

The Malawi Gazette Supplement, dated 21st November, 2003, containing
Acts (No. 3C)

21. Disclosure
of
interest

MALAWI GOVERNMENT

(Published 21st November, 2003)
Act

No. 14 of 2003

I assent

BAKILI MULUZI
PRESIDENT

13th November, 2003

ARRANGEMENT OF SECTIONS
SECTION

PART I – PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II – GENERAL PRINCIPLES OF CONSUMER PROTECTION

3. Consumer rights
4. Undertaking of the Government
5. Responsibilities of the Local Authorities
6. Obligations of supplier or trader
7. Responsibility of the consumer
8. Beneficial interpretation
9. Pyramid selling or betting prohibited

PART III – ADMINISTRATION

10. Establishment of the Consumer Protection Council
11. Vacation of office of members
12. Filling of vacancies
13. Invited persons
14. Chairman and Vice-Chairman
15. Remuneration of members of the Council or committees
16. Meetings of the Council
17. Non-liability of members of the Council or committees

**PART IV – FUNCTIONS AND POWERS OF THE
COUNCIL**

18. Functions of the Council
19. Powers of the Council
20. Committees of the Council

22. Funds, accounts and audit
23. Reimbursement of expenses of members of the Council, etc.
24. Annual reports
25. Progress reports

PART VI- CONTRACTUAL PROTECTION

26. Standard from contracts
27. Relief against unfair consumer contracts
28. Financial transactions
29. Consumer credit contracts
30. Right of retraction
31. Implied contract terms
32. Cancellation and variation of contracts
33. Supplier's or trader's liability
34. Standards and support service
35. Consumer information on standards
36. Supplier or trader to provide consumer with receipt, invoice, etc.
37. Price to be displayed on goods, etc.
38. Particulars or labels on goods to be in official language, etc.
39. Certain words to be used to indicate warranty
40. Warning about harmful technology and goods
41. Remedies for harmful technology and goods
42. Offence and penalty

PART VII – ADVERTISING

43. Supplier or trader to provide true information
44. Advertisement to be truthful
45. Abusive advertising prohibited
46. Duration of advertisement necessary in promotional sales, etc.
47. Consumer to be compensated
48. Offence and penalty

PART VIII – MEASURES FOR CONSUMER REDRESS AND MECHANICS

49. Representative consumer or class actions.
50. Subordinate courts to have jurisdiction over consumer claims.
51. Funding for the subordinate courts
52. Remedies and sanctions
53. Jurisdiction in respect of persons and causes of action
54. relationship between this Act and other laws

PARTIX – MISCELLANEOUS

55. Offence and penalty
56. regulations

An Act to protect the rights of consumers, address the interests and needs of consumers, establish a Consumer Protection Council, provide an effective redress mechanisms for consumer claims and provide for other matters incidental thereto or connected therewith

ENACTED by the Parliament of Malawi as follows-

PART I-PRELIMINARY

1. This Bill may be cited as the Consumer Protection Act, 2003, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*,

Short title and commencement

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

Interpretation

"Abusive clause" means a clause, which is or appears to be imposed on a consumer by a supplier or trader who has economic power over the consumer and which gives the supplier or trader an unfair, unconscionable or excessive advantage over the consumer;

"Abusive advertising" refers to abusive, unfair or discriminatory advertising which incites or is likely to incite violence, evokes fear or exploits profits from children, infringes environmental values or is capable of leading consumers to behave in a manner detrimental or hazardous to their health or safety;

"Advertiser" includes a supplier or trader of technology, goods or services who has commissioned the publication of an advertising message;

"appropriate laboratory" means a laboratory or organization recognized by Government and includes any such laboratory or organization established by or under any law for the time being in force for carrying out analysis or test of any goods with a view to determining whether such goods have any defect;

"business records" include

(a) accounts, balance sheets, vouchers, records, minutes of meetings, contracts, files, instructions to employees, invoices, import documents and other instruments; and

(b) any information recorded or stored by means of a pen, typewriter, computer or other device whatsoever and any material subsequently derived from information so recorded;

"Chairman" means the Chairman of the Council appointed under section 14;

"competent authority" means a body that has power or jurisdiction, derived from any written law, over a particular issue or entity;

"complainant" means a consumer or any consumer association who or which, as the case may be, makes a complaint;

"complaint" means any allegation in writing or orally made by a complainant that-

(a) as a result of any unfair trade practice adopted by a supplier or trader, the complainant has suffered loss or damage;

(b) the goods or technology mentioned in the complaint had one or more defects; and

(c) the services mentioned in the complaint suffer *from* deficiency in any respect

"consumer" means a person who-

(a) purchases or offers to, purchase technology, goods or services otherwise than *for* resale; but does not include a person who purchases any technology, goods or services *for* the purpose of using them in the production or manufacture of any other technology, goods or services *for* sale;

(b) receives or uses any technology, goods or services *for* which consideration has been paid or promised or partly paid or partly promised, or under any system of deferred payment and such person includes any user of such technology, goods or services other than the person who buys or pays *for* the same when such is made with the approval or acquiescence of the purchaser;

(c) hires or avails himself of any technology, goods or services *for* a consideration which has been paid or promised or partly paid or partly promised, or under any system of deferred payment and includes any beneficiary of technology, goods or services other than the person who hires or avails himself of the same when the technology, goods or services are availed with the approval or acquiescence of the hirer;

"consumer contract" means a contract *for* the sale or supply of technology, goods or services, in which the supplier or trader is dealing in the course of business and the purchaser or user is not; but does not include a contract *for* the sale, letting or hire of immovable property or a contract of employment;

"consumer dispute" means a dispute where the person or business against whom or which a complaint has been made denies or disputes the allegations contained in the complaint or having accepted the allegations, refuses, declines or fails to compensate any loss or injury suffered by the complainant to the satisfaction of the complainant;

"Council" means the Consumer Protection Council established under section 10 of this Act;

"defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under this Act or any other written law in relation to any goods;

"deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by this Act or under any written law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

"distribution" includes any act by which technology, goods or services are sold or supplied by one person to another person;

"distributor" means any person in the supply chain whose activity does not affect properties of a product;

"downstream processor" means a manufacturer who adds value to goods supplied or manufactured by another person;

"false or misleading advertising" includes any type of business information or communication which uses text, dialogue, sound, image or description which can directly or indirectly, expressly or implied or by omission, leads a consumer to make, a mistake, misunderstand or to be confused about any technology, goods or services on the market;

"goods" include all tangible items or articles acquired or used by a consumer;

"guarantee" means an undertaking applicable for a specified time made by a supplier or trader to pay for the cost of repairs or to replace a good that does not work due to a defect or deficiency arising from mechanical failure or faulty workmanship;

"interest" means the prevailing interest rates charged by commercial banks at that particular time;

"intermediate goods" means goods used as inputs in manufacturing or downstream processing;

"Local Authority" bears the same meaning as defined in the Local Government Act;

"manufacture" includes any process which transforms goods in order to add value to them for the purpose of resale; and includes any operation of packing or repackaging not linked to another form of transformation within a single enterprise;

"manufacturer" means a person who-

- (a) manufactures the product or a component part;
- (b) assembles or fabricates parts made or manufactured by any other manufacturer;
- (c) presents himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark; or
- (d) reconditions the product.

"offer for sale" includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing and any other act or notification whatsoever by which willingness to enter into any transaction for sale is expressed; .

"price" in relation to the transfer, supply, provision or sale of technology, goods or services, includes every valuable consideration whether direct or indirect, and includes any consideration which in effect relates to the transfer, supply, provision or sale of the technology, goods or services, although ostensibly relating to any other matter or things;

"pyramid selling" means

(a) a scheme for the sale or lease of a product whereby one person (the 'first person) pays a fee to participate in the scheme and receives the right to receive a fee, commission or other benefit-

(i) in respect of the recruitment into the scheme of other persons either by the first person or any other person;

(ii) in respect of sales or leases made, other than by the first person, to other persons recruited into the scheme by the first person or any other person; and

(b) a scheme for the sale or lease of a product whereby one person sells or leases a product to another person (the "second person") who receives the right to receive a rebate, commission or other benefit in respect of sales or leases of the same or another product that are not-

(i) sales or leases made to the second person;

(ii) sales or leases made by the second person; or

(iii) sales or leases, made to ultimate consumers or users

of the same or other product, to which no right of further participation in the scheme, immediate or contingent, is attached; .

"retail trade" means a form of distribution by which goods are customarily sold to consumers rather than for the purpose of

resale or manufacturing; and includes any act or set of acts or sale to consumers which is the subject of a consumer dispute or an action under this Act;

"safe product" means a product or service which does not present any risk to health, environment and safety of persons or property when used for the assumed purpose or in a way in which it is expected to be used:

Provided that a product shall not be considered dangerous only because it is possible to obtain higher levels of safety or because another safer product is available;

"sale" includes an agreement to sell or offer for sale;

"seller" means a person regularly engaged in retail trade or who participates in some act or set of acts of retail trade, which is the subject of a consumer dispute or action under this Act;

"service" means service of any description, which is made available to potential users and includes the provision of facilities in connexion with health, insurance, banking, including the rendering of a service free of charge or under a contract or personal service;

"Supplier" in relation to a service or technology, includes a person who performs a service or transfers technology and a person who arranges the performance of a service or the transfer of technology, goods or services to another person;

"subordinate court" bears the same meaning as defined in the Courts Act;

"technology", "technology transaction" or "technology transfer" includes, *mutatis mutandis*, systematic knowledge or a transaction involving the transfer of systematic knowledge for the manufacture of a product, for the application of a process or for the rendering of a service and does not extend to the transactions involving the mere sale or mere lease of goods;

"trader" in relation to any technology, goods or services means any person who sells or distributes, supplies or provides any technology, goods or services and includes the manufacturer thereof, and where goods are sold or distributed in package form includes the packer of the goods;

"trade practice" means any practice related to the carrying on of any trade; includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders, or the production, supply or price in the course of trade of any goods whether real or

No. 43 of 1998

Personal, or of any technology or service as defined in the Competition and Fair Trading Act. 1998;

"unfair trade practice" means a trade or business practice including the practice which, for the purpose of promoting the sale, use, supply or provision of any technology, goods or services adopts any unfair method or unfair or deceptive practice including the practice of making any statement whether orally or in writing or by conduct which

(a) falsely represents that the technology or goods are of a particular standard, quality, grade, durability, composition, style or model;

(b) falsely represents that the services are of a particular standard, quality or grade;

(c) falsely represents that any re-built, second hand, renovated, reconditioned or old goods are new or unused goods;

(d) represents that any technology, goods or services has sponsorship, approval, performance characteristics, accessories, peripherals, uses or benefits which such technology, goods or services do not have;

(e) represents that the supplier or trader has a sponsorship or approval, affiliation, intellectual property, license or franchise which such supplier or trader does not have;

(j) makes a false or misleading representation concerning the need for or the usefulness or utility of any technology, goods or services;

(g) gives to the public any assurance, warranty or guarantee of the performance, efficiency, efficacy or length of life of a product or any technology, goods or services that is not based on an adequate or proper test thereof; and

(h) takes advantage of a consumer by exerting undue pressure or undue influence on the consumer to enter into a transaction involving any technology, goods or services;

"warranty" means an agreement with reference to goods which are the subject of a contract, but collateral to the main purpose of such contract of sale, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat contract as repudiated as defined in the Sale of Goods Act;

Cap. 48:01

"wholesale" means a form of distribution by which goods are customarily sold for the purpose of resale or as inputs in manufacturing and includes any act or set of acts of sale for either of those purposes which is the subject of a consumer dispute or an action under this Act or any other written law;

"wholesaler" means a person regularly engaged in wholesale trade, or who participates in some act or set of acts of wholesale trade, which is the subject of a consumer dispute or an action under this Act or any other written law.

PART II-GENERAL PRINCIPLES OF CONSUMER PROTECTION

3. Consumers shall be entitled to the following rights -

Consumer rights

(a) the protection of their economic interest, health and safety in the consumption of technology, goods and services;

(b) true, sufficient, clear and timely consumer education including information on technology, goods and services offered, as well as on prices, characteristics, quality and risks that may be encountered in the consumption of the technology, goods and services;

(c) fair and non-discriminatory treatment by a supplier or trader of technology, goods and services;

(d) full, timely, adequate and prompt compensation for damages suffered by a consumer which, pursuant to the provisions of this Act or any other written law or other special or general contractual obligations, are attributed to a supplier or trader;

(e) the freedom and right to associate and join or form consumer unions or associations;

(f) access to the appropriate or competent authorities for the protection of their legitimate rights; and

(g) any other rights, freedoms, entitlements and interests incidental to or which would facilitate the enjoyment of the foregoing rights.

4. –(I) The Government shall in its policies, laws and administrative measures ensure that consumers draw maximum benefit from national, economic, environmental, cultural, social and other resources.

Undertaking of the Government

(2) The Government shall endeavour to establish or adopt, maintain and enforce standards for technology, goods and services according to Malawi Standards in order to prevent technology, goods and services from causing harm to life and property of a consumer as well as to the environment.

(3) The Government shall endeavour to establish a system for indicating the quality and other elements of the substance of goods and services and regulate against false advertising and exaggerated indications so that a consumer may not make a mistake in the selection of technology, goods and services, in purchasing or utilizing them.

(4) The Government shall endeavour to regulate activities that reasonably restrict fair and free competition concerning the prices and supply of technology, goods and services that are particularly important to consumers.

(5) The Government shall endeavour to promote the circulation of information and technology, goods and services in order to assist the consumer make a sound and informed choice and the technology, goods and services.

(6) The Government shall endeavour to ensure access to basic or essential needs and where appropriate prescribe minimum standards.

Responsibilities of the Local Authorities

5.--(1) Local Authorities shall have the responsibility to plan measures paralleling those of the Government as well as plan and execute measures concerning consumer protection according to the social and economic condition of the area under their jurisdiction.

(2) Local Authorities shall, in collaboration with the Council, have the responsibility of implementing the provisions of this Act and any other written laws on matters of consumer protection.

Obligations of a supplier or a trader

6.--(I) A supplier or trader of technology, goods or services shall -

- (a) take necessary and appropriate measures concerning technology, goods and services he provides *for* the prevention of danger;
- (b) ensure correct ingredients, measures or weights and give proper indications of technology, goods and services, as the case may be;
- (c) ensure that imported technology, goods meet the Malawi Standards;
- (d) co-operate with the Government or Local Authorities in the execution of policies relating to- consumer protection;
- (e) not supply technology, goods or services which can cause injury or harm to a consumer or the environment and which do not comply with the Malawi Safety Standards;
- (f) not engage in any unfair trade practices;
- (g) produce and show a business record, when requested to do so, to a member of the Council or a person duly authorized by the Council:

Provided that a member of the Council or a person duly authorized by the Council shall on demand produce to the trader or supplier a valid identification; and

(h) provide consumers with true, sufficient, clear and timely information on technology, goods or services that they offer.

(2) Any supplier or trader who contravenes subsection (1) shall be guilty of an offence and upon conviction, liable to a fine of K500, 000 and to imprisonment *for* five years.

Responsibility of the consumer

7. The consumer shall take the initiative to acquire the necessary knowledge of consumer life and endeavour to behave self-reliantly and rationally.

8.-(1) Any competent authority shall constitute consumer contracts or agreements in favour of and for the benefit of a consumer where the contract is unfair or ambiguous.

Beneficial interpretation

(2) The Council or any other competent authority shall closely regulate and control abusive, unfair, dumping, restrictive, harmful or anti-competitive trade or business practices or contract terms or clauses.

(3) Contractual clauses or stipulations shall have no effect where they purport to, or in fact

(a) exempt, exclude, reduce or limit the responsibility or liability of a supplier or trader for a defect, deficiency, inadequacy or efficacy of any nature of the technology or goods supplied or the services rendered;

(b) imply a waiver of the rights, freedoms or liabilities vested in the consumer pursuant to, this Act or any other written law and limit the exercise of the rights, freedoms and liberties of the consumer;

(c) place, shift or reverse the burden of proof against the consumer for a defect, deficiency, inadequacy or efficacy which is not immediately apparent to, the consumer;

(d) authorize the supplier or trader to unilaterally cancel, repudiate or rescind the contract except where this power is vested in the trader or supplier in the case of postal or sample sales; or

(e) create contractual terms and conditions, which are unfair, unconscionable, inequitable, oppressive or unreasonable to consumers or are actuated by bad faith.

9. A person who engages, causes or coerces another person to, be engaged in pyramid selling or betting commits an offence.

Pyramid selling or betting prohibited

PART III-ADMINISTRATION

10.-(1) There is hereby established a body to be known as the Consumer Protection Council which shall

Establishment of the Consumer Protection Council

(a) be a body corporate with perpetual succession and a common seal;

(b) in its corporate name, be capable of suing and being sued;

(c) be capable of holding, purchasing or otherwise acquiring, charging and disposing of any property, moveable or immovable, for the purpose, or in the course of carrying out its functions;

(d) have the powers of borrowing and lending money; and (e) be capable of doing or performing all such acts and activities bodies corporate may by law do, and perform.

(2) The Council shall consist of

(a) the following members appointed by the Minister

- (i) a representative from a consumer body in Malawi;
- (ii) a representative from an economic body in Malawi; (iii) a representative from Malawi Confederation of Chambers of Commerce and Industry;
- (iv) a representative from the Law Society of Malawi;
- (v) a representative of a trade union in Malawi;
- (vi) a representative from a women's organizations;
- (b) the following *ex officio* members
 - (i) the Secretary for Commerce and Industry or his designated representative;
 - (ii) the Director General of Malawi Bureau of Standards or his designated representative; and
 - (iii) the Chief Executive of the Pharmacy, Medicines and Poisons Board or his designated representative;
 - (iv) Secretary for Justice or his designated representative; and
 - (v) Secretary for Local Government or his designated representative.

(3) A member of the Council, other than an *ex officio* member, shall hold office for a period of three (3) years unless his appointment is terminated sooner than the expiry of that period and shall be eligible for re-appointment for one more term.

(4) The names of all members of the Council as first constituted and every change in the membership of Council shall be published in the *Gazette*.

(5) There shall be a Secretary to the Council who shall be an officer in the public service.

(6) The Secretary shall be the chief executive officer to the Council and as such shall be responsible to the Council for the administration and management of its affairs, and shall be in charge of all administrative, executive and other staff of the Council, and, in all such matters, shall, at all times, be subject to the direction and control of the Council.

(7) The Secretary shall exercise such powers and perform such duties as the Council may delegate to him in writing from time to time, and in any such delegation the Council may impose such conditions as to the exercise of such powers or the performance of such duties as the Council deems fit.

(8) In addition to the Secretary, there shall be appointed in the public service such other officers subordinate to the Secretary as may be required for the proper functions of the Council.

11. The office of a member, other than an *ex officio* member shall become vacant

Vacation of office of
members

- (a) upon his death;
- (b) if he has been absent from three consecutive meetings of the Council, of which he has had notice, without valid explanation;
- (c) if he has been convicted of an offence and sentenced to imprisonment for a period exceeding six (6) months without an option of a fine;
- (d) if he becomes mentally or physically incapable of efficiently performing his duties as a member of the Council;
- (e) if he becomes an undischarged bankrupt; or
- (j) if he resigns by giving one month notice in writing to the Minister.

12.-(I) on vacation of office by a member of the Council, the vacancy shall be filled by a person appointed in accordance with section 10 (2) (a) under which the former member was appointed:

Provided that if the remaining period is less than six (6) months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it deems fit, co-opt a person who belongs to the same organization as the member who has been granted leave to fill the vacancy during the absence of that member.

13. The Council may, in its discretion at any time and for any period, invite any person to attend any meeting of the Council and take part in the deliberations of the Council, but such person shall not be entitled to vote at that meeting.

14.-(I) The Minister shall appoint a Chairman from the elected members of the Council.

(2) The Vice-Chairman of the Council shall be elected by the members of the Council from amongst its members.

(3) No member appointed under paragraph (b) of subsection (2) of section] 0 shall be appointed or, elected as Chairman or Vice-Chairman, respectively.

(4) Subject to subsection (3), the Chairman and the Vice Chairman shall hold office for the duration of their membership of the Council.

(5) The office of the Chairman or the Vice-Chairman shall become vacant-

Filling of vacancies

Chairman and vice
chairman

Invited persons

Remuneration of
members of the
Council or committees

- (a) if the holder resigns his office by notice to the Minister: or
(b) if the holder of the office ceases to be a member of the Council.

Meetings of the
Council four
timesNon-liabilities of
members of the
Council or committees

- (6) Whenever the Chairman is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

15. A member of the Council a committee shall be paid out of the funds of the Council, such remuneration and allowances, if any, a_ the Minister may determine.

16.-(I) Subject to subsection (2), the Council shall hold ordinary meetings for the dispatch of business at least four times a year.

(2) An extraordinary meeting of the Council

- (a) may be convened by the Chairman at any time;
(b) shall be convened by the Chairman within twenty-one (21) days of receipt by him of a request in writing signed by not less than five (5) members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council

- (a) the Chairman or, in his absence, the Vice-Chairman, shall preside;
(b) in absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of their number to preside; and
(c) the quorum shall be formed by seven (7) members.

(4) An *ex officio* member of the Council shall attend any meeting of the Council in person.

(5) At any meeting of the Council a decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(6) The Council shall regulate its own procedure.

(7) The Council shall cause minutes of every meeting of the Council or committee of the Council to be kept.

17. No member of the Council or any committee of the Council shall be liable for any act or default of his or of the Council, done in good faith in the exercise of the functions or powers of the Council.

PART IV -FUNCTIONS AND POWERS OF THE COUNCIL

18.-(1) the functions of the Council shall be –

- (a) to identify price mechanisms in Malawi whether the prices are justifiable;
- (b) to monitor the frequency and the magnitude of price increases;
- (c) to liaise and consult with relevant stakeholders in order to understand what is happening in the economy;
- (d) to co-ordinate and network consumer activities and liaise with consumer associations or organizations, any competent authority and agencies within and outside Malawi to protect consumer interests;
- (e) to carry out, promote or participate in consumer education programmes and activities;
- (f) disseminate consumer information to the public;
- (g) to provide advice, to consumers, on their rights and responsibilities under this Act and any other written law and make available to consumers general information affecting their interests;
- (h) to monitor the operations of consumer organizations so that they operate in a transparent manner and effectively throughout the country;
- (i) to create or facilitate the establishment of conflict resolution mechanisms on consumer issues;
- (j) to investigate any complaint received regarding consumer protection, and where appropriate, refer the complaint to a competent authority and ensure that action is taken by the competent authority to whom the complaint has been referred;
- (k) to advocate for the effective implementation of this Act and any other written law affecting consumers;
- (l) to maintain a complaints register;
- (m) to formulate and submit to the Minister, policy and legislative proposals in the interest of consumers, consider and examine, and where necessary, advise the Minister on the modification, consolidation or updating of legislation providing protection to consumers in the areas covered under, or related to this Act or any other written law;
- (n) to collaborate with other institutions to ensure that the quality of technology, goods or services imported into the country comply with the Malawi Standards;
- (o) to recommend to Government, where appropriate, minimum standards for basic or essential needs;

Functions of the Council

(P) to carry out investigations or inspections on its own initiative or at the request of any person regarding matters relating to consumer Issues;

(q) to undertake such activities as are necessary, to expedite or convenient *for* or in connection with the performance of its functions under this Act.

19. For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power

Power of the Council

(a) to request an advertiser to withdraw an advertisement which contravenes the provisions' of this Act;

(b) to publish reports of the complaints the Council has dealt with;

(c) to caution suppliers or traders who contravene the provisions of this Act;

(d) to employ professional, technical and administrative personnel as it may deem appropriate and lay down conditions of service *for* such employees;

(e) to pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit;

(f) to enter into any contract or agreement;

(g) to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, which it considers necessary in the furtherance of its functions;

No. 7 of 2003

(h) subject to the Public Finance Management Act, to raise money by way of loans or overdrafts;

(i) to invest or deal with any moneys not immediately required in such securities and in such manner as it may deem fit and to vary or realize such investments;

(j) to manage, insure, let, sell, alienate, mortgage or otherwise deal with any property of the Council as it may deem necessary or expedient;

(k) to receive donations of money or other property from any person or body of persons, other than from a supplier or trader, *for* the furtherance of its functions;

(l) to receive such donations beneficially or as trustee of any trust established *for* the furtherance of such functions;

(m) to publish, from time to time, such professional or other information as it deems necessary or expedient *for* the promotion of the functions of the Council; and

(n) to do all such acts, matters and things as it deems necessary *for* fulfilling the functions of the Council.

20.-(I) The Council may, for the purpose of performing its Committees functions under this Act, establish committees and delegate to any such committee such functions of the Council as the Council may consider expedient.

Committees of the council

(2) The Chairman of each committee shall be appointed by the Council from amongst the members of the Council.

(3) Each committee may in its discretion invite any person, not being a member of the Council, to attend a meeting of the committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.

(4) The Chairman of a committee may convene a meeting of the committee of which he is Chairman.

(5) The Chairman may direct the Chairman of any committee to convene a meeting of such committee and such Chairman shall, as soon as is practicable, comply with such direction.

(6) At all meetings of a committee the quorum shall be formed by a majority of members.

(7) At all meetings of a committee each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the Chairman shall have, in addition to a deliberative vote, a casting vote.

(8) Every committee shall have the power to regulate its own procedure.

(9) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(10) A member of a committee shall, in respect of expenses incurred by him in traveling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council such allowances as the Council may, determine,

21. If a member of the Council has an interest, direct or indirect, in any matter before the Council and is present at a meeting of the Council at which the matter is under consideration, he shall as soon as practicable, disclose that fact and shall not take part in the, consideration or discussion of or vote on any question with respect to the determination of the matter,

Disclosure of interest

PART V-FINANCIAL PROVISIONS

22.-(1) the funds of the Council shall consist of

Funds, accounts and audit

(a) such sums as may be appropriated by Parliament for the purposes of the Council;

(b) any fees payable under this Act;(c) a portion of the fines paid to the subordinate courts in matters of consumer protection;

(d) such other moneys and assets as may vest in or accrue to the Council in the course of its functions; and

(e) such moneys or other assets as may accrue to or vest in, the Council by way of grants, subsidies, bequests, donations, subscriptions, rents, interests or royalties from any other person.

No. 7 of 2003

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every aspect comply with the provisions of the Public Finance Management Act.

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council.

Reimbursement of expenses of members of the Council.

23. The Council may make provision for the reimbursement of expenses any reasonable expenses incurred by a member of the Council or of a committee in connexion with the business of the council or the committee.

Annual reports

24.-(1) As soon as practicable; but not later than six (6) months after the expiry of each financial year, the Council shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Council, and shall be appended to the report

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Council may consider appropriate or as the Minister may direct...

Progress reports

(3) The Minister shall, after he receives the report referred to in subsection (1), lay the report before the National Assembly and subsequently the report shall be published.

25. The Council shall, at the end of every financial year, produce a progress report on its activities during that period and shall publish the report.

Standard form contracts

PART VI--CONTRACTUAL PROTECTION

26.-(1) Standard form contracts or agreements shall(a) be drafted in terms which are clear and understandable to a consumer and shall not contain references to contracts, rules, practices, texts or documents which, not being within public or

common knowledge, are not made available to consumer prior to the execution of the agreement *or* contract;

(b) be drafted in the official language and in characters readable at single sight by any normal sighted person: and

(c) where the contract is entered into locally, have a written translation into the national local language and shall be read and explained to an illiterate, blind, mute and similarly disabled consumer in a language he understands,

(d) (2) The Council shall control and regulate the standard form agreements to ensure adequate consumer protection,

27.-(I) A consumer who contracts for sale or supply of technology. goods *or* services where the contract is unfair or contains unfair provisions or where the trader *or* supplier has taken *or* is likely to take unfair advantage of his rights under the contract shall be given relief by a competent authority.

Relief against unfair
consumer contracts

(2) Where a consumer has entered into an unfair consumer contract, the competent authority may make anyone *or* more of the following orders-

- (a) canceling the whole *or* any part *of* the contract;
- (b) varying part only of the consumer contract;
- (c) enforcing part only *of* the consumer contract;
- (d) reducing any amount payable by the consumer under the contract;
- (e) annulling the exercise *of* any power, right *or* discretion under the consumer contract *or* directing that any such power, right *or* discretion should be exercised in a particular way,

(3) For the purposes *of* this section, an unfair consumer contract means a contract which

(a) results in an unreasonable *or* unequal exchange *of* value *or* benefits;

(b) is oppressive;

(f) imposes obligations *or* liabilities on a party, which obligations or are not reasonably necessary to protect the interests *of* the other party;

(d) excludes *or* limits the obligations *of* a party to an extent that it is not reasonably necessary to protect his interests;

(e) is contrary to commonly acceptable standards *of* fair dealings;

or

if) in case *of* a written consumer contract, if the contract is expressed in a language not ordinarily understood by the consumer.

Financial transactions

28.-(1) A consumer shall have access to banking and financial services including but not limited to opening and operating accounts, securing loans, mortgages, charges, insurance, health insurance cover, pension and other services at affordable or lowest possible rates.

(2) Contracts governing financial transactions such as general insurance, health insurance, hire purchase, and mortgage shall be interpreted, implemented and enforced

(a) in good faith;

(b) consistent with the instrument embodying the contract between the parties; and

(c) in a manner consistent with the laws governing or regulating financial transactions.

Consumer credit contracts

29. The supplier or trader of technology, goods or services shall, in a case involving the supply or sale of technology, goods or services that include the grant of consumer credits, inform the consumer and advise him in writing about the following matters in advance-

(a) the cash price of the technology, goods or services involved;

(b) the amount of interest, the annual or periodic rate at which the same is computed as well as the interest rate in arrears;

(c) the number of installments payable as well as the frequency or periodicity thereof; and

(d) the total amount payable for such technology, goods or services except that the said total amount shall not be higher than the sum of the cash price and the interest.

Right of retraction

30.-(I) A consumer shall have the right of retraction within a reasonable period but not less than seven (7) days from the signature or execution of a contract or receipt of the technology, goods or services where the contract has been entered into at a place other than the ordinary business premises of the supplier or trader,

(2) In computing the grace period within which the consumer should exercise the right of retraction from the day on which the agreement was entered into, weekends and public holidays shall be excluded.

(3) When the consumer exercises the right of retraction within reasonable time he shall be entitled to have the consideration he paid returned to him subject to corresponding reasonable adjustments which shall be agreed upon by the parties.

(4) A supplier or trader shall indemnify a consumer for injury or loss suffered where a good or item under service for fitness, repair, cleaning or otherwise suffers such detriment so as to diminish its value or render it wholly or partly unfit for the ordinary or normal use it is intended for.

31.-(1) In the service of technology transfer contract, the purpose of which is the repair of any type of goods, there shall be an implied obligation on the part of the service or technology supplier to use at his expense new spare parts, accessories, paraphernalia or peripherals fit for the goods involved without prejudice to the freedom of the parties to expressly agree otherwise.

Implied
contract terms

(2) Where the supplier of service or technology does not comply with subsection (1), a consumer shall be entitled to indemnity and such other redress including the supplier of services or technology substituting, without extra charge, the components, spare parts, paraphernalia, accessories or peripherals involved therein.

Cancellation
and variation of
contracts

32.-(1) A consumer may request cancellation of an agreement or a reduction of the price, without prejudice to being indemnified for injury or loss, where a technology, good or service which is the subject of the contract has concealed faults, defects or deficiencies that make it unfit or diminish its quality and usefulness below the standards normally expected from it to such an extent that, if previously known to the consumer he would not have purchased the same *or* would have paid a lower price for it.

(2) (a) A consumer shall be entitled, in addition to indemnity for consequential injury or loss, to_

- (i) free replacement of the technology;
- (ii) repair of the goods;
- (iii) adjustment of the technology, or
- (iv) free rendering of the service for a reasonable term; and

(b) where (ii), (iii) or (iv) is not possible, to its replacement or to the return of the amount paid.

(3) Subsection (2) shall apply where

(a) the technology, goods or services which are subject to compulsory standards regarding its quality or efficiency do not comply with the standards;

(b) the materials, elements, substances or ingredients forming or constituting the technology, goods or services do not correspond with the alleged specifications;

(c) a legal standard of fineness of jewellery or gold is lower than that allegedly present;

(d) a technology, good or service has been purchased under a given warranty and within the warranty period a deficiency, poor quality or defect covered by the warranty becomes evident; or

(e) a supplier or trader and the consumer have agreed that the technology, goods or services subject to the agreement should meet certain specifications but which the technology, good or service supplied or rendered does not meet.

(4) A supplier or trader shall replace goods or return the excess money paid, as the case may be, where

(a) after consideration of the permitted tolerance ranges, the net contents of goods are lower than expected or the amount is lower than what is indicated on the package or container; or

(b) the instrument used to measure the contents, quantity, volume or any other standard has been used to the detriment of the consumer or beyond the tolerance ranges permitted in the type of measurement.

Supplier's or
trader's liability

33.-(I) The actions referred to in section 32 above may be brought against any constituent of the distribution chain which sold such technology, goods or services including manufacturer, wholesaler, retailer or trader, all of whom may be severally or jointly liable.

(2) A consumer may cancel a contract, without prejudice to the indemnities he is entitled to, where a supplier or trader of technology, goods or services delays in complying with his obligations under a contract.

(3) (a) Where goods repaired show defects related to the service rendered and attributable to the supplier of the service, a consumer shall be entitled, within sixty (60) days from receipt of the goods or discovery of the defect, whichever is latter, to have it repaired without additional cost within the shortest possible time and in any event within fourteen (14) days; and

(b) this subsection shall not prejudice the consumer's right to proper indemnity for damages.

(4) A supplier shall indemnify a consumer for injury or loss suffered where goods or items under service for fitness, repair, cleaning or otherwise suffers such detriment so as to diminish its value or render it wholly or partly unfit for the ordinary or normal use it is intended for.

Standards and
support service

34.-(I) The supplier or trader of technology, goods or services shall supply or deliver technology, goods or services which shall offer the services or satisfaction legitimately expected by the consumer.

(2) The technology, goods or services shall meet the minimum requirements and relevant standards such as durability, usefulness, safety and viability.

(3) The supplier or trader shall also give the consumer a manual in a language understood by the consumer, receipt or any other document showing the technical characteristics, application of the product or technology, safety precautions relating to the operation or use thereof, the price, and the guarantee period which shall be sufficiently long but not less than six months.

(4) The supplier or trader shall, in transactions concerning products for long use, provide maintenance, after sale services and guarantee or warranty to the consumer.

35.-(1) A supplier or trader of a technology, goods or services shall provide consumers with true, sufficient, clear and timely information on-

(a) goods including whether they are genetically modified or not; and

(b) services offered, to enable consumers to make proper, informed and reasonable choices.

(2) A manufacturer or producer shall

(a) label all products in a manner that is legible, indelible and where applicable in bold letters and in ordinarily understandable language or dialect of a consumer; and

(b) label every genetically modified product.

(3) A manufacturer, producer, assembler or packer shall clearly indicate his name, postal and physical address, the contents, ingredients and the expiry date of the products in legible, distinct characters and in a contrasting colour to the background colour.

(4) The supplier or trader of technology, goods or services shall provide technology, goods or services that meet Malawi Standards.

36.-(1) A supplier or trader of technology, goods or services shall provide a consumer with a contract, receipt, ticket, invoice, business record or any other document that embodies or evidences the transaction unless this requirement is expressly excluded by this Act or any other written law.

(2) In the event that the technology, goods or services are not delivered, supplied or performed upon the execution of the transaction or upon the sale, the contract, receipt, ticket, invoice, business, record or document shall indicate the date and place where delivery, supply or performance is to take place and the consequences of any failure or delay.

Consumer
information on
standards

Supplier or trader to
provide the consumer
with receipt, invoice,
etc

Price to be displayed on goods, etc.

(3) In the supply of technology, goods or services the contract, receipt, ticket or invoice shall indicate the material components, spare parts, accessories, paraphernalia or peripherals to be used, price thereof, the cost of manpower or labour as well as the terms under which the supplier undertakes to provide such technology or service.

Particulars or labels on goods to be in official language

37. (1) The supplier or trader of technology, goods or services shall indicate clearly in local currency and exhibit to the public the price of any technology, goods and services, unless an express exemption applies under any written law.

(2) The price or any technology, goods or services shall include the actual price as well as any duty, tax, charge, fees or levy the consumer is liable to pay.

Certain words to be used to indicate warranty

38. A supplier or trader of technology, goods or services shall ensure that the particulars shown on the goods or their labels, packages or in advertisements and any information or announcements relating to the supply of a technology, goods or services is expressed in recognized official language, legal tender, and in generally accepted international, national or local measuring units.

39. A person shall only use the terms "guarantee" or "warranty" or any other equivalent term, to indicate clearly and accurately the extent of the warranty, as well as the conditions, manner, duration and place in which they can be enforced by a consumer.

Warning about harmful technology and goods

40.-(I) A supplier or trader of consumer technology or goods which are harmful or hazardous to human health or the environment shall put easily noticeable instructions and warning on the technology or goods so that the consumer may use them under highest possible safety conditions.

(2) (a) The supplier or trader of dangerous technology, goods or services shall, provide instructions and put a clearly visible and prominent warning on the technology, goods or services;

(b) Paragraph (a) above shall not prejudice the supplier's obligation to take corresponding safety measures or to conduct his activities with due diligence and care as may be required under this Act or any other written law.

(3) A supplier or trader who, after the introduction of technology, goods or services into the market becomes aware of the existence of unforeseen health hazards or risks, shall communicate as soon as possible to the relevant authority and inform consumers of the existence of such hazards or risks.

(4) The supplier or trader of technology, goods or services concerned shall bear the costs of giving notice to consumers and the

notice shall be given through the most effective and appropriate means to ensure full and timely dissemination of the information about the risks that such technology, goods or services might cause to the consumers.

(5) Subsection (4) shall not exempt the supplier or trader from his liability for the damage actually caused by the technology, goods or services,

41.-(I) The Council shall take all necessary steps for the full, timely and faithful compliance with the obligations set forth in section 40.

Remedies for
harmful
technologies and
goods

(2) Where it is verified in an appropriate laboratory that technology or goods have a material defect or deficiency or constitutes a material hazard or risk, even under proper use, the supplier or trader thereof shall, without prejudice to the liabilities that may have arisen, withdraw the same from the market and substitute or replace the same at his own expense.

(3) Where a supplier or trader fails to proceed according to subsection (2) he shall, within a reasonable period, return to a consumer the consideration paid for the technology, goods or services.

(4) A consumer shall show the supplier or trader the technology, goods or services as well as its package or other means of proving that the consumer purchased or lawfully availed himself of the same.

(5) The Council shall cause the immediate withdrawal of a technology, goods or services from the market and ban the circulation thereof where the hazard or toxicity of the technology, goods or services is proven to reach levels considered harmful or dangerous to public health or where it is reasonably foreseeable that the technology, goods or services are capable of causing harm or danger to the public.

(6) The trader or supplier of the technology, goods or services which cause harm or danger shall be liable for the damage caused and bear the expenses of withdrawing the technology, goods or services from the market.

Offence and
penalty

42. Any supplier or trader who contravenes any provision under this Part shall be guilty of an offence and upon conviction, liable to a fine of K500, 000 and to imprisonment for five (5) years.

PART VII - ADVERTISING

43. Every supplier or trader of technology, goods services shall provide a consumer with true, adequate, clear and prompt information on the technology, goods and services offered, so that the consumer can make a proper and informed choice.

Supplier or trader
to provide true
information

Advertisement to be truthful

44.-(I) An advertiser shall ensure that an advertisement (a) conforms to rules of decency, sincerity and truth;

(b) does not exploit superstition, ignorance or fear; and

(c) is distinct in whatever *form* it takes.

(2) Any advertiser who puts an advertisement that constitutes a false or misleading offer or promotion of technology, goods, activities or services shall be guilty of fraud.

(3) For the purposes of this section, false or misleading advertising includes any type of business information or communication using text, dialogue, sounds, images or descriptions which can directly or indirectly, expressly or by omission, lead a consumer to mistake, misunderstand or confuse

(a) the geographic, business or other origin of the *offered* goods or the place *for* the rendering of services agreed upon or the technology used;

(b) the components or ingredients of goods offered, or the percentages of the same used therein;

(c) the benefits or repercussions of the uses or hiring such technology, goods or services;

(d) the basic characteristics of the goods to be sold or the technology to be supplied or the services to be rendered, such as size, quality, usefulness, durability or any other standard deemed reasonable and indispensable or a normal dealing relating to such technology, goods or services;

(e) the date *'of* manufacture or useful life of the technology or goods,

(f) the terms of the warranties and guarantee as offered;

(g) the official or private, domestic or foreign recognition, approvals or distinctions or licences, such as patents, trademarks, medals, awards, prizes or diplomas;

(h) the price of the offered technology, goods or services, the terms of payment and the cost of the credit; or

(i) any other particular material to the transaction involving the technology, goods or services.

Abusive advertising prohibited

45.-An advertiser shall not use abusive advertising.

Duration of advertisement necessary in promotional sales, etc

46.-(I) An advertiser shall, in the case of promotional services, sales or special *offers*, indicate in the respective advertisement the duration thereof or, as the case may be, the nature or volume of the technology, goods or services *offered*, as well as the general conditions, warranties, guarantee and terms of the proposed business.

(2) Where no duration is fixed, nor the nature or volume of the technology, goods or services determined, the sale, promotion or offer shall be understood to extend for a maximum duration of thirty (30) days from time of the last announcement.

(3) Where the advertiser of technology, goods or services in promotion, sale or special offer fails to comply with the advertisement, a consumer may

(a) take necessary steps to compel the supplier or trader to comply with the obligation according to the general law of contract;

(b) accept another technology or goods or the rendering of an equivalent service; or

© cancel the contract if there has been an advance payment by the consumer.

47.-(1) Where abusive advertising results in loss to a consumer, the consumer shall be entitled to claim compensation from the offer or, or advertiser and the compensation shall in no event be less than the balance between the price of the technology, goods or services under promotion or sale and its regular or ordinary price or cost of replacement or repair.

Consumer to be compensated

(2) Where the statements made in the advertisement are considered false or misleading to consumers, the Council shall order an amendment of –the content and such amendment shall be announced at the expense of the advertiser through the same media used to disseminate the false or misleading message.

(3) The advertiser shall bear the burden of proving the truth of the statements contained in the advertising material.

48. Any person who contravenes any provision under this Part shall be guilty of .an offence and upon conviction, liable to a fine of K500, 000 and to imprisonment for five years.

Offence and penalty

PART VIII-MEASURES FOR CONSUMER REDRESS AND MECHANISMS

49.- (1) The defence, promotion or enforcement of rights under this Act or any other written law shall be exercised or conducted through individual or collective mediation, negotiation, arbitration or litigation.

Representative consumer or class actions

(2) Collective mediation, negotiation, arbitration or litigation may be conducted where collective or diffuse interests or rights are involved.

(3) Under “collective or diffuse interest” means supra-individual rights or interests having an indivisible nature to which undetermined individuals are entitled.

(4) Registered consumer associations shall be lawfully entitled to act in judicial or administrative tribunals in the collective enforcement or defence of the rights that this Act or any other written law vest in a consumer; and they may represent consumers in such tribunals.

(5) The decisions rendered in collective procedures shall have general effect and accrue to all consumers except where any such decision is dismissed for want of proof in which event any other consumer having an interest in the matter may bring a new action on the basis of facts and claims arising from the same transaction.

Subordinate courts to have jurisdiction over consumer claims

50. The subordinate courts shall

- (a) have jurisdiction over consumer protection claims;
- (b) be available and accessible to all consumers in order to provide simple, speedy, inexpensive and understandable justice; and
- (c) have the power to order alteration, modification, reform, rescission or reformulation of consumer contracts and transactions.

Funding for the subordinate Courts

51. Local Authorities shall allocate funds to the subordinate courts for the disposition of the consumer protection claims.

Remedies and sanctions

52.-(I) The subordinate courts shall have and exercise penal and remedial powers provided under this Act or any other written law.

(2) The subordinate court may under this Act or any other written law give the following remedies to a consumer

- (a) cancellation, rescission or revision of a contract or its clauses;
- (b) damages and interests; or
- (c) fine the guilty party.

(3) A subordinate court may

- (a) order the destruction of offensive technology or goods; (b) decide upon the prohibition of the sale or supply of technology, goods or services; or
- (c) order the withdrawal of the same from the market, within a specified period.

Jurisdiction in respect of persons and causes of action

53.-(1) Subject to this Act, a subordinate court shall have jurisdiction in respect of

- (a) any person who resides or carries on business or is employed within its area;
- (b) any person in respect of any cause of action that arose wholly within its area;

(c) any person, whether or not he resides, carries on business or is employed within its area, if he appears before the court and does not object to its jurisdiction; and'

(d) any person in respect of any proceedings incidental to any action instituted in the court by that person.

54. For the avoidance of doubt, this Act shall be regarded as complementary to the process of ensuring and enhancing laws regulating or touching on consumer protection.

Relationship
between this
Act and other
laws

PART IX-MISCELLANEOUS

55.-(1) any person who contravenes or fails to comply with any provision of this Act or any regulations made hereunder shall be guilty of an offence.

Offence and
penalty

(2) A person guilty of an offence under this Act or regulations made hereunder for which no specific penalty is provided shall be liable to a fine of K500,000 or where applicable to an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for five (5) years.

56.-(1) The Minister may, in consultation with the Council, make regulations generally for the better carrying into effect the provisions of this Act.

Regulations

(2) Without prejudice to the generality of the foregoing, the Minister may make regulations to fees to be paid by the complainants.

(3) The Chief Justice may in consultation with the Minister make regulations to-

(a) prescribe the manner in which complaints to the subordinate courts may be made;

(b) prescribe, the monetary jurisdiction and ceilings for matters which may be tried in subordinate courts;

(c) prescribe the procedure of subordinate courts in matters of consumer protection;

(d) prescribe forms for pleadings at subordinate courts in matters of consumer protection; and

(e) prescribe the sessions of the subordinate courts to facilitate access as well as to ensure expeditious determination of matters.

Passed in Parliament this fourth day of August, two thousand and three.

R. L. GONDWE
Clerk of Parliament