the “softer” strategies fail or the non-compliance is severe or repeated.

Indeed, the softer approaches are more likely to work when they are backed by the *realistic* possibility of stronger responses. The importance of an appropriately strong enforcement response cannot be over-emphasised as a means of achieving voluntary compliance by most suppliers in Trinidad and Tobago.

a) Persuasion and education

The most commonly used compliance tools of education and persuasion sit at the broad base of the pyramid. Authorised officers will use these tools frequently and will try to take advantage of any inherent good will or desire for compliance they find in the business community—of which there should be a considerable amount. Most people want to obey the law when they understand what they must do and why.

b) Informal warnings

An informal warning may be the most appropriate enforcement response when authorised officers encounter non-compliance that is minor, easily corrected and the supplier shows a desire to comply with the law.

c) Formalised warnings

Slightly higher up the pyramid will be a more formalised but still relatively soft response—a formal warning letter that will be placed on the supplier’s file and will be part of the supplier’s compliance history. The compliance history will affect how the supplier is treated the next time he comes to the Director’s attention—a history as a “bad actor” will indicate that more severe steps will be needed to deal with future violations of the law. This would be part of the escalating “tit for tat” response.

d) Written undertakings to comply

In appropriate circumstances, the Director will be able to ask a supplier to provide a written undertaking that he will do certain things, including obey the law. To some degree, an undertaking may be an alternative to a Consumer Protection Compliance Order. An undertaking, however, will be negotiated and will be able to include promises to change business practices to ensure that the supplier will not violate the legislation again. An undertaking will also be used as an alternative to prosecution in cases where the Director believes that returning to compliance and taking steps to avoid future non-compliance may be more important for public welfare than the imposition of sanctions.

e) Consumer Protection Compliance Orders

A Consumer Protection Compliance Order issued by the Director will be the next step in the pyramid. This will formally order the supplier to obey the law. This enforcement response occupies a narrower level on the pyramid because it will be used less often and more strategically.

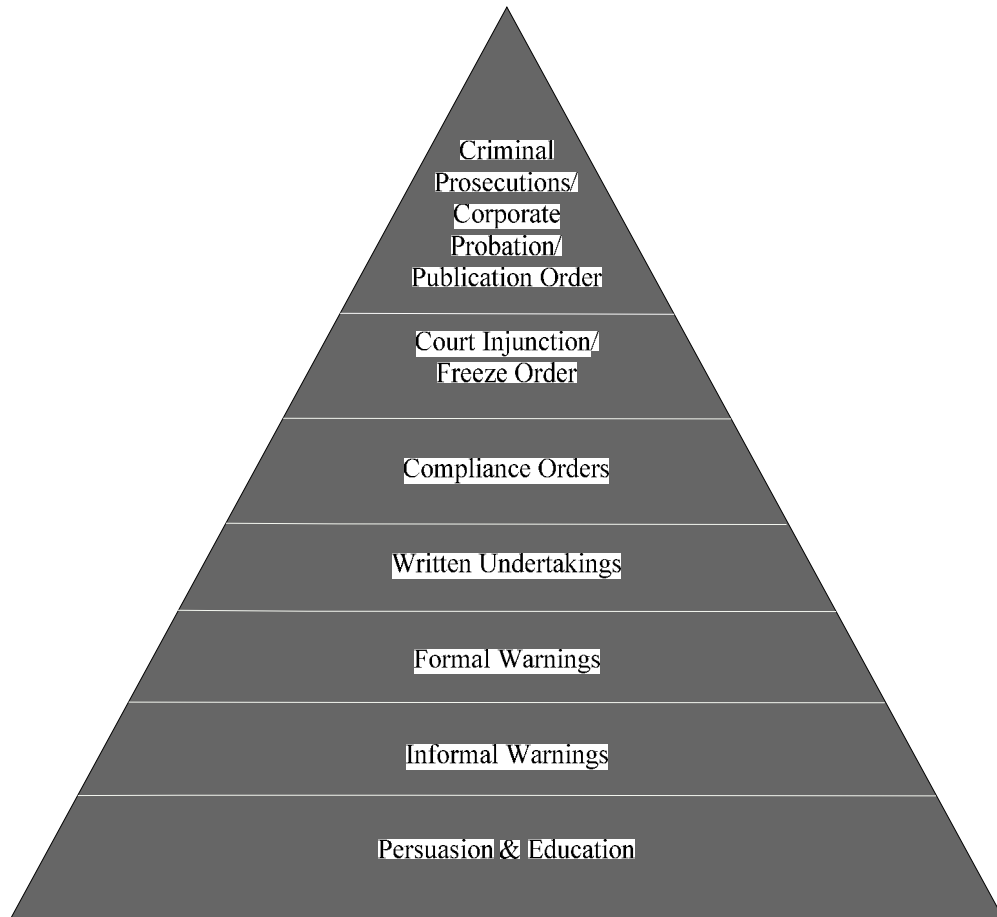
f) Injunctions and orders to freeze assets

The Director will be able to choose to apply to the court for an injunction to require a supplier to comply with the law, cease a certain activity or take other action. The Director will also be able to request the court for an order to “freeze” the assets of a supplier where those assets may have been acquired as the result of a failure to obey the consumer protection laws. This would ensure that the assets would be available for compensation of consumers.

g) Criminal prosecutions

Criminal sanctions will be at the top of the pyramid. It would be expected that these would be used rarely, but strategically. Prosecutions would be used against serious violators or suppliers who have an ongoing history of non-compliance that have not responded to softer approaches, including Compliance Orders. Corporate probation, discussed below, will be linked to prosecutions since it will be a sentencing option available to a judge.

The proposed pyramid that would be established under the new consumer protection legislation would look like this:



3. Legislative proposals

This section sets out the various enforcement responses that may be made when authorised officers encounter violations of the law. Authorised officers currently use written warnings and the Director of Consumer Guidance also has the authority to request written assurances and publish the names of recalcitrant traders, as well as to bring the matter to the attention of the Director of Public Prosecutions. The provisions in the proposed legislation will be intended to expand the range of possible responses and will allow enforcement officials to escalate their responses, if necessary.

Will authorised officers warn suppliers who do not comply with the new legislation?

When authorised officers reasonably believe that a supplier is not obeying the law, they will be able to deliver a written formal warning. The warning will identify what is needed to return to compliance and a deadline for this to happen.

The letter will form part of the supplier's compliance record and will have an effect on how the supplier is treated in the future. Authorised officers will be expected to check to see whether the supplier has complied after being warned since continuing non-compliance should lead to a more severe enforcement response.

Will the Director be able to ask a supplier to give an undertaking that he will comply with the proposed legislation in the future?

If the Director has a good reason to believe that a supplier has violated the proposed legislation, he will be able to ask the supplier to give a written undertaking that he will not continue or repeat the violations.

It would not be appropriate to ask for an undertaking if the alleged violation is serious and prosecution would be the better response, but an undertaking will require a supplier to take responsibility for his actions and correct any non-compliance.

An undertaking will also be able to require a supplier to take steps to ensure that future violations will not occur. For example, an undertaking may require a supplier to train staff or create a consumer complaints system or double-check advertisements to be sure they are accurate.

Accepting an undertaking will mean that the Director cannot prosecute the supplier for the actions that are the subject of the undertaking if the supplier complies with the undertaking. Giving and complying with an undertaking will therefore give a supplier an opportunity to avoid prosecution.

It will be possible to withdraw or vary an undertaking if the Director agrees. For example, if the supplier no longer offers the services that were the subject of the undertaking, he may want to cancel the undertaking. The Director will withdraw

the undertaking if he learns that he was misled in the negotiations. The Director will also be able to withdraw the undertaking if he no longer believes it to be necessary. This might happen if the supplier establishes a good compliance record or changes ownership or management or goes into a new line of business.

The Director will publish the undertaking in the Consumer Protection Registry and may publish it elsewhere if he believes it to be appropriate.

What will happen if a supplier does not live up to his undertaking?

The Director will be able to ask the Magistrate to make an order if the supplier does not comply with his undertaking. The Magistrate will be able to order the supplier to comply with the undertaking or even pay a fine equal to the gain made by the supplier by ignoring the undertaking. The Director will be able to make the application directly to the Magistrate and will not be required to apply through the Director of Public Prosecutions.

The Magistrate's order will impose a new level of seriousness on the undertaking. The court will also be given the power to remedy damage caused by the supplier's failure to comply with the undertaking. It is important to remember that a supplier does not *have* to enter into an undertaking—it will be a voluntary action, although it will usually be taken to avoid more serious enforcement responses, such as a prosecution.

What will be a Consumer Protection Compliance Order?

The Director will be able to issue a Consumer Protection Compliance Order to a supplier when he reasonably believes that a supplier is not complying with the proposed legislation. The Order will require a supplier to achieve compliance and will identify the actions required and the time within which compliance must be achieved.

What will be the process for issuing a Consumer Protection Compliance Order?

Before issuing a Consumer Protection Compliance Order, the Director will give the supplier an opportunity to present arguments on whether the Order should be issued or what the terms and conditions of the Order should be.

A supplier who has received a Consumer Protection Compliance Order will be able to appeal the Order to the Consumer Tribunal. The Consumer Tribunal is discussed in more detail below at Section W.

What will happen if unsafe goods are being sold in Trinidad and Tobago?

The Minister will be able to recall unsafe goods from the marketplace with a Recall Order. If the Director believes that goods are unsafe or pose a threat to the welfare of the public, he will be able to recommend to the Minister that an Order be made to remove goods from the marketplace.

The Director might recommend a recall Order for goods that have been recalled in another jurisdiction or if tests indicate that there is a safety problem. Goods that do not meet established standards may also be recalled under other legislation. The Director may consult with the manufacturer or supplier of the goods prior to making his recommendation to the Minister.

The Director will be able to use his powers to seek information from the supplier or manufacturer regarding the goods, the likely defects and the risks posed by the defects. He will also be able to take samples, make test purchases and conduct analyses to obtain information about the nature of the defect and risks. If necessary, he will be able to use his other investigative powers, including applying to the Magistrate for a warrant, to gather the necessary information to make a reasoned recommendation to the Minister.

Will the Minister be able to require the manufacturer or supplier to take other actions?

The Minister will be able to require the manufacturer or supplier to provide the public with information regarding the defect, the circumstances in which the defect might become dangerous, and what steps consumers should take, including appropriate disposal of the goods.

The manufacturer or supplier will also be expected to provide information to the public about how it intends to deal with the recall. Depending on the nature of the defect, the manufacturer or supplier of the goods may choose to replace or repair the goods. The cost of repair or replacement, including transportation or shipping costs, should be borne by the manufacturer or supplier.

The manufacturer or supplier will also be required to report to the Minister on the actions that have been taken.

H. Protection against unfair and deceptive business practices

1. Background

Laws that protect consumers and businesses from the effects of unfair business practices are necessary for several reasons. First, misrepresentations (false statements), deception, fraud and coercion are simply *wrong*—they are morally offensive. Second, a supplier who engages in these practices may have an unfair competitive advantage over honest suppliers. Third, vulnerable individuals in society deserve protection and these practices are often aimed at the elderly, the young, the less educated, and those with disabilities.

Prohibiting false statements so that people receive truthful information means that suppliers can compete on the basis of real differences in their products or services. The consumer can then choose, for example, whether to buy a more expensive

product with many features or a simpler, cheaper product. Or the consumer can compare products or services based on delivery time or other promises. Accurate information that does not leave out important matters is the basis for consumer choice and a healthy competitive market.

Some unfair and deceptive practices are scams to take money from the public. Telling someone that he has won a prize—but must send money for an “administration fee” and the prize is never sent—is a scam. Falsely advertising that a major sports star or famous entertainer endorses a product deceives the buyer. Other unacceptable practices would include harassing someone to buy a product or service.

The proposed consumer protection legislation will protect consumers against such unfair and deceptive practices. The laws of Trinidad and Tobago already provide some protection in this area by, for example, the *Trade Descriptions Act, 1984* and the *Protection Against Unfair Competition Act, 1996*. The Government intends, however, to protect consumers against a wider range of unfair and deceptive practices and to impose a broad duty to trade fairly with consumers. While trading fairly is honest business practice, the proposed legislation will make this requirement clear. It will also prohibit specific practices that are considered deceptive, misleading or unfair.

The prohibitions in existing legislation that protect businesses will be maintained. The proposed legislation will not reduce the protections currently available to consumers or businesses. If a new unfair, misleading or deceptive practice harming consumers arises in the community, the Minister will be able to make Orders to prohibit the practice.

The proposed consumer protection legislation will draw on experience and “best practices” in different countries that have laws dealing with unfair business practices. The laws in the United Kingdom, the European Community, Australia, Canada, and Barbados, among others, have been examined. Countries across the world agree that these practices must not be allowed in a civil society. There is broad agreement that the practices set out below are unacceptable.

2. Legislative proposals

This section sets out the business practices that will be prohibited in the proposed legislation. Some of these prohibitions exist already in legislation, but the proposed legislation will expand the protection available to consumers. Existing protection for dealings between businesses will be maintained.

Will suppliers have to be fair to consumers?

Suppliers will have a general duty to trade fairly: This is an important new provision that will require suppliers to use honest business practices. A supplier must not mislead or deceive the consumer, although it will not be necessary to prove that a consumer was actually misled. This general provision will be broader

than the prohibited actions that are listed below and will allow the courts to consider the particular situations, the characteristics of the people involved, and the nature of the transaction to determine fairness.

What will “misleading or deceptive” mean?

“Misleading or deceptive” will be based on what the average reasonable consumer might believe. If the supplier is aiming his advertising at a particular group, however, the characteristics of the group will be considered. For example, if advertising is aimed at children, their vulnerabilities, such as a willingness to easily believe what they hear or be easily influenced, will be taken into account.

Will a supplier have to trade fairly if he is supplying a service?

The prohibitions against deceptive or unfair business practices will apply to both goods and services. Not only will a supplier not be able to mislead a potential consumer about such matters as whether a car is new or second-hand, but he also will not be able to say that a repairman is experienced or has special training if this is not true.

What business practices will be specifically prohibited by the new legislation?

Certain practices will be prohibited in all circumstances. It will not matter if the potential consumer is familiar with the product or service, well educated, knowledgeable and able to protect his own interests—the practices will still be forbidden. The practices set out below are clearly deceptive, misleading, unfair or fraudulent and should not be permitted. These prohibitions will not limit the scope of the broader duty to trade fairly.

1. *Misrepresentations*: Forbidding misrepresentations means that a supplier cannot make false statements to a consumer. The consumer also must not be misled because he is not given information that he needs to know to decide whether or not to purchase an item or a service. The proposed legislation will incorporate provisions found in the *Trade Descriptions Act, 1984*.

A supplier also cannot give false information about the quality of services or who will perform the services. The supplier cannot suggest that an experienced expert will do the work and then send a student.

A supplier will need to provide clear and accurate information to consumers before they commit to purchasing the goods or services. False statements about sponsorship, endorsement, testing, price, place of origin or that goods have accessories they do not have would be prohibited. Sports stars will really have to endorse the protein bar and the Italian olive oil will really have to come from Italy.

2. *Misleading conduct*: Many people think of false statements or lies as being the only way to misrepresent a matter or mislead others. But it is possible to mislead someone through conduct. Thus the new legislation will forbid a

THE CONCERT WITH NO ARTISTE

A concert promoter advertises that a major entertainer will be appearing at a concert. Several thousand devoted fans buy tickets, but the artiste never appears. Inquiries show that he was never booked for the concert and had never been hired by the promoter to appear. The fans were misled.

person from engaging in conduct that is likely to mislead the public as to the nature, manufacturing process, characteristics, suitability for purpose or quantity of goods, or the nature, characteristics, suitability for purpose or quality of services.

3. *Misleading conduct in relation to employment:* Anyone who offers employment will be prohibited from misleading a prospective employee by saying, for example, that he or she can make "\$50,000 per month" when payment is a commission that is unlikely to ever be that high. The prohibition will include "work at home" schemes so that such statements as "you can work at home only a few hours a day to make \$20,000 a month" will be forbidden if not true.

NO JOB AVAILABLE

A young man responds to an ad offering the chance to work on a cruise ship—an opportunity that offers both good pay and exciting travel. He must pay an upfront "administration fee." He pays but no reply or work follows.

4. *No intention to supply:* In Trinidad and Tobago, it is often necessary to arrange to buy a good or service that will be delivered at a later time. Perhaps the store is waiting for a new shipment of goods or the repairman has a list of customers who must be served first. Many people will put down a deposit or pre-pay in order to guarantee that they will have the good or service when it is available. Under the proposed legislation, anyone who accepts a deposit or pre-payment must intend to supply the good or service and must not intend to supply a good or service that is materially different from the one ordered. (Where a delivery is simply very late, the consumer will have the rights discussed at Section I.)

LEFT IN THE LURCH

A dealer offers attractive deals on computers from Japan. A woman responds, chooses her computer and pays a deposit. She is told the computer will arrive in 6 to 8 weeks. Time passes. After two months, she calls the dealer but the number is out of service. The dealer has the deposit and the consumer has no computer.

5. *Gifts and prizes*: People are often attracted to a product or service because a gift or prize is being offered—a supplier might offer a free MP3 player or an appliance to entice future customers to sign up for a long-term service. A store might advertise that purchasers of a stove or refrigerator will be eligible for a draw for a free microwave. Anyone making such offers, however, will have to really intend to provide the gift, prize or other free item.
6. *Dual pricing*: If more than one price is attached to a good by the supplier, the supplier must charge the consumer the lower or lowest price. “Attached” will be defined; for example, it may be written, stamped, encoded or printed on a nearby sign. While a supplier should only have one price on an item, if he does leave on the lower price, he must charge that price and not the higher price that is also stuck on the item. If the price tag conflicts with the price being charged at the cash register—for example, if the item has a price bar code that is not the same as the sticker price—then the supplier will have to charge the consumer the lower price.
7. *Bait advertising*: An ad offering a good or service at an attractive price will often draw people into a store or office. However, luring a consumer into a store by falsely advertising a “bargain price” for a popular product is both unfair and deceptive if when he arrives, the product is not available, but the supplier offers a more expensive product in its place. This is often called “bait and switch.” A supplier should also not offer a service—for example, “low cost oil change”—if the service will not be available at the advertised price. The new legislation will forbid a supplier to advertise goods or services at a specified price if he does not intend to supply them at that price or does not reasonably believe they can be supplied at that price for a reasonable period of time. What would be considered a “reasonable period” would depend on the nature of the market in which the supplier carries on business and the nature of the advertisement.

COME IN AND GET A DEAL!

An appliance store advertises a one-day sale of 32-inch flat screen TVs for \$5000. An eager consumer gets up early and stands at the front door waiting for the store to open. When the door opens, the consumer rushes to the TV section and looks for the sale TVs—but he’s told that they are “sold out” and he can buy another one at full price. As the first customer on the sale day, he was clearly “baited” to come in and then the store tried to “switch” him to a full price TV.

8. *Referral Selling*: A supplier must not try to convince a consumer to buy goods or services by telling him that he will receive a discount or other benefit by providing names of other prospective buyers if the discount depends on something happening after the consumer makes his purchase, such as a

purchase by the other buyers. In these cases, the consumer is being persuaded by an uncertain future event that may not happen.

9. *Pyramid selling scheme*: Pyramid selling schemes will be forbidden. Under a pyramid scheme, participants are recruited to join and encourage others to join. Generally, people pay to join and are promised a commission for introducing others to the scheme. As more people are recruited, money goes to those higher on the pyramid. Eventually, the people at the lower end of the pyramid (the base) lose their money since no more participants will join, while those at the top (often the promoters and their friends) have received a substantial sum. As well, participants may be asked to pay for goods at an inflated price or goods of little value that will not support a genuine multi-level marketing arrangement, which is not illegal.

Determining whether an arrangement is a pyramid scheme or a multi-level marketing arrangement depends on the specific facts. Two factors will help to tell the difference between a pyramid scheme and a legitimate multi-level marketing scheme. The first is whether the rewards for participants in the scheme are purely based on product sales. The second is whether the products are genuine products of real value, and of a type that normally will be used and purchased time and time again by a consumer, and not at a grossly inflated price. If both factors are present, it is likely that the scheme is a legitimate multi-level marketing scheme.

10. *Asserting right to payment without cause*: People know that if they order something, then they must pay for it. Sometimes, however, they receive a good or service they did not ask for. If it is part of an agreed arrangement, they may have to pay anyway—members of a book club may have books delivered that they did not explicitly order. In other cases, there may be no obligation to pay for a good or service that was not requested. Therefore, a person will be prohibited from demanding payment from a consumer for unsolicited goods or services unless there is reasonable belief that there is a right to payment.
11. *Harassment and coercion*: No consumer should be coerced or threatened or harassed to purchase anything. The proposed legislation will provide specific protection against this: a person must not use physical force, coercion or undue harassment in connection with the supply of goods or services.

What will happen if dishonest suppliers try new scams on consumers in Trinidad and Tobago?

The Minister will be able to make an Order prohibiting a new or unfair business practice. This allows the Minister to respond to a changing marketplace, the development of new scams or evolving needs in Trinidad and Tobago.

What will the consumer be able to do if he is misled by an unfair business practice?

A consumer who enters into a contract because of deception, misrepresentation or other unfair business practices will be able to have the contract declared void. The supplier will not be able to enforce the contract. The consumer may have the contract declared void by an application to the Consumer Tribunal, which will be discussed below at Section W.

I. Delayed delivery

1. Background

In a small island economy, consumers must often order items that will be delivered in the future. The supplier should make sure that the consumer understands this when the goods or services are being ordered and possibly paid for. If delivery is delayed, however, the item or service may lose its value for the consumer. A woman will not be happy if the shoes that match her wedding dress arrive three weeks after the wedding. A family ordering warm clothes to visit relatives in North America will not want the clothes if they arrive after the trip. If there is a very long delay, consumers may choose to purchase through another supplier. In that case, they will not want the delayed item when it finally arrives.

The legislative proposals will provide a solution to this dilemma. The new legislation will allow the consumer who is not bothered by the delay to affirm the contract. The consumer who is finding that the delayed item is no longer useful or attractive will have the choice to cancel the contract without having to provide a reason to the supplier. Non-delivery of items that are ordered from distance sellers, such as suppliers operating on the Internet, is discussed below at Section N.

2. Legislative proposals

This section deals with late delivery and the situations where the consumer has told the supplier that the goods or services must be supplied by a certain date.

What will happen if the supplier fails to deliver goods or services within a reasonable time?

If goods or services are not delivered or performed within 30 days after the date for which delivery or performance was promised, the consumer will be able to cancel the contract. The consumer should agree in writing to the delivery or performance date at the time of ordering. If delivery or performance is delayed more than 30 days beyond the promised date, then the consumer will be able to either cancel the contract or agree to the later delivery or performance date.

If the delivery date or performance date is not specified in the contract, the consumer may cancel if the supplier does not deliver goods or begin performance of services within 30 days after the date of the contract.

What will happen if the consumer has told the supplier that the goods or services must be supplied by a specific date?

In some situations, the consumer has to have the goods or services by a specific date. The consumer will be able to cancel the contract if the goods or services are not delivered or performed by the date that has been specified by the consumer and made known to the supplier. The consumer must ensure that the agreed date of the delivery is in writing, whether on the receipt or in another order document.

The consumer will also be able to recover damages caused by non-delivery—for example, the need to purchase an alternative wedding dress.

J. Restocking fee

1. Background

Recently in Trinidad and Tobago, consumers have expressed their concerns about restocking fees and their legality. When the customer returns an item to a store, the store demands a “restocking fee” before it will take the item back. The restocking fee is intended to cover the extra costs of returning the item to inventory, correcting inventory records, possibly changing orders for replacement stock and so on. Customers may be taken by surprise and may also be shocked when the restocking fee is a large portion of the money they expected to receive as a refund. A restocking fee may seem particularly unfair if charged when they return defective goods.

The legislative proposals will distinguish between situations when consumers are entitled to return goods because they are defective in some fashion and situations where the consumer has simply decided he does not want the goods.

Defective goods are covered in Section O dealing with Consumer Guarantees. Depending on the situation, the consumer will be entitled to a repair or a refund. If the consumer is entitled to a refund, it will be a complete refund that must not be reduced by imposing a restocking fee. In fact, this is the effect of the current law, combining the operation of the *Sale of Goods Act, 1895*, the *Unfair Contract Terms Act, 1985*, and the *Adverse Trade Practices Order, 2000* issued under the *Consumer Protection and Safety Act, 1985*. This will, however, be clarified by the proposed legislation so that suppliers will more easily understand their obligations.

Where a consumer is returning an item because it is no longer wanted (for example, the pillows don’t match the sofa), the supplier does not necessarily have to accept the returned goods. It will be a matter of store policy, competitive

advantage, and goodwill if the store accepts returned merchandise. In these situations, a restocking fee may be acceptable since the supplier can incur real costs to deal with returned goods. The important matter will be to balance the need of the supplier to recover costs with the expectations of the consumer regarding refunds.

2. Legislative proposals

Will a supplier be able to charge a consumer a fee for restocking returned goods?

A supplier cannot charge a restocking fee if the consumer is entitled to return goods because they are defective. The provisions on consumer guarantees for goods, set out below in Section O, outline the situations in which a consumer will be entitled to return goods to the supplier.

A supplier will be able to charge a reasonable restocking fee if goods that are not defective are returned. What would be considered reasonable would depend on the circumstances. A consumer would not expect a restocking fee to be greater than the value of the goods. Even a fee based on a percentage of the cost of the returned goods may not be reasonable if the goods were very expensive.

What will a supplier have to do to charge a restocking fee?

If a supplier chooses to charge a restocking fee, he must notify the consumer before the goods are bought. Generally, this would be included in the store's policy on dealing with returns and refunds, which ought to be prominently displayed. It is not sufficient to put the notice only on the consumer's receipt since this is provided after the sale.

NO NOTICE, NO FEE

A consumer buys a drill to hang shelves on his concrete wall at home. After he gets home, he realizes he has bought the wrong kind of drill and goes back to the store to exchange it for a hammer drill. The store asks for a restocking fee. There is no sign telling the consumer about the fee. With the new legislation, the store will not be able to charge the fee.

Are there any other charges that a supplier will be able to demand of a consumer returning goods that are not defective?

If the consumer has received a gift or other benefit with the goods, it will have to be returned at the same time the goods are returned to the supplier. If the gift was perishable, such as food, then the value of the gift may be deducted from the refund due to the consumer.

K. Repairs

1. Background

A number of consumers have complained that they have not been given information they need when bringing an item in for repair. They are not always treated with respect and, in some cases, are not being treated honestly. These provisions are aimed at remedying this situation.

2. Legislative proposals

What information will the supplier have to give to the consumer when an item is being brought in for repair?

The supplier will have to make a record of the repair and give it to the consumer. The record will include the name, address and phone number of the consumer; a description of the item brought in for repair, including any serial number; an estimate of the repair costs, the date the item was brought in and the date when the repair is expected to be completed.

What will the supplier have to do if the cost of the repair will be higher than the estimate?

If the cost of the repair will be higher than the estimate, the supplier must contact the consumer and receive his agreement to continue with the repairs.

What will happen if the consumer decides not to complete the repairs?

If the consumer decides not to continue with the repairs after having been contacted by the supplier, the supplier must return the item to the consumer. The supplier will be entitled to be paid a reasonable sum for reviewing the item and determining the scope of repairs required.

What may be reasonable will depend on the circumstances. For example, if a supplier asked for an amount that was equal or close to the original estimate, that would not be reasonable since that estimate should have considered not only the cost of reviewing the item, but also doing the actual repairs.

L. Price marking

1. Background

All consumers are entitled to know in advance what price they are expected to pay. Consumers should be able to take into account price—which for many will be the key factor in a decision to buy—before they are committed to their purchasing decision. Suppliers have a corresponding obligation to inform consumers of the prices of the goods being offered. Pricing information should be clearly visible to consumers. Consumers should not have to seek assistance to find out how much something costs.

2. Legislative Proposals

The proposed legislation deals with pricing of goods offered by suppliers to consumers.

What will suppliers have to tell consumers about prices?

Suppliers will have to provide the selling price of goods or, where appropriate, a unit price. Prices may be on the goods themselves, on a ticket or notice near the goods (for example, on a shelf or in front of a bin), or grouped together in an accessible price list or catalogue.

The pricing will have to be clear, legible, and easily identifiable. Unit prices will be used where goods are being sold in bulk or where they are sold loose from a bin, such as fruits or vegetables. A unit price might be by number, such as “three grapefruits for \$2.50” or by weight or volume.

Will there be any exceptions to the pricing provisions?

The proposed legislation will not apply to auctions or promotional material in a shop window that is not intended to be removed from the window for purchase. If the display contains products that are intended to be sold, such as cakes in the window of a bakery, prices should be supplied.

M. Protection against unfair terms in contracts

1. Background

Consumers in Trinidad and Tobago are protected by common law against contracts that are unfair because of how they were negotiated. A consumer might agree to an unfair or “unconscionable” contract because of pressure, emotional stress or because the supplier takes advantage of the consumer’s vulnerable position. For example, pressuring an elderly person to agree to expensive and unnecessary house repairs is unfair. A court may decide that an unfair contract is invalid.

Traditionally, however, the law gives less protection to a consumer who signs a contract that contains unfair terms, even though the negotiations themselves were not unfair. In 1985, Trinidad and Tobago passed the *Unfair Contract Terms Act, 1985*, which identified several terms that could not be included in a contract. Specifically, a supplier cannot avoid being held responsible for death or personal injury resulting from his negligence and he cannot unreasonably try to avoid responsibility for negligence that causes other harm, such as property damage or spoiling of food during shipping.

Consumers, however, should be protected from other unfair terms in contracts, particularly in standard form contracts. These contracts are prepared in advance.

The consumer has no opportunity to negotiate. Instead, the consumer is simply offered a contract to sign. Often, neither the consumer nor the supplier's representative really understands what the contract means. Typically these contracts are long, written in "legalese" and full of small print. The supplier's attitude is "take it or leave it" and the consumer has little real choice in the matter. The consumer could take the lengthy and expensive route of asking the courts to declare the offensive terms to be invalid, but this is not practical and does not deal with widespread use of unfair terms in contracts.

Legislation in the United Kingdom, the European Union, Australia, Canada and Barbados has been examined to identify trends and "best practices" in dealing with unfair terms in contracts. Many statutes dealing with unfair contract terms are based on a 1993 Directive issued by the European Union that sets out a list of terms that are considered to be unfair in standard form contracts. This list was adopted in the United Kingdom and Barbados, for example. The terms are placed on a "Grey List" that may be enlarged in the future. The list is "grey" since the terms are not banned but are identified as being likely to be unfair.

The new legislation will continue to provide the protections of the *Unfair Contract Terms Act, 1985*. Parliament has already determined that these protections are necessary and that the terms set out in that Act should not be permitted in any circumstances. These terms, which may be thought of as a "Black List," will be continued in the proposed legislation. These terms are also found in the EU "Black List" of prohibited terms, which also includes terms that are specific to the political and social needs of the EU, such as multiple languages. The protections for business provided in the *Unfair Contract Terms Act, 1985* will be continued.

The "Grey List" terms will supplement the "Black List" and together (along with the Minister's Order-making power) they will provide a comprehensive regime to protect consumers from contract terms that are unfair.

2. Legislative proposals

This section identifies terms that will be prohibited by the new legislation, which may be thought of as a "Black List" and are essentially the terms that are currently found in the *Unfair Contract Terms Act, 1985*. There is also a "Grey List" of terms that are unlikely to be fair when they are found in standard form contracts that the consumer cannot negotiate with the supplier of the goods or services. The provisions related to the Black and Grey Lists will be enforceable by the proposed Consumer Tribunal. The proposed legislation also provides for review by a court of terms in *negotiated* contracts if there is a strong reason for believing they are unfair.

What kind of contracts will be covered by the new legislation?

The prohibitions in the new legislation (the “Black List”) will apply to any contract between a consumer and a supplier of goods or services. These are terms that are considered to be unfair in any circumstances.

The proposed legislation will identify terms that may be unfair to the consumer (the “Grey List”) when they are found in contracts that *have not been individually negotiated by the consumer*. Contracts that are not individually negotiated are often called “standard form” contracts because the consumer is asked to sign a pre-printed standard contract that applies to all customers. A contract term is not individually negotiated if it has been prepared in advance and the consumer cannot influence the content of the term. The new legislation will also apply to consumer leases and consumer credit arrangements, which are discussed in Section Q.

The supplier will have to prove that the contract was individually negotiated. A supplier who claims that a contract or a term in a contract was individually negotiated is responsible for showing that it was. The consumer does not have to prove that it was a standard form contract prepared in advance.

Will contracts for both goods and services be covered?

Yes. The new legislation will apply to terms in contracts for goods and for services.

What will make a term in a contract “unfair”?

A term in a contract will be “unfair” if it significantly unbalances the contract to the disadvantage of the consumer. It is expected that certain terms will be to the advantage of the supplier and others should benefit the consumer—but there should be a rough balance between the rights and obligations of the supplier and the consumer. When this balance is weighted significantly toward the supplier, the contract or its terms may be unfair.

How will a consumer or supplier be able to tell that a term is unfair?

In determining whether a term is unfair, a number of factors will be taken into account. These will include such matters as the nature of the goods and services and the other terms in the contract. The relative strength of bargaining positions and the choices available to the consumer may also be relevant. Previous dealings with the supplier and customs of the trade can also be relevant to whether a particular term significantly unbalances a contract. If the consumer has required that the goods be specially ordered or manufactured to order, the interests of the supplier may be stronger.

Will there be any terms that will always be considered to be unfair to consumers?

Suppliers will be prohibited from using terms that are considered to be unfair in all circumstances; this will be the “Black List.” These reflect the terms in the

current *Unfair Contract Terms Act, 1985* and the prohibitions will be carried through into the new legislation dealing with consumers. These will include:

1. Excluding or limiting the legal responsibility of a supplier if the consumer dies or is injured because of any action or failure of the supplier.
2. Excluding or limiting the legal responsibility of the supplier for other loss or damage due to negligence unless the term is reasonable.

ARE MY CLOTHES REALLY WORTH SO LITTLE?

A consumer takes a very expensive suit into the dry cleaners. A sign in the store says that any claims for clothing damaged during dry cleaning will be limited to ten times the cost of the \$50 cleaning. When the \$4000 suit is returned to the consumer, there is a large hole in the jacket. The dry cleaner points to the sign and offers the consumer \$500.

3. Inappropriately excluding or limiting the legal rights of the consumer against the supplier or another person if the supplier totally or partially fails to fulfill any of his contractual obligations. This might include requiring a consumer to use a particular arbitration arrangement rather than exercise his rights to other forms of dispute resolution through the courts or the proposed Consumer Tribunal.
4. Requiring the consumer to keep his part of the agreement while the supplier's obligations depend on the supplier's choice. For example, it would be unfair to make the consumer pay for something that the supplier chooses not to deliver to the consumer or where the supplier delivers something that is different or of lower quality from what the consumer agreed to pay for.

What is the 'Grey List'?

The Grey List will set out terms that are very likely to be unfair to most consumers in most circumstances. It is possible that a supplier may be able to show that the use of a Grey List term is not unfair in the circumstances in which it is being used.

Will all unfair terms in contracts be listed in the "Grey List"?

No, the "Grey List" is not exhaustive. Terms that are not on the List may be considered as unfair if they cause a significant imbalance in the rights and obligations in the contract to the detriment of the consumer. The consumer will be able to ask the Consumer Tribunal to decide if a term in a standard form contract is unfair even if it is not found on the Grey List.

What terms will be on the Grey List?

The "Grey List" of terms that may be regarded as unfair will include the following terms:

1. Permitting the supplier to keep the consumer's money if the consumer decides to cancel the contract while not allowing the consumer to be paid a similar amount if the supplier decides to cancel. There should be a balance in the contractual terms.
2. Requiring the consumer to pay a disproportionately high penalty if he does not keep his part of the agreement. For example, it would not be reasonable or fair for a supplier to demand a penalty that is several times larger than the value of the goods or services that are the subject of the contract. A late payment fee, for example, that is \$500 when the money for the goods or service is only \$100 would be unreasonable.
3. Allowing the supplier the choice to cancel the contract without giving the consumer a similar choice or allowing the supplier to keep money already paid if the supplier decides to cancel the contract. Mutuality and balance are important and allowing the supplier to keep deposit money would be an incentive to dishonest business practices.

NEW WINDOWS—LIKE IT OR NOT

A company selling windows puts in its contracts that the consumer may not cancel the contract in any circumstances. So if delivery is significantly late or the consumer decides he does not need the windows and wants to cancel (before they are manufactured), the contract says he cannot. This term tries to take away his rights to cancel in certain circumstances.

4. Allowing the supplier to cancel a long-standing contract without reasonable notice. However, there may be justifiable reasons for the cancellation and the contract might include definitions of what would be considered a justifiable reason. For example, a financial institution might want to reserve the right to cancel a contract without notice if the consumer's actions jeopardised the security for a loan.
5. Extending a contract with a fixed end without the consumer's agreement or setting an unreasonable deadline for agreement. If a consumer believes that his arrangement with a supplier is finished, then it should not be continued unless the consumer agrees.
6. Binding the consumer to terms that he had no reasonable opportunity to become familiar with before signing the contract. A common example of this is found in "shrink wrap" contracts, which got their name from computer software wrapped in plastic with the contract inside. The consumer cannot read the contract until the package is opened, which can only happen after the sale.

7. Allowing the supplier to change the terms of the contract, including the characteristics of the product or service to be provided, without the consumer's knowledge or consent, unless there is a valid reason already set out in the contract. A contract might provide for a substitution—perhaps the supplier is not sure whether a product has been discontinued and tells the consumer that a similar product might have to be ordered. Generally, however, the consumer is entitled to get the product or service ordered.
8. Providing for the price of goods to be determined at the time of delivery or the price to be increased without giving the consumer the right to cancel the contract if the final price is too high in relation to the original agreed price. There are situations where a price cannot be determined at the time the contract is made and the consumer can only be given, and agree to, a reasonable estimate. Where for whatever reason the final price turns out to be significantly higher than the estimate, the consumer should be able to cancel the contract.
9. Giving the supplier the right to determine whether the goods or services supplied meet the requirements of the contract, or giving the supplier the exclusive right to interpret any term of the contract. Contracts are mutual agreements and both the consumer and the supplier should have the right to determine (or to seek a binding determination through some dispute settlement arrangement) these questions.
10. Limiting the supplier's obligation to respect commitments made by his agents or making his commitments subject to compliance with a particular formality. In general, the consumer should be able to rely on commitments made by the representative of a supplier, such as a salesperson.
11. Obliging the consumer to fulfill all his obligations where the supplier does not perform his. Contracts are mutual agreements and a term such as this one creates an imbalance that goes to the heart of the meaning of a contract.
12. Giving the supplier the possibility of transferring his rights and obligations under the contract where this may reduce the guarantees for the consumer, without the consumer's agreement. As an example, a supplier may not be able to carry out obligations under a contract and may seek to have another supplier fulfill the contract. This can be to the consumer's advantage since it means that the consumer will get the wanted goods or services. If, however, the "new" supplier cannot provide goods or services of the quality or quantity required under the contract, the consumer has lost some of his contractual benefits. The consumer must be able to decide whether this is acceptable.

13. Excluding or hindering the consumer's right to take legal action or exercise any other legal remedy. This could be done by requiring the consumer to take disputes exclusively to arbitration, by unduly restricting the evidence available to the consumer or imposing on him a burden of proof that, according to the applicable law, should lie with the supplier. Consumers and suppliers may agree to mediate or arbitrate a dispute, but this must be freely chosen. Indeed, one of the objectives of the new legislation will be to provide more opportunities to settle disputes, but the settlement arrangements must be fair and the consumer must not be asked to limit legal rights prior to agreeing to the contract.

Are there some matters that will not be examined for fairness?

If the contract language is clear, the definition of the main subject matter of the contract or the question of whether the price is adequate will not be examined for fairness.

What will happen with contracts that are confusing to the consumer?

The supplier will have to write the contract terms in plain, clear and understandable language. The contract language should take into account the characteristics of the group of consumers who are likely to use the contract. The size of the lettering in contracts should also be large enough for easy reading.

The consumer's interest will prevail if a contract term is not clear and there is doubt about the meaning of a term.

What will happen if a term is on the Grey List?

If a claim is made about a term on the "Grey List," it is up to the supplier to show that it is not unfair.

What will happen if there is an unfair term in the contract?

An unfair term in a contract is not binding on the consumer, although the contract will continue if it can do so without the unfair term.

What will happen if the supplier disputes the consumer's view that a term is unfair?

The consumer will be able to ask the Consumer Tribunal, discussed in Section W, to rule on the matter. If the Tribunal decides that a term in a standard form contract is unfair, the supplier will not be able to make use of that term in his standard form contracts (not just the contract with that specific consumer).

What will happen if the contract is not a standard form contract and the consumer believes a term is unfair?

The prohibitions on the "Black List" will apply to all contracts, even if they are not standard form contracts. The consumer can apply to the Consumer Tribunal to have the term (and possibly the contract) declared void.

The consumer will be able to apply to the court to have a term not on the “Black List” declared unfair. In some cases, it may be important to protect a consumer when the terms in a contract are unfair but the contract is not a standard form contract—that is, the consumer negotiated the contract with the supplier. In these cases, the consumer may apply to the court to have a term declared unfair. In making its decision regarding a term in a negotiated contract, a court might consider:

1. whether the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the business;
2. the relative strengths of the bargaining position between the supplier and consumer;
3. whether the consumer was able to understand any documents relating to the supply or possible supply of goods or services;
4. whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer; and
5. the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the seller.

The matters that a court might consider in deciding that a negotiated contract term is unfair will be similar to those considered in deciding whether a contract is unconscionable. The section above makes clear, however, that the court can look at the substance of a particular term and not merely examine the circumstances surrounding the negotiation of the contract.

What will be the Director’s role in dealing with unfair terms in contracts?

The Director may require a supplier or industry association to provide a copy of a standard form contract or information about the use of the document. Although contract terms on the Grey List are not necessarily unfair in all circumstances, the Director may seek agreement from the supplier or association using the contract to adjust the term to one that is more balanced.

If the Director is unable to negotiate the removal of the unfair term from a standard form contract, he will be able to apply to the Consumer Tribunal for an order prohibiting the use of the term in the supplier’s standard form contracts.

What will happen if other terms that are unfair are being used in Trinidad and Tobago?

The Minister, by Order, will be able to add another provision to the non-exhaustive “Grey List” of terms that may be considered unfair. He will also by Order be able to add to the “Black List,” that is, prohibit a particular term from

being used in contracts in Trinidad and Tobago because it is inherently unfair to consumers.

N. Distance selling and e-commerce

1. Background

The growth of the Internet and the global economy has meant that consumers are faced with more choices and opportunities. It has also meant that they are faced with more challenges, particularly with unequal access to information. When the consumer deals with the supplier at a distance, whether over the Internet in an e-commerce transaction, or by mail when ordering from a catalogue, or by transacting business over the telephone, the consumer does not meet the supplier face-to-face.

Consequently, the consumer cannot examine the goods—touch them, try them on, match colours, or check for quality. If the consumer is arranging to purchase services at a distance, it will be more difficult to assess the quality of work or check references. It may be next to impossible to obtain reliable information about the reputation of the supplier. Indeed, in some cases, the consumer may not even know where the supplier is located. Buying goods from other countries—cross-border transactions—will become more common and this is particularly true for a small island economy like Trinidad and Tobago’s. Improved protection is required.

Countries are improving protection by giving consumers tools for better decision making. The EU, for example, has issued a Directive on this matter. Consumers must have the information and the right to deal with unsatisfactory goods and services. At the same time, governments must work together to improve co-operation to enforce legislation when transactions occur across borders. Effective protection and enforcement will be an on-going challenge, but it requires a foundation of strong legislation.

2. Legislative proposals

These sections set out the obligations of a supplier of goods or services to consumers by means of distance communications and what consumers should be able to expect from these suppliers. The obligations primarily involve giving information so the consumer is not disadvantaged by the lack of opportunity to interact directly, view goods and so on.

What is “distance selling”?

Distance selling occurs when the supplier uses distance communication to interact with the consumer. The result will be a distance contract if the supplier has used distance communication up to and including the point at which the contract is concluded.

What are “distance communications”?

The supplier and consumer communicate at a distance when they are not present together at the same time. Examples of distance communication include a letter; an ad in a newspaper with order form; a catalogue; telephone with or without human intervention; electronic mail; fax; and teleshopping. There will be some exceptions to the definition of “distance communication,” such as purchases made from a vending machine.

What will be the general duty of a supplier who provides goods or services at a distance?

Suppliers will have to give consumers accurate, clear and easily accessible information. The information should be sufficient for the consumer to identify the supplier and to communicate promptly and easily with the supplier about the transaction. The consumer should have information that is accurate and complete enough to serve legal documents.

What information will suppliers have to give to consumers?

The minimum required information that suppliers will have to give to consumers before the consumer enters into a distance contract is the following:

1. The name of the supplier;
2. The physical and postal address of the supplier;
3. The supplier’s email address, if available;
4. Telephone number or other contact information to which the consumer can direct an inquiry;
5. A detailed description of the goods or services to be supplied, including any relevant technical or system specifications;
6. The currency in which the costs must be paid, the amount to be paid, the method of payment, and the security arrangements for payment;
7. The supplier's delivery arrangements and the cost of shipping;
8. The supplier’s cancellation, return, exchange and refund policies, if any;
9. Expected date of delivery;
10. Privacy policy; and
11. Notice of other costs to the consumer that are not collected by the supplier; this may include handling and insurance and where it would be reasonably known, taxes and duties.

What will happen if other information is needed?

The Minister will be able to make an Order requiring additional information to be supplied to consumers.

Will there be special provisions dealing with electronic contracts, such as contracts concluded over the Internet?

Suppliers selling over the Internet will have to make information available in accessible and printable format. The consumer must be able to access, retain and

print the information. Often the online supplier will show the consumer a page on the site with all the necessary information and invite the consumer to print out or save the page for future reference.

What will happen if the consumer makes a mistake while ordering goods or services over the Internet—for example, clicks on the wrong product on a website?

Suppliers selling online will have to provide consumers with an opportunity to correct errors in their orders. The computer screen may invite the consumer to review the order (often called the “order basket”) and make changes if desired. The consumer must be able to accept or decline the contract after reading it. Usually this is done by clicking on an “I agree” button or something similar.

Will the consumer get a copy of a distance sales contract after he agrees to the contract?

If the contract is not electronic and thus available to the consumer at the time of ordering, the supplier will have to give the consumer a copy within 15 days after the consumer agrees to the contract. The copy will have to include the disclosure information mentioned above, the date the contract was made, and the consumer’s name.

What will happen if the consumer does not receive the required information or a copy of the contract?

The consumer will be able to cancel the distance contract if the supplier does not comply with these requirements. Thus, if the consumer has no copy of the contract within the required time, he may cancel the contract. If the copy does not contain the necessary information, the consumer may cancel within 7 days after receiving the contract.

What will happen if the consumer doesn’t receive the goods or services?

The consumer will be able to cancel the contract at any time before the goods or services are delivered if they are not delivered within 30 days of the supply date agreed upon in the contract or, if a supply date is not specified, are not delivered within 30 days of the date of the contract in accordance with the provisions set out above in Section I.

Will the consumer get a refund?

If a distance sales contract is cancelled, the consumer will receive a full refund within 15 days after the notice of cancellation has been given.

Will the consumer have to return the goods if the contract is cancelled?

If a distance sales contract is cancelled, the consumer will have to return any goods received under the contract unused and in the same condition in which they were delivered.

What will the supplier have to do when the goods are returned?

The supplier will have to accept the goods returned by the consumer who has cancelled a contract. The supplier will be responsible for the reasonable cost of returning the goods. If, however, the consumer is returning goods according to a return and refund policy of the supplier and not because the contract was legitimately cancelled, the supplier may require the consumer to pay the cost of returning the goods.

O. Consumer guarantees for goods

1. Background

Trinidad and Tobago has a traditional legal structure dealing with warranties and guarantees. Warranties and guarantees are now considered to be essentially the same and the proposed legislation will speak of consumer guarantees. The *Sale of Goods Act, 1895*, the *Hire Purchase Act, 1957* and the *Misrepresentation Act, 1983* provide the essential legal framework. Nevertheless, the legislation cannot be said to serve consumers well in all circumstances.

The new consumer protection legislation will deal with consumer guarantees for both goods and services. The growing importance of services means that consumers require an equivalent framework of guarantees for services. To clarify the discussion, the proposed provisions for services are found in the next section, Section P. Suppliers will not be able to contract out of most of the guarantees. The *Sale of Goods Act, 1895* will continue in force and will be primarily used for business-to-business transactions.

Consumers in Trinidad and Tobago are also concerned about after-sales service on major appliances and electronic equipment. Often repairs are delayed and the consumer must do without the item. This poses a serious problem when the item is a necessity, such as a refrigerator or stove. Availability of parts and the adequacy of repair skills is a further concern in an island economy where many consumer goods are imported.

The new legislation will impose an obligation on the manufacturer to ensure that parts and repairs are available unless the consumer is specifically notified before purchase that they will not be available. For example, a supplier of a discontinued electronic appliance may not be able to guarantee parts and repairs, but if the consumer knows this, he will be able to make an informed choice about accepting this risk.

2. Legislative proposals

Most of these guarantees are found in current legislation. One purpose of the proposed legislation, however, is to ensure that the guarantees are clearly laid out

in legislation and cannot be removed from contracts to reduce the protection that should be available to consumers.

What guarantees will the consumers of goods have?

When consumers acquire goods they will have certain guarantees that cannot be removed from the contract. These are:

1. The supplier has a right to sell the goods.

This means that the supplier has a right to dispose of the goods by selling them to the consumer at the time of sale. It is common for a supplier to order goods after making an agreement with the consumer and may not actually own the goods when the agreement is made.

When the goods are delivered, however, the supplier must have the right to transfer ownership. This guarantee does not apply where the consumer is only leasing or hiring the goods, although the supplier must have the right to lease or hire out the goods.

The goods are free from any undisclosed security, such as a lien. This means that no other person has a claim on the goods or, if there is a claim, then that the consumer has been told before entering into the contract.

2. The consumer has a right to undisturbed possession of the goods. Where the goods are leased or hired, the period during which the consumer has this right is the term of the lease or hire agreement; and
3. The consumer is guaranteed that the goods are of acceptable quality.

What will “acceptable quality” mean?

Goods are considered to be of acceptable quality if they are fit for the purpose for which goods of that type are usually supplied; acceptable in finish and appearance; free from minor defects; safe; and durable.

How will the consumer determine that an item is of acceptable quality?

Acceptable quality is judged by what a reasonable consumer who knows what the quality of the goods is—including any hidden defect—would regard as acceptable.

What will the reasonable consumer consider in deciding if the item is of acceptable quality?

In making this judgment, the consumer will have to take into account the nature of the goods; the price, if relevant; statements made about the goods on any packaging or labeling; any representations made about the goods by the supplier or manufacturer; and all relevant circumstances surrounding the supply of the goods.

If, for example, the consumer has been told that the sofa is a “display model” and lightly soiled, he will not be able to complain later about dirt marks on the cushions. The consumer should expect that certain purchases (such as stoves) will last longer than others (flashlight batteries). A stainless steel toaster can be expected to be sturdier than a plastic toaster. Generally, if the reasonable consumer would be happy with the goods, then the goods will be considered to be of acceptable quality.

Will it matter if the supplier tells the consumer that the item is flawed or damaged?

If the supplier draws a defect to the consumer’s attention and the consumer still decides to acquire the goods, then the goods will be considered to be of acceptable quality, even if a reasonable consumer might not have found them acceptable. Thus, if a consumer bought a new sofa, he would not expect to find dirt marks. But the consumer buying the “display model” who knows that it has marks is buying a display model of acceptable quality.

How will the supplier draw a defect to the consumer’s attention?

Defects can be drawn to the consumer’s attention by a written notice, a sign, or a statement such as “as is” attached to the goods. The defect should be noted on the receipt.

Will it matter how the consumer uses the item?

If the consumer uses the goods in an unreasonable way and the goods would not have failed except for the unreasonable use, the goods will be considered to have met the guarantee of acceptable quality. A consumer using a light hand mixer to mix vast bowls of black cake for gifts to his extended family should not be able to argue that the burnt-out mixer was not of acceptable quality.

What will happen when the consumer tells the business how he wants to use the item and asks for an item that will meet his needs?

The consumer will be guaranteed that the goods are reasonably fit for their intended purpose when the consumer has informed the supplier of the intended purpose.

If the supplier states that the goods are fit for a specific purpose, then the goods are guaranteed to be fit for that purpose. This applies whether or not the purpose is one for which the goods are commonly supplied. So if a consumer tells the salesperson that he needs an air conditioner for a room that is not shaded and is 600 square feet in size, he should be sold an air conditioner that is strong enough for his purpose. If a consumer tells the salesperson he wants a watch for scuba diving, then the watch is not fit for its purpose if it leaks ten feet underwater.

The goods will not be guaranteed as fit for a purpose if it would be unreasonable to rely on the supplier or the consumer does not rely on the supplier’s skills or

judgment. It may not be reasonable to rely on what the part-time checkout clerk says and a computer technician buying a computer may not be expected to rely on a salesman in a large electronics store.

What will happen if a consumer buys from a catalogue and the item is different from the picture or description in the catalogue?

The consumer will have a guarantee that goods will fit their description if the goods were supplied according to a description. A consumer who buys a refrigerator that is described as having “automatic defrost” should receive a refrigerator with that feature.

What will happen if the consumer buys after looking at display or demonstration models in a store?

The consumer will have a guarantee that goods will match a sample or model if the consumer chooses the goods by examining a sample or demonstration model. Most large appliances, for example, are purchased by examining a display model.

The consumer should make allowances for slight differences in items made of natural materials or made by hand. Wood grain may be different (though it should be of the same type and grade of wood) or hand-blown glasses may have slightly different shapes.

When goods are sold by sample or description, the consumer must be given a reasonable opportunity to determine whether they match the original sample or description. He must have enough time to unpack and examine an appliance and perhaps read the instruction booklet to compare what he received with what he was expecting.

Will consumers be able to expect they are receiving new goods?

Consumers will have a guarantee that goods are unused unless the supplier states that the goods are used before the consumer decides to accept the goods or the consumer knows or should know that the goods are used. For example, a consumer who purchases an older model computer should assume it is used unless specifically told otherwise.

If the supplier has tested or prepared goods in a reasonable way in preparation for delivery to the consumer, the goods will be considered to be unused.

What will the supplier be able to charge the consumer if no price has been set?

The consumer will have to be charged a reasonable price if the price of goods is not set in a contract (or by reference to a contract) or cannot be established by a course of dealing between the supplier and the consumer.

The consumer will be able to determine a reasonable price by looking at what other suppliers in the area are charging for similar goods. If the consumer has agreed to a particular price—that is, he has made a contract to pay a price—he

will not be able to argue that the price is unreasonable because he later found others who charged less for the same item.

Will the consumer be able to find spare parts for his purchase?

The manufacturer guarantees to take reasonable action to make repair parts and facilities for repair reasonably available for a reasonable period of time when new or used goods are first supplied to a consumer in Trinidad and Tobago.

What is considered reasonable in terms of availability or length of time depends on the facts—the nature of the goods, the cost of the spare parts, the cost of the goods, the availability of generic parts, the life expectancy of the goods, the inconvenience to the consumer, the predictability of the need for repair, and similar matters. A blouse with defective white buttons should be repaired almost immediately while specialised repairs to a rare car may reasonably take much longer.

What will happen if there is no manufacturer in Trinidad and Tobago?

The person who imports or distributes the goods will be considered to be the manufacturer where goods are manufactured outside of Trinidad and Tobago and the manufacturer does not have an ordinary place of business in Trinidad and Tobago. This person must ensure that adequate spare parts and repair facilities are available.

Will parts and repairs be covered for used goods?

If the goods are used but have been imported into Trinidad and Tobago and acquired by a consumer for use for the first time in Trinidad and Tobago, that consumer will benefit from this guarantee. If a consumer buys a refurbished computer, he will have the benefits of the guarantees. A person who later buys the computer from the consumer in Trinidad and Tobago will not have the benefit of this guarantee, but will have to explore the marketplace to determine the availability of parts and facilities.

How will manufacturer's guarantees (or warranties) work?

If an express guarantee is attached to goods (for example, on a label or packaging), the supplier of the goods to the consumer is bound by the guarantee unless he explicitly informs the consumer before supplying the goods that he will not be bound where it is reasonable for him to do so.

If a guarantee is publicised in a manufacturer's advertisement directed at consumers in Trinidad and Tobago, the supplier is bound by the guarantee only if he explicitly adopts it.

Any description that is found in a guarantee attached to goods or publicized in a manufacturer's advertisement will form part of the description that goods must fit when the consumer buys by description (see above), even if the supplier is not bound by the guarantee.

A manufacturer's guarantee relating to goods given to the consumer with the apparent or explicit authority of the manufacturer binds the manufacturer. Such a guarantee will be presumed to have been given by the manufacturer unless there is evidence to rebut this presumption.

When a document containing a manufacturer's guarantee is given to the consumer by a supplier in connection with the supply of goods, it is presumed to have been given with the authority of the manufacturer unless there is evidence to rebut this presumption.

Will the consumer still have guarantees for goods that are supplied at the same time as services?

Guarantees with respect to goods will apply whether or not the goods were supplied in connection with a service. If a consumer hires a workman to replace his patio and the workman supplied the bricks, the bricks will be guaranteed (as will the service of installing the patio, discussed below).

What will consumers be able to ask of suppliers when they are not satisfied with their merchandise?

Consumers will have redress against suppliers who fail to comply with any guarantee that is binding on the supplier.

What will happen when the supplier can remedy the failure?

If the failure can be remedied—such as by a repair or replacement of a broken part—the consumer will be able to require the supplier to remedy the failure within a reasonable time. A failure might include a missing or broken piece, such as in “knock down” furniture that the consumer assembles himself. In this case, the supplier would be expected to remedy the failure by supplying the missing or defective part.

What will happen if the supplier cannot reasonably repair the goods?

If the supplier cannot reasonably be expected to repair the goods, he will be able to refund the purchase price to the consumer. This might happen if the cost of repairing the goods is higher than their value or if the goods have not been designed to be repaired, such as some small electrical goods. Alternatively, the supplier might choose to provide the consumer with replacement goods that are identical to or better than the original goods.

Any replacement goods will be considered to be supplied by the supplier and any guarantees and obligations that applied to the original goods will apply to the replacement goods.

What will be meant by a “refund”?

A refund will mean a cash refund of money paid or the value of any other consideration that might have been given for the goods. No fees or other charges

should be deducted from the refund (such as restocking fees or “administration” fees). If the goods were sold accompanied by a perishable “bonus,” such as a ham, the value of the ham should not be deducted even if it is not returned with the goods. If the supplier chooses to provide a bonus that might reasonably be consumed before the defects were known, the supplier should expect that it would be consumed and not be available to be returned.

How quickly should a consumer be able to expect the supplier to remedy the failure?

The supplier will have to remedy the failure within a reasonable time. What can be considered a reasonable time depends on the circumstances, but such factors as the complexity or rarity of the repair and the need for replacement parts may be important in determining reasonableness. Replacing plain white buttons on a shirt should be expected to happen more quickly than repairing a rare model car.

What happens if the item is important to the consumer and is being repaired?

Where the item with a defect is one that is important to the consumer’s quality of life, such as a refrigerator or automobile, and the repair will take some time, it may affect the reasonableness of the delay if the supplier offers to make a substitute available to the consumer while the repairs are being made. Thus, an auto dealer may make a “loaner” car available or a retailer may supply a substitute refrigerator or mobile phone to the consumer while repairs are taking place. Extended warranties that may be purchased by consumers may also provide for “loaner” items while repairs are being made.

Will the consumer ever not have a right to a remedy against the supplier?

Generally, the consumer will not have a right to a remedy against a supplier in several circumstances:

- if the consumer does not exercise his rights within a reasonable time;
- if the goods have been sold by the consumer;
- if the goods have been damaged and their condition is not related to the failure (for example, the consumer will still have a right against the supplier if a toaster was not fit for its purpose and caught on fire and was destroyed, but not if the package was left in the driveway and run over);
- if the goods have been attached to property and cannot be detached or isolated without damage. An example might be wallpaper pasted to a wall.

What will be a reasonable time for the consumer to exercise his rights?

A reasonable time will mean the period from which the consumer was supplied with the goods to the time when it would have been reasonable to identify the defect.

What this period might be depends on the nature of the goods, their likely use, and the amount of use that is reasonable before the defect is likely to be noticed. Although the consumer may not be able to identify the defect immediately, he should take action quickly once he knows of the defect.

What will happen if the supplier does not repair the goods?

If the supplier fails to make a repair, or does not adequately repair the goods, or is taking an unreasonably long time to make the repair, the consumer will be able to take the goods elsewhere and obtain from the supplier the reasonable costs of having someone else do the repairs.

Alternatively, the consumer will be able to reject the goods if he prefers not to seek out alternative repairs when the supplier has not remedied the failure.

If a repair is not made and the consumer chooses not to reject the goods, he will be able to obtain compensation from the supplier to reflect the reduction of value of the goods below purchase price because the supplier failed to comply with the guarantee.

What will be failures of a “substantial” nature?

The consumer and supplier have different rights and obligations when the goods have failures of a substantial nature. Such goods cannot be repaired or made right. Failures will be considered to be of a substantial nature if a reasonable consumer would not have purchased the goods knowing the nature and extent of the failure.

A substantial failure will also occur if:

1. the goods depart significantly in one or more ways from the description, model or sample by which they were supplied;
2. the goods are substantially unfit for their purpose and the goods cannot easily and within a reasonable time be remedied to make them fit for their purpose;
3. the goods are not of acceptable quality because they are unsafe; or
4. the goods are used when they were represented as being new.

Will the consumer be able to reject goods that have a substantial failure?

The consumer will be able to reject goods that have a substantial failure by returning the rejected goods to the supplier unless the nature of the failure or other characteristics of the goods make it impossible to return the goods without significant cost to the consumer. This might happen, for example, if a failing car will not move and requires a tow truck or a very large piece of furniture requires careful packing and shipping. In these cases, the supplier should collect the goods or make arrangements for them to be collected.

If the consumer has ownership of the goods, the supplier regains ownership when the goods are returned to him. The consumer should co-operate with any paperwork that might be required to clarify ownership.

Will the consumer be able to collect any damages after returning goods that have a substantial failure?

The consumer may collect damages to compensate for emotional distress, personal injury and inconvenience resulting from the substantial failure. If the food for a large fete is spoiled due to a refrigerator's failure and the guests have nothing to eat, the hostess and host will be distressed. If someone is ill because of the spoiled food, there will be more distress and inconvenience and possibly some medical bills. If the consumer has had to rent a substitute item, such as a refrigerator, he should be able to collect the costs.

When will the consumer have a claim against the manufacturer?

A consumer will have a claim against a manufacturer if:

- the goods are not of acceptable quality;
- the goods do not match the description given by the manufacturer;
- there are no spare parts or repair services available (and the consumer was not told this when he bought the goods); or
- the goods do not comply with the manufacturer's written warranty.

The consumer should remember that claims against the manufacturer might be taken against the importer of the goods, depending on the circumstances.

Will the consumer be able to claim for any damages when there is a failure of guarantees?

The consumer will be able to claim from the supplier any loss or damage, including personal injury, distress and inconvenience, resulting from the failure that was reasonably foreseeable as being likely to result from the failure.

How will the consumer and the supplier settle disputes about guarantees for goods?

The Consumer Tribunal, discussed below at Section W, will provide a process to settle disputes between a consumer and a supplier of goods regarding failures to comply with guarantees and remedies.

P. Consumer guarantees for services

1. Background

Consumers of services do not have the same protection as consumers of goods with respect to guarantees and remedies. This is a significant gap in the level of consumer protection in a market where the offering and use of services is becoming more important. One of the important objectives of the new legislation

will be to create a regime of guarantees for services that is equivalent to the one established over 100 years ago for goods in the *Sale of Goods Act, 1895*.

2. Legislative proposals

The proposed legislation essentially creates guarantees for services that are equivalent to the long-established guarantees for goods. For example, acceptable quality of goods will be the equivalent of the competent delivery of services.

Will the consumer have a guarantee that services will be delivered competently?

The consumer will have a guarantee of reasonable care and skill regarding services. This is the equivalent of a guarantee of acceptable quality for goods.

The consumer will have a guarantee that the services will achieve a particular result. Where the consumer makes known the particular result he wants from the service or the purpose for which the service is required, there will be a guarantee that the service, and any product resulting from the service, will achieve that result or will be fit for that purpose. This is the equivalent of the goods guarantee regarding fitness for the purpose.

The guarantee of achieving a result or fitness for a particular purpose will not apply if the consumer did not rely on the supplier's skill or judgment or it would have been unreasonable for him to have done so. For example, a consumer who has frequently used a particular service may be relying more on his own past experience and own judgment rather than the judgment of a sales clerk about what kind of service he wants to buy or who he wants to supply it.

Will the consumer guarantees help the consumer who is waiting for a service to be completed?

The consumer will have a guarantee that the service will be completed within a reasonable time.

If the completion time is not set out in the contract between the supplier and the consumer or determined by a course of dealing between them, the time will be a reasonable time. This is comparable to guarantees regarding delivery time of goods.

Will a consumer have any guarantee regarding the price of the service?

The consumer will have a guarantee that the price for services will be presumed to be reasonable if the price of the services is not set out in a contract (or by reference to a contract) or cannot be established by a course of dealing between the supplier and the consumer. The consumer may refuse to pay more than a reasonable price.

What will happen when the supplier of the service can remedy a failure?

If the failure to comply with a service guarantee can be remedied, the consumer will be able to require the supplier to do so within a reasonable time. For example,

the consumer may ask the painter to repaint a streaky wall or ask the electrician to send another worker if the one doing the work doesn't appear to know what he's doing.

What will the consumer be able to do if the supplier does not remedy the failure?

If the supplier refuses or neglects to remedy the failure or does not do so within a reasonable time, the consumer will be able to have the failure remedied by another supplier. In this case, the consumer may recover from the original supplier all the reasonable costs of having the failure remedied—for example, having the wall repainted. This is similar to taking goods to another supplier for repair.

What will happen if the failure cannot be remedied?

If the failure is substantial or cannot be remedied, the consumer will be able to cancel the contract for the supply of the service.

Alternatively, he may obtain from the supplier damages to compensate for any reduction of the value of the product or result of the service below the amount paid or payable by the consumer.

What will be a “substantial failure” in a service?

As with a substantial failure regarding goods, a substantial failure in a service is one that cannot be remedied. A failure to comply with a guarantee regarding a service will be substantial if:

1. the service would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure—in other words, no one would want to hire the supplier for the service having seen the outcome; or
2. the product of the service is substantially unfit for a purpose for which services of the type in question are commonly supplied and the supplier cannot easily and within a reasonable time make it fit for the purpose; or
3. the product of the service is unfit for a particular purpose or cannot be expected to achieve a particular result made known to the supplier and cannot easily and within a reasonable time be made fit for the particular purpose or to achieve the particular result; or
4. the product of the service is unsafe.

Will the consumer be able to collect any damages regarding services that have a substantial failure?

The consumer, in addition to other remedies for a substantial failure, such as cancellation and damages for reduction in value, may recover compensatory

damages for any loss or damage (including personal injury, emotional distress, and inconvenience) that is reasonably foreseeable as being the result of the failure to comply with a guarantee relating to service.

There is no right to redress for a failure of a guarantee relating to service if the cause of the failure is independent of human control or is due to an act or omission of a person other than the supplier.

How will the consumer cancel the contract?

The cancellation of a contract for services will not take effect until the consumer has communicated the intent to cancel to the supplier. Generally the cancellation should be in writing or should be confirmed later in writing if done orally.

How will the consumer and the supplier settle disputes about guarantees for services?

Disputes between a consumer and a supplier of services regarding failures to comply with guarantees and remedies will be able to be taken to the Consumer Tribunal for settlement; see Section W.

Q. A transparent and efficient market for credit

1. Background

In modern economies, consumers will often need access to credit and will need the tools to use credit wisely. Availability of appropriate credit can spur economic growth and provide opportunities for consumers that would otherwise not be available to them.

To use credit wisely, however, consumers must have adequate information. Financial decisions can be difficult at the best of times and many otherwise educated and capable people are not highly “financially literate.” It is currently too difficult for consumers to determine the real cost of credit and compare the options that are available to them—and the increasing number of options that may be available to them in the future.

The objective of the proposed credit provisions in the new consumer protection legislation will be to provide consumers with the information they will need to make informed decisions about using credit.

Credit information should not only be transparent to the consumer by being written in a clear and non-technical language, but it should also be presented in a format that allows the consumer to compare credit offerings from different sources. For example, the consumer should be able to compare the costs of a loan from a retailer to a loan from a bank and then compare those to the costs of charging the item on his credit card.

Several jurisdictions, including New Zealand and a number of the Australian states, have replaced outdated hire purchase legislation with new comprehensive credit legislation dealing with credit contracts and consumer leases. The proposed consumer protection legislation will not provide a complete regime for regulating the provision of credit but rather will focus on transparency and comparability.

The proposed legislation will also provide for some amendments to the *Hire Purchase Act, 1957* to ensure compatibility with the new approach to disclosure. The Government has closely examined legislation and legislative proposals dealing with credit in several jurisdictions, including the EU, the UK, New Zealand, Canada and the United States and has drawn on the principles relating to disclosure to provide for a basic regime of transparency and comparability for consumers in Trinidad and Tobago.

2. Legislative proposals

The proposed legislation on consumer credit will deal with individual consumers—that is, human beings. It covers consumer credit contracts, which will include consumer leases, and focuses on disclosure and comparability of terms. The basic objective of the proposed legislation is to ensure that the consumer has certain information prior to signing the credit contract. Specifically, the consumer should know the cost of credit as a yearly rate, the dollar amount of the credit and the amount that the credit will cost him after all payments have been made as scheduled. In some cases, the lender or lessor will have to provide regular information to the consumer about the state of the credit arrangements.

What will be a “consumer credit contract”?

A consumer credit contract will be a contract between a consumer and a lender where interest (and possibly other fees) is charged for the use of credit.

Who will be a consumer for the purposes of the proposed credit legislation?

A consumer for the purposes of this Part of the proposed legislation will be an individual who enters into the consumer credit contract for personal, domestic or household purposes. Investment by the consumer debtor is not a personal, domestic or household purpose (for example, a woman buying stocks on margin). Lending to businesses, even small businesses, raises different issues and is dealt with differently by lending institutions than loans to individual consumers. The proposed legislation will only deal with consumers as individuals.

Who will be a lender?

A lender carries on the business of providing credit or makes a practice of providing credit in the course of his business. If a father lends some money to his child or a friend “helps out” another friend until payday, they are not lenders.

What will be an interest charge?

An interest charge will be considered as a charge that accrues over time and will be calculated by applying a rate to an amount owing under a credit contract.

Will a lease be a consumer credit contract?

Leases will be considered as consumer credit contracts that will be subject to these provisions if the lessee (person entering into the lease) is a consumer and the lessor (person leasing the goods) carries on business leasing goods or leases goods in the course of his business.

The proposed legislation will apply, for example, to a car dealer who leases cars to people for their own use. It would not apply, however, when the dealer leases trucks to businesses.

How will disclosure to the consumer be made?

Disclosure by a lender or lessor will have to be clear, concise and expressed in a way that will bring the information to the attention of a reasonable person.

What will the lender have to tell the consumer before the consumer agrees to the consumer credit contract?

The information that will have to be provided by the lender will include the following:

1. Full name and full address of the lender (who may not be the vendor);
2. The annual percentage rate of interest (APR) and all the costs and charges included in the rate; whether the rate is variable; if it will change during the lifetime of the agreement and, if so, its duration;
3. The amount and frequency of repayments;
4. Whether the loan is secured and, if so, on what;
5. Specific warning if the loan is secured on a consumer's home;
6. The duration of the agreement;
7. The total charge for credit;
8. The cost of early settlement or prepayment of the agreement; and
9. Information about the right to cancel.

What will happen if the lender doesn't disclose the information to the consumer?

If the lender fails to disclose the required information to the consumer by the time the credit contract is made, the consumer will be able to cancel it at any time. The lender will be unable to collect the debt for the time period before the disclosure was made or enforce any security interest or recover property.

Will the lender have to update the disclosure information?

The lender will have to provide the consumer with information at least every six months unless it is a revolving credit contract, in which case disclosure must be made at least every 45 working days. There will be exceptions, such as if the consumer cannot be located or if the consumer has breached the credit contract and enforcement proceedings have begun.

What information will be in the continuous disclosure statement sent to the consumer?

The lender will update the consumer's account with such information as the opening and closing balances, the amounts paid, interest paid, annual interest rate, and any other fees charged to the consumer.

What will a consumer have to be told before signing a consumer lease?

The information that the lessor will have to disclose to the consumer will include:

1. lessor's full name and address;
2. the term of the lease;
3. the cash price of the goods being leased;
4. whether the lessee has an option to buy the goods, and if so, how much the lessee must pay to do so (or a method of calculating that amount);
5. the amount, timing and number of payments to be made under the lease;
6. how much is to be paid at the start of the lease or before the lessee takes the goods (such as a deposit);
7. the total amount payable under the lease (if ascertainable);
8. a statement of how the lessee may terminate the lease, including how any amount payable on termination would be calculated;
9. particulars of any services that are in substance financed by the lease; and
10. any default fees, charges or enforcement costs that may be payable.

What will happen if the consumer isn't given the required information about the lease?

If the lessor does not give the consumer the required information, he will not be able to take steps to enforce the contract or recover property or a security interest under the contract until disclosure is made.

If a lender or lessor does not give the consumer the required information, will the consumer have to pay the interest charges on the loan or lease?

A lender or lessor who fails to make initial disclosure to the consumer will have to return any interest payments and credit charges for the period from when the disclosure should have been made until the time it was actually made.

What will a consumer be able to do if he doesn't get the required information or return of interest and other charges from the lender or lessor?

The consumer will be able to apply to the Consumer Tribunal for an order requiring the lender or lessor to comply with the requirements in the law.

A lender or lessor who fails to provide the required disclosure commits a strict liability offence.

How will consumers be able to compare the costs of borrowing?

The Minister by Order may prescribe a methodology for the calculation of the cost of borrowing. Such an Order would adopt an internationally accepted

methodology for expressing the cost of borrowing and would not set interest rates themselves.

For disclosure provisions to be truly helpful to consumers, the same approach for the disclosure of the cost of borrowing would have to be used by different kinds of lenders (such as banks, credit unions, and retail lenders). The Minister, therefore, would develop the details of this Order only after full consultation with stakeholders.

R. Codes of practice

1. Background

Codes of practice are increasingly important in setting the rules that suppliers will live by day-by-day. A code can be tailored to the needs of a particular industry, supplier or type of consumer. It can clarify and elaborate what a supplier must do to obey the law. For example, it can set out in detail what a supplier must do to honour the consumer's rights to exchange damaged goods or get a refund. It can establish procedures to deal with consumer complaints or to deal with returned purchases.

A code can require suppliers to train their employees or establish service standards (for example, replying to a consumer complaint within 12 hours or sending a repair person within 24 hours). If a code is created by an industry organisation, it can include an industry-wide scheme for dispute settlement.

Suppliers can publicise that they follow a code and many find it gives them an advantage in the marketplace as consumers learn that they will be treated honestly and fairly by those that follow the code.

The *Consumer Protection and Safety Act, 1985* requires the Director of Consumer Guidance to promote the development of codes by industry organisations. This responsibility will be continued.

The new legislation, however, will create a more detailed framework for the development and use of both mandatory and voluntary codes. The legislation and practice in several jurisdictions have been examined. The United Kingdom, Australia and New Zealand, in particular, emphasise the role that codes can play in strengthening consumer protection. The new Barbados *Consumer Protection Act* (2002) also has a flexible approach to the problem of ensuring that businesses abide by the terms of a code. New consumer standards developed by the ISO (International Organization for Standardization) dealing with industry codes and the resolution of consumer complaints have also been reviewed.

2. Legislative proposals

The new legislation will set out the Director's role in promoting industry codes of practice, how codes may be made mandatory and what happens if a code is registered with the Director.

What is an industry code of practice?

An industry code of practice governs the behaviour of industry participants. It may deal with their behaviour toward each other or toward consumers of goods or services supplied by the industry.

What will be the Director's role in promoting industry codes of practice?

The Director will be given a strengthened mandate to promote the development of industry codes of practice. For example:

- He may issue guidelines or promote the use of international standards for developing an industry code of practice and the desirable contents of such a code.
- He may establish the criteria that must be met before a code can be registered. For example, a code that effectively deals with a supplier's relations with consumers would include a process for settling consumer complaints.
- The Director may accept registration of an industry code if he reasonably believes that it is in the public interest to do so.

Who will develop codes of practice?

Generally industry organisations will develop codes of practice. The organisations see the benefits to their members of having a structured and common approach to dealing with certain matters, such as customer relations, ecological practices, or purchasing practices. The intent is usually to improve competitiveness and reputation.

In some cases, industry organisations may be requested to develop a code and government officials may work with an industry to be sure that the code meets legislative requirements (including fair trading practices). The Director may choose to take on the role of actively working with an industry to ensure that its code is effective in dealing with consumer concerns.

Will suppliers have to comply with a code of practice?

Industry codes may be mandatory or voluntary. The Minister will be able to declare a code or part of a code to be mandatory.

What will be a registered code of practice?

An industry association will be able to request the Director to register its code of practice. The Director will not be required to accept registration but may do so if

he believes it to be in the public interest. Any member of the industry association who represents itself as adhering to the association's registered code will have to comply with the code.

What will happen if a supplier does not comply with its industry code of practice?

The consequences will depend on the type of code. Failure to comply with a mandatory code will be a strict liability offence since the code is part of the law.

If a supplier promotes itself as following a registered code, failure to adhere to the code will also be an offence.

Failure to comply with a voluntary code will be dealt with by the industry association that sponsored the code. Each voluntary code should have a process for dealing with industry members who ignore the code.

S. Offences

1. Background

The proposed legislation emphasises enforcement actions that are alternatives to prosecution. It is necessary, however, to be clear that non-compliance is an offence and, where appropriate, the alleged offender will be subject to prosecution.

There are several forms of non-compliance that the Government believes should be treated as criminal offences. In general, these are matters where there is actual wrongdoing, such as the unfair businesses practices that are essentially types of fraud. Giving false information to the Director or authorised officers or obstructing an investigation should also be treated as serious offences.

Most offences that will be created by the new legislation will be treated as strict liability offences. Suppliers who have been charged with these offences would have the defence available to them that they took all reasonable care to avoid the offence.

Whether an offence is criminal or strict liability, it will be dealt with by the courts. The proposed Consumer Tribunal, discussed in Section W, will not deal with prosecutions, which are reserved to the courts.

2. Legislative proposals

This section sets out the provisions for both criminal offences and strict liability offences that would be included in the new legislation.

What criminal offences will be created by the new legislation?

It will be a criminal offence to:

1. give false information to the Director, an authorised officer or any person empowered to conduct an investigation, including false information in response to a Director's requisition for information or a Substantiation Order;
2. obstruct the Director or an authorised officer in the performance of their duties and, in particular, fail to co-operate with an inspection or investigation or instruct others not to co-operate;
3. engage in any prohibited unfair business practice (the "Black List");
4. fail to comply with a written undertaking given to the Director;
5. fail to comply with a Consumer Protection Compliance Order.

It will also be a criminal offence for any authorised officer or employee or contracted officer of the Ministry responsible for consumer affairs to disclose confidential business information acquired in the pursuance of his duties without legal authority or appropriate authorisation.

Criminal offences may be prosecuted either on summary conviction or on indictment.

What will be a strict liability offence?

Most of the offences in the proposed legislation will be considered to be strict liability offences. These are a form of "regulatory offence" where it is only necessary for the Government to prove on the balance of probabilities that the prohibited behaviour took place. It is not necessary to prove intent. If the Government proves its case, it will be open to the defendant to present a defence of due diligence, discussed below at Section T.

Suppliers, lenders or lessors will commit a strict liability offence if they:

1. fail to provide required information to consumers;
2. fail to comply with a mandatory code of practice or a registered code of practice to which the person promotes his adherence;
3. fail to comply with an order of the Consumer Tribunal;
4. fail to remove a term in a standard form contract that has been found to be unfair to consumers by the Consumer Tribunal;

5. fail to return money, exchange goods, honour the cancellation of a contract or perform any other action as required by the proposed legislation.

Strict liability offences may be prosecuted either on summary conviction or on indictment.

T. Defences

1. Background

As mentioned above, a number of the offences in the proposed legislation will be strict liability. The defence to a strict liability offence is often referred to as “due diligence.” This means that the defendant must prove on the balance of probabilities that all due care was taken to avoid the commission of the offence.

What constitutes due diligence depends on the facts of the situation. Among the factors that will be considered in deciding whether the defendant’s actions showed that due care was taken will be the customs of the industry, the compliance with an industry code of practice dealing with the issue, the costs of avoiding non-compliance, and the presence of practices, policies, and training programmes within the defendant’s business to avoid non-compliance. If the supplier has taken care to follow the law and the level of care is reasonable in the circumstances, the supplier will likely have a valid due diligence defence.

A valid publication, such as a newspaper or magazine, will also have a defence if it has published a misleading or deceptive advertisement in the course of business that it could not have reasonably known was misleading or deceptive.

2. Legislative proposals

The legislation will provide for two kinds of defences to strict liability offences, as discussed below.

Will there be a defence to a strict liability offence?

It will be a defence to a strict liability offence to show on the balance of probabilities that due diligence was exercised to avoid committing the offence.

Will a newspaper or magazine have a defence if it has published a misleading advertisement or otherwise aided in the commission of an offence by publishing information?

It is a defence if a person can prove that its business is to publish or arrange publication of advertisements (such as an advertising agency) and it received the information for publication in the ordinary course of business and had no reason to suspect that publication might constitute an offence.

U. Other enforcement actions: injunctions and orders to hold assets

1. Background

The remedies, sanctions and enforcement tools proposed for the new consumer protection legislation will be intended to complement each other and will provide the Director with a choice of approaches to take in order to achieve compliance with the legislation.

The Consumer Protection Compliance Order, for example, will serve some of the functions of an injunction in that it is intended to bring a person into compliance with the legislation or prevent likely future non-compliance. It will be issued by the Director when he has reasonable grounds to do so. In addition to prohibiting a supplier from continuing in a violation, it may also focus on changing behaviour to prevent future non-compliance.

In some cases, however, the power of a court order will be an important factor in gaining compliance and indicating publicly that certain behaviour is unacceptable. Failure to comply with a court injunction is also contempt of court, which makes other sanctions available to the court to deal with non-compliance in extreme cases.

The principle reason for seeking an injunction rather than pursuing a prosecution will be the urgent nature of an injunction and its focus on immediately stopping behaviour. An injunction is intended to provide a speedy response to prevent non-compliance and is not in itself a sanction or punishment. In urgent cases (for example, where public harm may occur) an injunction may be granted without notice, that is, an *ex parte* injunction.

The Director will also be able to apply to a court without notice for a “freeze” order if he believes that a supplier is not complying with the proposed legislation and is holding a consumer’s money or other assets. The court order would prevent the supplier from disposing of the money or assets until a determination can be made about the supplier’s behaviour.

2. Legislative proposals

This section describes the orders that may be made by a court on the application of the Director.

What will the Director be able to do when faced with serious non-compliance that requires an immediate response?

The Director will be able to apply directly to the High Court for an injunction. The Court may grant the injunction when it appears to the Court that an offence has occurred or will occur.

What will the injunction require?

An injunction will be able to require several things. It may order the person to refrain from doing any act or thing that would be an offence against the proposed legislation. Alternatively, it may order a person to do something that would prevent an offence.

Will the Director have to tell the supplier that he is applying for an injunction?

Normally the Director will have to notify the supplier against whom he seeks an injunction. An injunction may only be issued if 48 hours' notice is given to the supplier named in the application unless the urgency of the situation is such that notice would not be in the public interest.

What will the Director be able to do if he believes a supplier has committed an unfair practice and has a consumer's money?

The Director will be able to apply to the court without notice to the supplier for an order forbidding the business from disposing of the consumer's money or other assets.

This type of order will most likely be requested when an unfair business practice—which is essentially a form of fraud—is involved. The order may be granted without notice to the supplier because of the potential that assets will be hidden if notice is given. The order may be broader than the value of a particular consumer's assets in the hands of the supplier because closer investigation may indicate that many consumers have been defrauded. The order may require regular renewal by the court because of its intrusive nature.

What will happen if the supplier does not obey the injunction or the order?

The supplier would be guilty of contempt of court and may face several sanctions, including imprisonment.

V. Sanctions

1. Background

The enforcement options that will be given to the Director under the new legislation provide the tools to demand and enforce compliance. The ultimate enforcement tool, however, is criminal prosecution. Criminal prosecution must be used often enough to be a potentially *realistic* response to non-compliance and it must be used *strategically* to deliver the appropriate compliance message. It is ultimately self-defeating to either under-use or over-use the prosecution tool. The sanctions that accompany prosecution must be based on acceptable principles. Modern sentencing principles suggest that a sanction should:

- aim to change the behaviour of the offender;
- eliminate any financial gain or benefit from non-compliance;

- consider what is appropriate for the particular offender and the nature of the offence;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by non-compliance, where appropriate and possible; and
- aim to deter future non-compliance.

Sentencing criteria will send the message to the public and the courts that non-compliance with the proposed consumer protection legislation is a serious matter and the penalty should reflect that degree of seriousness. The judge will be instructed by the proposed legislation to take a number of factors into account that will allow the punishment to reflect the seriousness of the offence.

At the same time, it is important to ensure that the offender is brought back into compliance in the future—doing this may have a far more beneficial effect on society and consumers than a single example of punishment. Measures that may be taken instead of or in addition to the more traditional approach of imposing a fine may have a strong influence on future compliance. A form of “corporate probation,” which includes community service orders, will be included in the proposed legislation as a sentencing option in order to influence offenders to change their behaviour so that they will not re-offend.

2. Legislative proposals

This section describes the sanctions that are proposed for the new legislation. The proposed legislation will incorporate existing provisions found in the *Consumer Protection and Safety Act, 1985* that deal with corporate liability and the liability of directors and officers, as well as related corporations.

What will the court be asked to take into account when it fines a supplier for committing an offence?

Criteria for the court to consider in setting fines will be set out in the proposed legislation. In addition to any other sentencing principles that a court is required to consider, it should take into account the harm caused, benefits received by the offender as a result of the offence, and the offender’s compliance history.

Will the supplier be allowed to keep the money it has gained from not complying with the law?

The court will be able to require convicted offenders to pay an additional fine equal to the court’s estimate of the benefit they received from the commission of the offence. This “giving up” of profits will ensure that suppliers are not able to profit from their illegal activity, whether the offence is a criminal offence or a strict liability offence. This fine would be in addition to any fine imposed by the court as a sanction.

Will there be any other sanctions that the court could impose on corporations that have broken the law?

The court will be able to impose corporate probation on a corporate offender. Traditionally, only fines could be imposed on corporations as a sanction after committing an offence. Corporate probation allows the court to fashion remedies that go to the nature of the offence, the reasons why it was committed, and the damage done to consumers or the community.

What will a court be able to include in a corporate probation order?

A corporate probation order will be able to have a number of provisions. These may include directing the offender to implement organisational changes to prevent repetition of the offences; to implement a consumer complaints system; to provide regular information to the Director about its activities; or to pay an amount to a community group, consumer group, educational institution or other body in the community where the offence occurred to assist them in their work.

Will the court be able to make a publicity order?

The court may also order a supplier to publicise its non-compliance and any corrective action it has taken. The supplier may also be required to tell consumers any information about its activities that the court believes is appropriate. If the supplier fails to do this, the Director may publicise the information and recover the costs of publication from the supplier.

What levels of fines will be included in the new legislation?

Fine levels will be sufficiently high to allow the sentencing principles set out above in the background section to operate. At the same time, the other sentencing options that are provided are intended to send a message that fines are not the only or even necessarily the best sanction to impose for non-compliance.

A wide range of fines will be provided in the proposed legislation and the sanctioning principles would take into account whether the fines are intended to apply to an individual or a corporation and whether it is a first or subsequent offence.

Will the court be able to sentence people who do not comply with the new legislation to prison?

The court will be able to impose prison terms on individuals convicted of criminal offences. Strict liability offences will be sanctioned by fines and other actions, such as corporate probation.

W. The Consumer Tribunal

1. Background

There is an urgent need for a quick, inexpensive, and binding means of settling disputes between consumers and suppliers in Trinidad and Tobago. Consumers

must be able to settle smaller disputes that cannot be handled easily by the courts. Consumers want a relatively informal approach that does not require lawyers and is not intimidating to people who are not used to the legal system. Both consumers and suppliers will want to deal with an adjudicator who understands their problems, is experienced in the types of issues that are involved in consumer disputes, offers a fair and unbiased hearing and makes decisions quickly.

Over the years, several approaches have been explored to develop a system for dealing with consumer disputes. One was the creation of a small claims court, which was not pursued. Another is the enhancement of programmes to mediate disputes between consumers and suppliers or settle consumer complaints early through improved consumer service in industry. Some consumer complaints can be handled by regulators, such as the Regulated Industries Commission or the Telecommunications Authority of Trinidad and Tobago.

The Government believes that establishing an effective regime to handle consumer disputes will be one of the most important achievements of the reform of consumer protection legislation. Creating by statute a specialised tribunal to hear and adjudicate on disputes will allow for a tailored approach that can combine legal and other expertise in an organisation that will make decisions according to the rules of fairness and natural justice. This will mean that the consumer and supplier will have their case heard by an unbiased decision-maker and that they will have an opportunity to present their sides of the dispute.

The rules of procedure that will be developed by the new Consumer Tribunal will accommodate the need for a “user friendly” but dignified approach. Hearings may be oral or done through the filing of documents, depending on the nature of the case and the wishes of the parties. Lawyers will not be required, although representation by a lawyer or an agent would not be forbidden. Effective case management will prevent delays and adjournments and decisions could be expected to be made quickly.

Mediation will be emphasised as an important element of the settlement of disputes. It will be expected that, in most cases, consumers and suppliers will have tried to settle their differences through mediation before they reach the Consumer Tribunal. Indeed, as a body of specialised case law develops at the Tribunal, it may be easier to settle matters at the mediation stage as consumers and suppliers understand what are acceptable outcomes for disputes.

The new Consumer Tribunal will have another function, as well. In addition to hearing disputes between consumers and businesses, it will hear appeals from the Director’s decisions to issue Consumer Protection Compliance Orders. Consistent with the rules of natural justice and fairness, a Tribunal Member who had heard a consumer complaint regarding a particular supplier would not hear an appeal from a decision of the Director that dealt with the same issue.

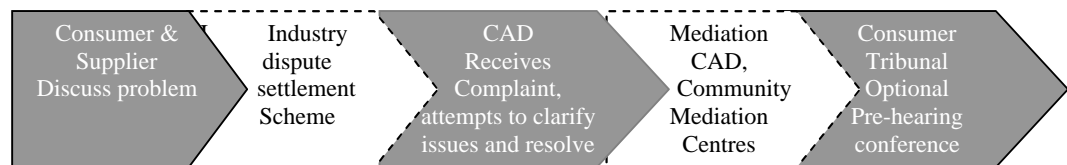
The Director will also be able to make certain applications to the Tribunal for declarations that may benefit consumers, such as a determination that a contract term is unfair. The Consumer Tribunal will not play any role with respect to prosecutions for violations of the proposed legislation; that function will be reserved to the courts.

2. Legislative proposals

This section describes the proposals for a specialised quasi-judicial tribunal that will deal with disputes between consumers and suppliers and hear appeals from certain decisions of the Director.

There are a number of ways in which consumers will want to deal with their disputes with suppliers. How do these all work together?

The consumer should first start to deal with the problem by talking to the supplier, perhaps moving up to the manager or owner who may have greater authority to settle the matter. Sometimes there may be an industry association available that offers dispute settlement services that can be used. If these steps do not work, the consumer can go to the Consumer Affairs Division, which will use its best efforts to solve the problem by trying to clarify the issues, talking to the supplier and suggesting solutions. If the matter is still not settled, the consumer may wish to take advantage of mediation services that are available—although the supplier will have to co-operate in order for mediation to be effective. As a final step, the consumer may apply to the Consumer Tribunal for a remedy.



How will consumers be able to settle their disputes with suppliers?

A new specialised quasi-judicial Consumer Tribunal will be established. One of the most important roles of the Tribunal will be to provide expert and final settlement of disputes between consumers and suppliers that have not been settled through discussion or mediation.

What is a quasi-judicial tribunal?

A quasi-judicial tribunal is established by statute to make decisions in a particular way. It is not a court—hence is it “quasi-judicial” but it must be fair, independent and free from bias in making its decisions. These are judicial qualities.

The Consumer Tribunal will have a specified jurisdiction that will be laid out in the proposed legislation—its mandate will be limited to what it is authorised to deal with. As a specialised tribunal, its members will not necessarily be lawyers so people with other backgrounds may be appointed. The Tribunal will be

expected to establish procedures that are less formal than those of the general courts and it will aim for speedy handling of its cases.

Who will be able to be appointed to the new Consumer Tribunal?

The Members of the Consumer Tribunal will be appointed by the President. One Member will be appointed as Chairman and another as Vice-Chairman. To be eligible for appointment, Members will have to have knowledge of law, commercial practices, consumer issues or other specialised knowledge that is relevant to their duties on the Tribunal.

How will the new Tribunal operate?

The Consumer Tribunal will develop Rules of Procedure to guide the Tribunal and parties who appear before it. The rules will deal with how appeals are to be filed, whether mediation may be required prior to a hearing, how evidence is to be presented and who may represent consumers and suppliers. One objective will be to establish a quick and effective process. The Tribunal will be able to refuse to hear applications that it reasonably considers to be frivolous or vexatious.

How will the Tribunal be able to help consumers who have disputes with suppliers?

The Tribunal will have the jurisdiction to hear disputes between consumers and suppliers regarding goods and services. The Consumer Tribunal will deal with the rights and obligations that are established under the proposed legislation. Either the consumer or the supplier will be able to request a hearing by the Tribunal, ideally after having gone through mediation offered by either the Ministry of Legal Affairs or a community mediation centre.

It is proposed that the Tribunal will have the jurisdiction to hear matters with a value of \$100,000 or under. The Minister will be able to make an Order changing the value of the matters that may be heard by the Tribunal.

What kinds of orders will the Tribunal be able to make when settling consumer-supplier disputes?

The Tribunal will be able to make several different orders, depending on the nature of the dispute. It may cancel a contract or declare particular provisions of a contract to be void; award damages to either party; order a repair to be made or payment for repairs; order payment for completion of a service by another business; order a supplier to accept returned goods; order goods to be replaced; order reimbursement or payment to either party; and make any other such orders as it sees fit in the circumstances.

What role will the Director play in dealing with matters that may be the subject of consumer-supplier disputes?

The Director will be able to ask the Tribunal for certain declarations. For example, he may ask the Tribunal to declare that a term in a standard form contract is clearly unfair.

What decisions of the Director will a supplier be able to appeal to the Tribunal?

A supplier can appeal a Consumer Protection Compliance Order issued by the Director to the Consumer Tribunal.

How will an appeal against a Consumer Protection Compliance Order work?

The supplier will have to file an appeal. This must be done within 30 days after the Consumer Protection Compliance Order has been issued. Filing an appeal does not stop the operation of the Order, although the Tribunal may make an order to suspend its operation.

In deciding whether to suspend an Order while the appeal is being heard, the Tribunal must take into account the objective of protecting consumers in Trinidad and Tobago.

What will the Tribunal be able to decide after it hears an appeal of a Consumer Protection Compliance Order?

The Tribunal will have several choices. It may confirm or cancel the Order. Or it may change the Order by amending, suspending or deleting part of the Order.

What will the Director have to show to the Tribunal to have his decision confirmed?

The Director does not have to prove that the supplier has committed an offence. This is not a prosecution for an offence. He will have to show that he (or his officials) had a reasonable belief that an offence had occurred or was occurring or would occur.

How will the Tribunal be held accountable for its actions?

The Tribunal will prepare an annual report that will be presented to Parliament by the Minister. The report will be expected to deal with the workings of the Tribunal, its caseload, significant cases, its budget, organisational arrangements and its Members.

The Tribunal will also be open and transparent in its activities. In general, its hearings will be open (with exceptions for personally or commercially sensitive information) and its decisions will be public. There will be no appeal from the decisions of the Tribunal to the courts but the Tribunal actions and decisions will be subject to judicial review by the courts.

VI. Preparation for the New Consumer Legislation

The Government is committed to strengthening the protection available to consumers in Trinidad and Tobago. The new consumer protection legislation will be an important Government priority in the coming months. At the same time, the Ministry of Legal Affairs will be working to renew and revitalise the organisational framework that must be in place to effectively implement the new legislation.

A. The legislative process

1. The Policy Paper and consultation

This Policy Paper is Government policy and has been approved by Cabinet. It will be distributed widely and will form the basis of more intensive consultation with interested stakeholders and the public generally. In addition to targeted meetings to discuss the proposals in the Policy Paper, the Government will be conducting open meetings to hear from members of the public in Trinidad and Tobago.

2. Cabinet approval

Following the period for consultation on the Policy Paper, the Minister of Legal Affairs will identify any changes to the direction set out in the Policy Paper as a result of consultations. The Minister will seek Cabinet approval of these policy changes and instructions that will form the basis of the drafting of the Bill that will be introduced into Parliament.

3. Drafting and approvals

After Cabinet has approved any changes to the Government's policy arising from consultations, the Ministry of Legal Affairs will be working with drafters to develop the Bill. Drafting will be completed in mid-2008.

4. Introduction into Parliament

It is expected that the Bill will be ready for introduction into Parliament by the end of 2008. Between now and the introduction of the Bill, the Ministry will continue working on the organisational renewal of the Consumer Affairs Division and exploring institutional options. These matters are discussed in greater detail below.

5. Enactment of the new legislation

The enactment of the legislation will mean that the Ministry will have to begin a campaign to educate the public about the new rights and responsibilities established by the new statute. Education sessions, public announcements, distribution of brochures and other materials will be necessary if the full benefits of the new consumer protection regime are to be achieved.

At the same time, the Ministry will be moving forward with organisational renewal and preparation for the duties and responsibilities that the new legislation will impose on the Ministry. For example, the Ministry will be working to implement a Consumer Call Centre, developing a legislative Compliance Policy, revising internal manuals, training staff in their new responsibilities and working with community mediation centres.

6. Proclamation of the new legislation

The new legislation will not be proclaimed immediately in its entirety so that suppliers and consumers can become familiar with their new rights and obligations.

One part of the proposed legislation would be proclaimed immediately, however. The provisions dealing with the establishment of the Consumer Tribunal would be proclaimed to allow for appointments and the creation of the new organisation. Rules of procedure, case management systems, training of new members and other practical matters will have to be put in place so the Tribunal will be able to open its doors to the public without delay when the entire statute is proclaimed.

B. Creating the Prices Advisory Council & Consumer Advisory Board

The Government announced in the Budget Speech of August 20, 2007 that it intended to establish a Prices Advisory Council. The Council will have a mandate to address comprehensively, from a supply side perspective, the level of prices in the economy. The Government also committed to establish a Consumer Advisory Board to advise the Minister on matters relating to prices and consumerism.

C. Organisational Renewal

Today, the major services provided by the Consumer Affairs Division (CAD) can be divided into five broad categories. These are complaint management; consumer education; research and monitoring; enforcement; and prices, weights and measures inspection. The Consumer Affairs Unit in Tobago also deals with consumer complaints, educational outreach and research and monitoring. The Unit works closely with the CAD.

The Ministry has recognised that strong laws must equally be accompanied by an effective administrative structure. The Ministry is currently reviewing the major services it provides today and will be making recommendations for improving the way the consumer protection services will operate under new and improved legislation in both Trinidad and Tobago. The review includes an examination of organisational alternatives, including the possible establishment of an executive agency or a separate ministry responsible for consumer affairs. The proposals in this Policy Paper, however, would be compatible with a variety of institutional arrangements.

Some functions currently provided by the Consumer Affairs Division will move to other parts of Government. Plans are already in progress to move the functions of the Prices, Weights and Measures Unit from the Consumer Affairs Division to the Trinidad and Tobago Bureau of Standards which will be responsible for the administration of the *Metrology Act, 2004* once it is proclaimed.

The best practices of a number of countries are being examined as possible solutions to challenges currently faced by the Ministry. The Ministry will build upon the strengths of the current CAD and the Tobago Consumer Affairs Unit, work to improve existing services and business processes, examine how new technologies can enhance effectiveness, develop modern policies and procedures, and enhance training and skills

Already, a number of specific opportunities to enhance the Ministry's approach to protecting consumers have been identified. These are outlined below.

1. Risk-based enforcement

Currently the CAD assesses the risks to consumers in Trinidad and Tobago through direct contact with consumers. Complaints to the CAD and the Tobago Consumer Affairs Unit are tracked in a computer database. Quarterly and annual reports are produced to help identify complaint trends, types of business attracting the most complaints, regions in the country where complaints occur, and other trends, such as gender and age of people who encounter problems with suppliers.

The Division closely monitors radio and newspaper stories about consumer problems. It also gains valuable information from other contact with consumers, such as seminars and other public outreach activities. Much of this information helps the CAD to target and set priorities for future outreach, education, and enforcement.

The CAD is committed to continually improve its ability to assess risks to consumers and target effective strategies to reduce these risks. In the CAD's experience, most suppliers in Trinidad and Tobago want to comply with the law. Usually only a very small percentage of suppliers deliberately break the law.

Many suppliers, however, may inadvertently violate rules because they are not fully aware of their obligations or do not know how to comply. Busy people are often unaware of their legal obligations, although most manage to stay within the limits of the law most of the time because good behaviour is recognised as being desirable and good business practice.

Effective risk management can help organisations like the CAD to better focus scarce resources to have the greatest impact in protecting consumers. This may mean specific education strategies, or increased inspections and strategic enforcement actions against suppliers with a poor track record of respecting consumer rights.

Good management requires that more resources should be devoted to identifying and dealing with those dishonest suppliers causing consumer problems, while focusing educational and persuasive efforts on those individuals or firms who want to understand their rights and responsibilities.

Furthermore, good enforcement relies on good and reliable data. The CAD wants to improve the way it collects and uses important data to target more effective and frequent inspection campaigns. Good information will also enhance the CAD's consumer rights education programme, including more campaigns to educate suppliers about their duties under the law. The CAD also plans to conduct studies aimed at better understanding the needs of vulnerable groups of consumers, such as the young, the elderly, and those with disabilities or low literacy skills.

This kind of information combined with careful analysis and planning can greatly assist the Division in designing effective enforcement strategies, identifying areas where education should be directed, where compliance efforts should be targeted, and even alerting policymakers to emerging gaps in the law.

2. Development of a Compliance Policy and enforcement manuals

Compliance Policies evolved from the understanding that regulators need to develop a strategic approach to achieving compliance. Compliance will also be enhanced if both suppliers and consumers perceive the new legislation and its enforcement as fair and characterised by an appropriate mixture of even-handedness and flexibility.

A Compliance Policy for the proposed legislation will guide the Director and his staff when making enforcement decisions. The Policy will link the different elements of the regulatory system and bridge the gap between statutory policy and operational procedures. It will set out the available legislative tools (for example, inspections, compliance orders, written undertakings) and how and when they will be used. The Policy will not only be a guide for the exercise of discretion by

enforcement officials, but it will also contribute to transparency and accountability.

The Compliance Policy for the new legislation will be accompanied by an internal inspection manual that will set out procedures, risk assessments, inspection timetables, investigation scenarios, and like matters for enforcement officials.

3. Development of the Consumer Protection Registry

The Consumer Protection Registry will contribute to transparency, accountability, communication with the public and education. As the CAD develops materials, reports, the Compliance Policy for the new legislation and similar documents it will be placing these on the Registry. It will be working with technical staff to create the appropriate website for the Registry.

4. Strengthening the Consumer Affairs Division mediation system

Today a number of the consumer advocates in the CAD have received formal training in mediation techniques. With the introduction of new legislation, the CAD plans to introduce enhanced mediation services to help consumers and suppliers to resolve their differences quickly and effectively.

Sometimes a dispute that should ordinarily be resolved fairly simply can persist because of the personalities of the individuals involved. Effective mediators can often help separate the facts from the emotions and help pave the way to a fair and mutually acceptable solution to a dispute.

The CAD will build upon its existing services by offering more mediation services to consumers and suppliers and helping to encourage voluntary mediation programmes in sectors where consumer complaints are more common. The Ministry has also begun to explore potential partnerships with existing mediation programmes, such as the Community Mediation Centres, to help ensure that such services are readily available to consumers and suppliers in need.

5. Co-ordination with other Ministries and Agencies

The CAD has a long tradition of working closely and co-operatively with other Ministries who share a mandate to protect consumers. Officials from CAD are often asked to represent consumer interests on other Ministries' committees and standards committees, and in other collaborative initiatives. In the past, representatives from other Ministries and Agencies have helped the CAD to develop a National Consumer Policy that identified potential reforms, programmes and other opportunities to enhance consumer welfare.

Recently, representatives of the CAD have met with regulators in the banking sector, the telecommunications sector, the public utilities sector, and those dealing with food and drug safety and standard-setting, among others, to discuss plans to reform consumer laws and to seek out new opportunities to collaborate.

6. Development of a Call Centre to handle complaints

The Government recognises that consumers often do not easily understand who or where to call when they encounter a problem. Since there are many Ministries and Agencies responsible for protecting the public, consumers would benefit from being able to call one phone number and have access to assistance and guidance. The Ministry has initiated discussions with other organisations with responsibilities in consumer protection to explore this opportunity.

7. Strengthening of regional and international co-ordination

For many years, Trinidad and Tobago has assisted many regional small island nations in their efforts to establish consumer affairs offices. These efforts will undoubtedly continue in the future, particularly as Trinidad and Tobago gains experience with some of the new approaches in the proposed legislation.

The Revised Treaty of Chaguaramas commits all CARICOM Members to enhancing and harmonising consumer protection laws and practices, and this has further stimulated co-operation in the region. As consumers in the region begin to expand their purchases of goods and services using e-commerce and other distance transactions, there will be an increased need for co-operation among consumer protection regulators.

Internationally, consumer protection authorities are developing co-operative agreements for enforcement activity, are exchanging valuable information about scam artists and other fraudulent businesses, and collaborating on training in new skills such as detection of cyber-crimes. Trinidad and Tobago will be pursuing such arrangements both regionally and internationally.

The Government remains committed to working with its regional colleagues to help ensure that consumers benefit from a consistently high level of security and protection in our increasingly regional and global marketplace.