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(b) publish that document in such manner as it thinks fit.

(4) The Tribunal may exclude from what it publishes



(3) In the case of an appeal against a determination to

- 2.** In this Act —
- “Board” means the Board of Commissioners appointed under section 5(1)(a);
- “business” —
- (a) means the carrying on of any commercial activity for gain or reward; and
- (b) includes —
- (i) manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in goods for gain or reward; and
- (ii) acquiring, supplying and otherwise dealing in services for gain or reward;
- “Commission” means the Fair Trading Commission established under section 3(1);
- “Commissioner” means a member of the Board;
- “document” includes —
- (a) anything on which there is writing;
- (b) a map, plan, drawing or photograph;
- (c) anything from which sounds or visual images are capable of being reproduced;
- (d) any record created, stored, generated, received or communicated by electronic or electromagnetic means;
- “enterprise” means a person, firm, partnership, corporation, company, association or other juridical person, engaged in commercial activities for gain or reward, and includes its branches,

- (j) for the suspension of determinations of the Commission;
- (k) for the suspension of decisions of the Tribunal;
- (l) for the awarding of costs;
- (m) for the Tribunal to reconsider its decision disposing of an appeal where it has reason to believe that the decision was wrongly made because of an administrative error made by a member of its staff;
- (n) for the publication of reports of the Tribunal's decision;
- (o) for conferring on the Tribunal such ancillary powers as the Minister thinks necessary for the proper discharge of its duties.

21.(1) The Tribunal shall decide an appeal by reference to the grounds of appeal set out in the notice of appeal.

Disposal of
appeal

(2) In disposing of an appeal the Tribunal may do one or more of the following —

- (a) confirm the determination appealed against;
- (b) quash that determination;
- (c) vary that determination;
- (d) remit the matter to the Commission for reconsideration and determination in accordance with the directions, if any, given to it by the Tribunal;
- (e) give the Commission directions for the purpose of giving effect to its decision.

20.(1) The Minister may make rules for regulating the exercise of the rights of appeal conferred by this Act and the practice and procedure of the Tribunal.

(2) Without prejudice to the generality of subsection (1), rules may make provision for the following—

- (a) about the holding of hearings by the Tribunal including for such hearings to be held in private;
- (b) about persons who may appear on behalf of a party to an appeal;
- (c) setting time limits in relation to anything that is to be done for the purposes of an appeal or for such limits to be set by the Tribunal;
- (d) about fees payable for the filing of notice of appeal with the Commission or for the performance of any other function by the Tribunal.
- (e) for time limits to be extended by the Tribunal;
- (f) conferring powers on the Tribunal to give such directions to the parties to an appeal as it thinks fit for purposes connected with the conduct and disposal of the appeal;
- (g) about withdrawals of appeal;
- (h) placing restrictions on the disclosure of information and documents or for such restrictions to be imposed by the Tribunal;
- (i) about the consequences of a failure to comply with a requirement imposed by or under any rule, including for the immediate dismissal or

(3) The Commission shall have all powers necessary for the performance of its functions and discharge of its duties and without prejudice to the generality of this section, may

- (a) keep under review commercial activities to ensure that practices that may adversely or unfairly affect the interests of consumers and businesses are prevented or terminated;
- (b) take such action as it considers necessary
 - to prevent the abuse of a dominant position by an enterprise;
 - to eliminate anti-competitive practices;
 - and

16.(1) The Tribunal shall, on its own initiative or on the application of a party, refer a question of law arising in a proceeding before it for determination by the Supreme Court.

Reference of question to court

(2) If a question of law arising in a proceeding is referred to the Supreme Court, the Tribunal shall not—

- (a) make a decision to which the question is relevant until the question is determined by the Supreme Court; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the determination of the question by the Supreme Court.

17.(1) The Tribunal may decide on its own procedures, except in so far as its procedures are prescribed by rules under this Act.

Power to regulate procedure not provided for

(2) The Tribunal is to conduct its proceedings without procedural formality but must observe natural justice.

(3) The Tribunal may permit and regulate the use in any proceedings of any telecommunication facility that the Tribunal considers will assist in the determination of an appeal.

18. The Tribunal shall sit at such times and in such places as the Chairperson may direct.

Sittings

19.(1) Subject to subparagraph (2), the Tribunal may, on an appeal, consider any evidence that it thinks relevant, whether or not it was available to the Commission at the time it made the determination appealed against:

Evidence

Provided that the Tribunal gives a party to the appeal sufficient time to adduce evidence in reply.

(2) Rules may make provision restricting the evidence that the Tribunal may consider on an appeal in specified circumstances.

(3) The alternate of a member may, in the event of the absence of that member, act as member and while so acting as a member, has and may exercise and discharge all the powers and duties of that member, respectively.

10. A member of the Tribunal may hold that office concurrently with any other office.

11. The Chairperson shall preside at all sittings of the Tribunal at which he or she is present.

12. The Chairperson and two other members constitute a quorum at any sitting of the Tribunal.

13. No action lies against a member for anything the member may say or do or omit to do while acting in good faith in the intended performance of the functions of a member.

14.(1) The Chairperson of the Tribunal may appoint as special adviser for a proceeding, a person whose specialised knowledge or experience is such that he or she will be able to assist the Tribunal in that proceeding.

(2) A special adviser appointed under subparagraph (1) may sit with the Tribunal and assist at its request but is not a member.

15.(1) The Tribunal shall have regard to any direction concerning the policies of the Government given to the Tribunal by the Minister.

(2) The Minister shall not give a direction to the Tribunal in respect of an appeal before the Tribunal or a direction that would derogate from the duty of the Tribunal to act judicially.

(ii) to consumers, general information with respect to the rights and obligations of persons that affect the interests of consumers; and

(f) to assist a national body in developing and promoting the observance of standards of conduct for the purpose of ensuring good business practice.

Appointment of Board

5.(1) The President upon the advice of the Minister appoints—

- (a) a Board comprising 5 Commissioners, and the Chief Executive Officer who shall be an ex officio member of the Board; and
- (b) the Chairperson of the Board from among the Commissioners appointed under paragraph (a).

(2) The Commissioners appointed under subsection (1)(a) shall be persons from the public and private sector appointed by virtue of their qualifications and experience in law, economics, accountancy or commerce.

Term of office

6.(1) Every Commissioner shall, subject to subsections (2) and (3) be appointed for a term of 3 years.

(2) A Commissioner may be re-appointed.

(3) A Commissioner may resign from office at any time by giving not less than 28 days notice in writing.

Disqualification

7. A person shall not be appointed as a Commissioner if he or she—

- (a) has in terms of a written law in any country—

- (a) the member dies;
- (b) the member's term of office expires;
- (c) the member resigns from office under paragraph 5;
- (d) the member is convicted of an offence; or
- (e) the member is removed from office under paragraph 6.

8.(1) Where the Minister is satisfied that—

- (a) a member is absent or temporarily incapable of performing the functions of a member; or
- (b) the office of a member is vacant,

Temporary member

the Minister may appoint a person to act in the place of that member during the period of absence or incapacity or until the vacancy is filled.

(2) An acting member appointed under this paragraph has the powers, duties and entitlements of a member.

(3) An appointment under this section and an act done while a person is acting as a member of the Tribunal shall not be questioned in any proceeding on the grounds that the occasion for the appointment had not arisen or had ceased.

9.(1) The Minister may appoint a person to be the alternate of a specified member of the Board and may terminate the appointment at any time.

Alternate member

(2) The alternate of a member may resign the office of alternate member by notice in writing delivered to the Minister.

- (a) a Chairperson who shall be an Attorney-at-Law; and
- (b) 3 other members who shall have knowledge and experience in economics, business or consumer affairs.

(2) The Tribunal appoints a Secretary who, in addition to any other duties conferred on him or her shall be responsible for convening all sittings of the members.

Appointment **3.** The Minister responsible for Trade shall appoint the members and cause their names to be published in the *Gazette*.

Duration of office **4.(1)** A member holds office for such term as is specified in the member's instrument of appointment.

(2) A member is eligible for reappointment.

Resignation from office **5.** A member may resign his or her office by giving not less than two months notice in writing.

Removal from office **6.** The Minister may remove a member from office if he or she is satisfied that —

- (a) the member is permanently incapable of performing his or her duties;
- (b) the member has engaged in dishonourable conduct;
- (c) the member is incompetent; or
- (d) the member has neglected his or her duty.

Vacancy in office **7.** The office of a member of the Tribunal becomes vacant if —

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to, or arrangement or composition, with his or her creditors which has not been rescinded or set aside;

(b) has been convicted —

(i) in Seychelles, of a criminal offence involving fraud or dishonesty; or

(ii) outside Seychelles, of an offence which, if committed in Seychelles, would have been an offence involving fraud or dishonesty.

8.(1) The President may remove a Commissioner from office upon being satisfied that the Commissioner—

Removal from office

(a) is for whatever reason, incapable of performing the functions of a Commissioner;

(b) has neglected the duty of a Commissioner or has engaged in misconduct; or

(c) has been absent, without leave of the Board, from 3 consecutive meetings of the Board.

(2) A Commissioner unless he or she resigns under section 6(3) or is removed from office under this section, continues in office until a successor comes into office, notwithstanding that his or her term has expired.

9.(1) Where a vacancy occurs in the office of

Filling of vacancies

Commissioner, the President upon the advice of the Minister, shall appoint a person to replace the Commissioner.

(2) A person appointed under subsection (1) shall hold office for a term of not more than 3 years.

Commission for the purpose of investigation into.....

.....

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(State briefly the subject matter of investigation)

to be held at.....on the..... day of.....at.....o'clock and to give evidence concerning the matters herein questioned; (if the person is summoned to produce any documents, add) and to bring with you and produce at such time and place (specify the documents, time and place).

Dated this.....day of.....

.....
**Commissioner
Fair Trading Commission**

SCHEDULE 2

(Section 44(4))

THE APPEAL TRIBUNAL

Interpretation

- 1. In this Schedule
“member” means a member of the Tribunal;
“Secretary” means the Secretary of the Tribunal appointed under paragraph 2(2);

2.(1) The Tribunal consists of—

Composition

is liable in damages for any loss caused to any other person by such conduct.

(2) An action under subsection (1) may be submitted before the Commission at any time within 3 years of the date that the cause of action arose.

Contempt of Commission

56. A person who insults, interrupts or otherwise commits any contempt of the Commission commits an offence and is liable on conviction to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

Regulations

57.(1) The Minister may make regulations for giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations—

- (a) for amending a Schedule;
- (b) for prescribing the form under this Act;
- (c) for fees or charges —
 - (i) for applications and appeals;
 - (ii) in connection with services given under this Act.

(3) Regulations made under subsection (1) may provide that any person who contravenes them commits an offence and is liable on conviction to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years.

SCHEDULE 1 *(section 33(4))*

FORM OF SUMMONS TO A WITNESS

To (AB name of person summoned; and his or her address)

You are hereby summoned to attend before the Fair Trading

communication or information whatsoever, which relates to or which has come to the knowledge of that Commissioner in the course of his or her duties under this Act.

(2) A Commissioner who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years.

13.(1) The Board may meet at such times as the Chairperson may determine.

Meetings

(2) The decision of the majority of the Commissioners present and voting at any meeting of the Board is considered to be the decision of the Board and, in the event of an equality of votes, the Chairperson shall have a casting vote.

(3) No act, decision or proceeding of the Board shall be questioned on account of any vacancy in the membership thereof, or on account of the appointment of any Commissioner being defective if, the act was done or authorised or the decision was taken or the proceeding took place by or in accordance with a majority vote of the persons who at the time were entitled to act as members.

14.(1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Chief Executive Officer appointed under section 20.

Seal

(2) The affixing of the seal shall be authenticated by any Commissioner or one other person authorised in that behalf by a resolution of the Board.

(3) A document purported to be under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be deemed to have been executed or issued, as the case may be, without any further proof, unless the contrary is proved.

15. Three Commissioners shall constitute a quorum for any meeting of the Board.

Quorum

Destruction of records

51.(1) A person which destroys or alters any document which that person is required to produce to the Commission, or causes such document to be destroyed or altered commits an offence and is liable —

- (a) where the person is an individual, to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both; and
- (b) where the person is a person other than an individual, to a fine not exceeding 400, 000 rupees.

(2) Where the person referred to in subsection (1) is a person other than an individual, every director or officer of that entity is severally liable to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both, unless the director or officer can prove that he or she took all necessary and proper means to prevent such document from being destroyed or altered.

Giving false or misleading information to Commission

52. A person who gives to the Commission or an authorised officer any information which he or she knows to be false or misleading commits an offence and is liable to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

Failure to comply

53.(1) A person which refuses or fails to comply with a direction or order of the Commission commits an offence and is liable —

- (a) where the person is an individual, to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both.
- (b) where the person is a person other than an individual, to a fine not exceeding 400,000 rupees.

relating to consumer protection, fair competition and other written la .1(i)-h1tily37.1(1w54.2(1)7

(2) A person referred to under subsection (1) who contravenes that subsection commits an offence and is liable, upon conviction to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

PART IV - FINANCES OF COMMISSION

Funds **27.(1)** The funds of the Commission consist of—

- (a) moneys appropriated by the Appropriation Act and paid to the Commission; and
- (b) moneys lawfully charged by the Commission.

(2) The funds of the Commission may be applied by the Commission—

- (a) in payment of—
 - (i) expenses incurred by the Commission in the performance of its functions; and
 - (ii) such remuneration and allowances due to the Commissioners, the staff of the Commission and any experts retained by the Commission; and
- (b) to create any reserves determined by the Commission.

Accounts and audit **28.(1)** The financial year of the Commission shall be the calendar year.

(2) The Commission shall keep proper accounts and other relevant records in the form and manner approved by the Auditor General.

(3) Article 158 of the Constitution shall apply in respect of the auditing of the accounts of the Commission.

PART VIII - APPEAL FROM TRIBUNAL

45.(1) A party aggrieved by a decision of the Tribunal may appeal against the decision to the Supreme Court.

Appeal to Supreme Court

(2) An appeal shall be prosecuted in the manner provided by rules made by the Chief Justice.

46.(1) On appeal, the Supreme Court may—

- (a) affirm, reverse, amend, alter an order or direction of the Tribunal;
- (b) remit the matter to be further determined by the Tribunal with its opinion on the matter; or
- (c) make such orders as it thinks fit.

Powers of Supreme Court on appeal

47. An appeal shall not operate as a stay of an order or direction given by the Tribunal, except an order imposing a financial penalty on an enterprise.

Stay of execution on appeal

PART IX - MISCELLANEOUS

48. Any person performing functions under this Act shall be deemed to be a public officer for the purposes of the Public Officers (Protection) Act and of sections 372 and 373 of the Penal Code.

Liability Cap 192 Cap 158

49. A person who, in any manner, impedes, prevents or obstructs any investigation by the Commission or any authorised officer in the execution of an inquiry commits an offence and is liable to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years or to both.

Obstruction of investigation

50. A person who obstructs the execution of a warrant issued under section 34(2)(b) commits an offence and is liable on conviction to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years or to both.

Obstruction of execution of warrant

of its establishment, issue procedural rules that shall govern the conduct of hearings before the Commission.

(2) In formulating and issuing the procedural rules, the Commission shall have regard—

- (a) to the principles of natural justice;
- (b) the need for fairness between the parties; and

Commission, which may retain it, taking reasonable care to ensure that it is preserved, until the conclusion of the investigation.

(8) Where a book, document or article has been seized under subsection (2), a magistrate may on the application of an interested party order that the book, document or article be returned to the person from whom it was seized, or the person who is otherwise legally entitled thereto, if the magistrate is satisfied that the book, document or article will not be required for the purposes of the investigation.

(9) The person from whom any book, document or article is seized under subsection (2) is entitled at all reasonable times, and subject to such reasonable conditions as may be imposed by the Commission, to inspect the book, document or article and, in the case of a book or document, to obtain a copy of it.

(10) The Commission shall be given at least 7 days notice of an order made under subsection (8).

Copies of
document or
book of account

35. Where a document or book of account has been seized, inspected or examined by an officer of the Commission under section 34, the officer may make or cause to be made one or more copies of it, and a document purporting to be certified by the officer to be a copy made pursuant to this section is admissible in evidence and has the same probative value as the original document.

Termination of
investigation

36.(1) The Commission may, at any stage, terminate an investigation where it is of the opinion that the matter being investigated does not justify further investigation, and shall make a report in writing stating the reasons for the termination.

(2) A report made under subsection (1) shall be submitted to the Minister within 3 months of the termination of the investigation.

- (d) to compel the production of such books, records, papers and documents as it may consider necessary or proper for any proceeding, investigation or hearing held by it;
- (e) to examine any documents produced;
- (f) to require that any document submitted to the Commission be verified by affidavit;
- (g) to seize documents;
- (h) to adjourn investigations;
- (i) to make test purchases;
- (j) to inspect goods; and
- (k) to do all necessary and proper acts in the lawful exercise of its powers or the performance of its functions.

(2) The Commission shall have the power to hear orally a person who—

- (a) in its opinion will be able to furnish any information required by it; or
- (b) will be affected by an investigation or hearing.

(3) The Commission shall hear a person under subsection (2)(b), if the person has made a written request for a hearing showing that he or she is an interested party likely to be affected by the result of the investigation or hearing, or that there are particular reasons why he or she should be heard orally.

(4) A summons for the attendance of a witness or other

persons or for the production of documents for the purpose of an investigation may be made in the form specified in Schedule 1.

(5) A summon shall be signed by one of the Commissioners and may be served personally or by registered post.

(6) A person who without lawful or reasonable excuse, fails to attend a hearing or to produce a document or other

(b) evidence of the commission of that offence is to be found in any book, document or article that is likely to be found in a building or place,

the magistrate may at any time issue a search warrant authorising the officer of the Commission named in the warrant to enter and search such building or place specified in the warrant for such book, document or article and to seize and take away such book, document or article.

(3) Where a magistrate is satisfied that the authorised officer has reasonable grounds to believe that a person, in executing the warrant, has been or will be refused access to any premises or document, the magistrate may direct a police officer to take such steps as are reasonably necessary to enter the premises and to enable the warrant to be executed.

(4) The owner, occupier or person in charge of any premises in respect of which an authorised officer enters pursuant to a warrant issued under this section shall provide the officer with all reasonable facilities and assistance in the exercise of his or her powers.

(5) A person who alters or interferes with any book, document or article seized under this Act commits an offence and is liable on conviction to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years or to both.

(6) The officer of the Commission referred to under subsection (2) is not personally liable for any loss or damage arising from the execution of a search warrant under this section.

(7) Where the officer has seized any book, document or article under subsection (2), he or she shall take it to the