

附 錄

一、香港消費者委員會條例

CONSUMER COUNCIL ORDINANCE

To incorporate the Consumer Council, to define its functions and powers, to negative personal liability of members and employees for the Council's or its committees' acts or omissions, and for connected purposes.

[15 July 1977] L.N.167 of 1977

PART I PRELIMINARY

1. Short title

This Ordinance may be cited as the Consumer Council Ordinance.

2. Interpretation

In this Ordinance, unless the context otherwise requires –

“Council” means the Consumer Council incorporated by section 3(1);

“financial year” means each period of 12 months ending with 31 March;

“member” means a member of the Council.

PART II INCORPORATION AND POWERS

3. Incorporation of Consumer Council

(1) The Consumer Council existing at the commencement of this Ordinance is hereby created a body corporate consisting of the persons who from time to time hold office 25 members of the Council.

(2) The Council shall have perpetual succession and a common seal and shall be capable of suing and being sued and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

(3) The Council shall continue to be known in the Chinese language as “消費者委員會”

4. Functions of Council

(1) The functions of the Council are to protect and promote the interests of

consumers of goods and services and purchasers, mortgagors and lessees of immovable property by —

- (a) collecting, receiving and disseminating information concerning goods, services and immovable property;
- (b) receiving and examining complaints by and giving advice to consumers of goods and services and purchasers, mortgagors and lessees of immovable property;
- (c) taking such action as it thinks justified by information in its possession, including tendering advice to the Government or to any public officer,
- (d) encouraging business and professional associations to establish codes of practice to regulate the activities of their members;
- (e) undertaking such other functions as the Council may adopt with the prior approval of the Governor in Council.

(2) The Governor may by notice in writing to the Council declare any goods, services or immovable property or class of goods, services or immovable property to be outside the scope of the Council's functions under subsection (1).

(3) In subsection (1) and in section 5(2)(c). "goods and services" does not include goods and services which are —

- (a) supplied by —
 - (i) the Government, the Urban Council or the Regional Council; or
(Amended 39 of 1985 s. 60)
 - (ii) a body mentioned in the Schedule; or
- (b) made the subject of a declaration under subsection (2).

(4) The Governor in Council may, by order published in the Gazette, amend the Schedule,

(Amended 5 of 1992 s. 2)

5 Powers of Council

(1) The Council may do such things as are reasonably necessary to enable it to carry out its functions.

(2) Without restricting the generality of subsection (1), the Council may in carrying out its functions —

- (a) acquire, hold and dispose of all kinds of property movable and immovable, and in any manner which it thinks fit;
- (b) enter into any contract;

(c) undertake the testing and examination of goods and services and inspection of immovable property; (Amended 5 of 1992 s. 3)

(d) produce or distribute, by way of sale or otherwise, any publication which is of interest to consumers;

(e) do any thing which it may do under this Ordinance in association or co-operation with any other person or sponsor any other person to do that thing;

(f) charge for the use of any facility or service provided by the Council;

(g) with the prior approval of the Governor, become a member of or affiliate to any international body concerned with consumer matters.

6. Membership of Council

(1) The Council shall consist of the following members —

(a) a Chairman who shall be appointed by the Governor for a term not exceeding 2 years;

(b) a Vice-Chairman who shall be appointed by the Governor for a term not exceeding 2 years; and (Replaced 28 of 1985s. 2)

(c) not more than 20 other persons each of whom shall be appointed by the Governor for a term not exceeding 2 years; (Replaced 28 of 1989s. 2)

(2) The Chairman, Vice-Chairman and any other member appointed under subsection (1) (c) may be reappointed upon expiry of their respective terms of office, (Amended 28 of 1985s. 2)

(3) The Chairman, Vice-Chairman and any other member appointed under subsection (1) (c) may at any time — (Amended 28 of 1985s. 2)

(a) resign his office by notice to the Governor; or

(b) be removed therefrom by the Governor for permanent incapacity or other sufficient cause,

and upon such resignation or removal the term for which he was appointed shall be deemed to have expired.

(4) Where the Chairman, Vice-Chairman or any other member appointed under subsection (1) (c) is precluded by temporary incapacity or other cause from exercising his functions as such for any period the Governor may appoint another person to act in place of the Chairman, Vice-Chairman or other member during such period with all such rights, powers, duties or liabilities as if he had been appointed under subsection (1). (Amended 28 of 1985s. 2)

(5) (Repealed 28 of 1985s. 2)

(6) Where any question arises under subsection (3) or (4) as to whether any incapacity or cause exists or whether any incapacity is temporary or permanent or any cause sufficient, the decision of the Governor thereon shall be final.

7. Meetings of Council

(1) Meetings of the Council shall be held at such times and places as the Council, the Chairman or in his absence, the Vice-Chairman may from time to time appoint.

(2) The following procedural provisions shall apply to every meeting of the Council and subject thereto the Council may regulate its own procedure —

- (a) at meetings of the Council 11 members shall form a quorum; (Repealed 28 of 1989s. 3. Amended 5 of 1992s. 4)
- (b) the Chairman or in his absence, the Vice-Chairman shall preside or, if both are absent or disqualified under section 9 (c), the members present shall appoint one of their number to preside;
- (c) every question shall be determined by a majority of votes of the members present and voting thereon;
- (d) in the event of an equality of votes the member presiding shall have a casting vote in addition to his ordinary vote.

(Amended 28 of 1985s. 3)

8. Committees

(1) The Council may appoint committees and may delegate to them the exercise and performance of any of its powers and functions except this power of delegation.

(2) Persons who are not members of the Council are eligible for appointment to committees.

(3) Subject to the terms of any delegation by the Council, every committee —

- (a) may exercise and perform the delegated powers and functions with the same effect as if it were the Council itself.
- (b) shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary;
- (c) may regulate its own procedure.

9. Disclosure of member's interest

If a member of the Council, or of any committee of the Council, has a direct or indirect commercial interest in any matter under discussion at a meeting of the Council or of the committee, being an interest greater than that which he has as a member of the general public, the following provisions shall apply —

- (a) he shall disclose the nature of his interest at the meeting;
- (b) the disclosure shall be recorded in the minutes;
- (c) where the disclosure is made by the member presiding, he shall vacate the chair during the discussion;
- (d) the member (including one who has vacated the chair under paragraph (c)) shall, if so required by the member presiding, withdraw from the meeting during the discussion and shall not in any case, except as otherwise determined by the member presiding, vote on any resolution concerning the matter or be counted for the purpose of establishing the existence of a quorum.

10. Appointment of staff and advisers

(1) Subject to subsection (4), the Council shall appoint a person to hold the office of Chief Executive. (Amended 28 of 1985s, 4)

(2) The Council may appoint such other employees as it thinks fit and, subject to subsection (4), determine all matters relating to their remuneration and terms and conditions of appointment or employment.

(3) The Council may engage the services of technical and professional advisers in such manner and on such terms and conditions as it thinks fit.

(4) The Council shall obtain the prior approval of the Governor to —

- (a) any appointment proposed to be made under subsection (1) and the terms and conditions thereof
 - (b) the suspension or dismissal of the Chief Executive;
 - (c) the salary or salary scale (including allowances and other pecuniary benefits) and conditions of employment applicable to the Chief Executive and every other employee or class of employee, and any variation thereof.
- (Amended 28 of 1985s. 4)

(5) No person shall be employed by the Council otherwise than on the salary or salary scale or on the conditions of employment applicable to that person approved by the Governor under subsection (4).

11. Documents of Council

(1) The Council may make and execute all such documents as may be expedient for or conducive to the exercise and performance of its powers, functions and duties.

(2) The fixing of the seal of the Council to any document shall —

- (a) be authorized by resolution of the Council; and

(b) be authenticated by the signatures of any 2 members authorized by resolution of the Council, either generally or specially, to act for that purpose.

(3) Any document purporting to be duly executed under the seal of the Council shall, unless the contrary is proved, be considered to be duly executed.

(4) Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be in the form of a deed may be entered into or executed on behalf the Council by any person generally or specially authorized by the Council for that purpose.

PART III

FINANCIAL

12. Resources of Council

(1) The Governor may, out of money appropriated for the purpose by the Legislative Council, authorize payment to the Consumer Council of such amounts as he thinks fit.

(2) The resources of the Council shall consist of—

- (a) all money received by the Council pursuant to subsection (1);
- (b) money paid to the Council by way of donations, fees, subscriptions, rent and interest;
- (c) all other money and property, including accumulations of income, received by the Council for its purposes.

13. Borrowing powers

The Council may, with the approval of the Financial Secretary, borrow or otherwise raise money and charge all or any part of its property as security therefor.

14. Investment of funds

All money of the Council that is not immediately required shall be invested—

- (a) on fixed deposit in any bank or savings bank approved by the Financial Secretary, either generally or in any particular case, for the purpose; or
- (b) in such other forms of investment as the Financial Secretary may approve.

15. Estimates

The Council shall in each financial year adopt estimates of income and expenditure for the ensuing financial year and, before a date to be appointed by the

Financial Secretary, send them to the Governor for his approval together with a programme of its proposed activities for the ensuing financial year.

16. Accounts, audit and annual report

(1) The Council shall keep proper accounts and proper records in relation thereto and shall within 3 months after the expiry of a financial year, or such further period as the Financial Secretary may allow, prepare a statement of the accounts of the Council, which statement shall include an income and expenditure account and a balance sheet.

(2) The Council shall, subsection (3), appoint an auditor, who shall be entitled to have access at any time to all books of account, vouchers and other financial records of the Council and to require such information and explanations relating thereto as he thinks fit.

(3) The Council shall obtain the prior approval of the Financial Secretary to any appointment proposed to be made under subsection (2).

(4) The auditor shall, as soon as is practicable, audit the accounts required by subsection (1) and shall submit a report thereon to the Council.

(5) The Council shall within 3 months after the receipt by it of the auditor's report in respect of its accounts for a financial year, or within such further period as the Financial Secretary may allow, furnish—

- (a) a report on the affairs of the Council for that year
- (b) a copy of its accounts therefor, and
- (c) the auditor's report on the accounts,

to the Governor who shall cause the same to be tabled in the Legislative Council.

PART IV GENERAL

17. Council not servant or agent of Crown

The Council is not a servant or agent of the Crown and does not enjoy any status, immunity or privilege of the Crown.

18. Governor may give directions

(1) The Governor may, if he considers that the public interest so requires, give to the Council such directions as he thinks fit with respect to the exercise and performance by the Council of its powers, functions and duties under this Ordinance, either generally or in any particular case.

(2) The Council shall comply with any direction given to it under subsection (1).

19. Protection of members of Council and committees

(1) No member or employee of the Council or of any committee of the Council shall be personally liable for any act done or default made—

(a) by the Council; or

(b) by any committee of the Council,

acting in good faith in the course of the operations of the Council or of the committee.

(2) The protection hereby conferred on members and employees or of a committee in respect of any act or default shall not in any way affect any liability of the Council for that act or default.

20. Prohibition of exploitation of the Council's name for advertisement purposes

(1) No person shall, with a view to promoting or disparaging any goods, services or immovable property or promoting the image of any person, publish or cause to be published any advertisement which either expressly or by implication makes reference to—

(a) the Council;

(b) any committee, member, agent or employee of the Council;

(c) the Council's publication or finding of tests or surveys conducted by or on behalf of the Council; or

(d) any other information published by the Council,

without written consent of the Council.

(2) Any person who contravenes subsection (1) commits an offence and is liable to a fine of \$100,000.

(3) For the purpose of subsection (1) "advertisement" may be constituted by any words, whether written or spoken, or any picture, drawing, visual image, figure or article—

(a) appearing in any publication; or

(b) brought to the notice of the public or any section of the public in any other way.

(Replaced 5 of 1992s. 5)

21. Transitional provisions

(1) All property of whatever kind and whether movable or immovable vested in or belonging to the Consumer Council existing at the commencement of this Ordinance shall as from that date vest in or belong to that Council in its corporate

capacity without any further assurance.

(2) All obligations and liabilities of the said Consumer Council are as from the commencement of this Ordinance the obligations and liabilities of the Council in its corporate capacity.

(3) Where anything has been commenced by or under the authority of the said Consumer Council before the commencement of this Ordinance such thing may be carried on and completed by the Council in its corporate capacity.

(4) Every person who immediately before the commencement of this Ordinance holds an appointment as Chairman, Executive Director or a member of the said Consumer Council is, as from such commencement but subject to the terms of his appointment, the Chairman, Executive Director, or a member of the Council, as the case may be, for the purposes of this Ordinance.

(5) Notwithstanding the definition of “financial year” in section 2 the period between the commencement of this Ordinance and 31 March 1978 shall be deemed to be a financial year.

(6) No stamp duty shall be payable in respect of any transfer of property under this section.

SCHEDULE

Asia Television Limited

China Light and Power Company, Limited

China Motor Bus Company, Limited

The Cross-Harbour Tunnel Company, Limited

Fish Marketing Organization

Hong Kong Air Cargo Terminals Limited

The Hong Kong and Yaumati Ferry Company Limited

Hong Kong Commercial Broadcasting Company Limited

Hong Kong Housing Authority

Hong Kong Telecom International Limited

Hong Kong Telephone Company Limited

Hong Kong Tramways Limited

The Hongkong Electric Company, Limited

Hospital Authority

Hutchvision Hong Kong Limited

Kowloon-Canton Railway Corporation
Kowloon Motor Bus Company (1933) Limited
Mass Transit Railway Corporation
Metro Broadcast Corporation Limited
New Hong Kong Tunnel Company Limited
New Lantau Bus Company (1973) Limited
The “Star” Ferry Company, Limited
Tate’s Cairn Tunnel Company Limited
Television Broadcasts Limited

二、韓國消費者保護法

CONSUMERS PROTECTION ACT

Wholly Amended by Law No. 3921, Dec. 31. 1986

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose) This Act aims to provide for the State, local governments and enterprisers and the roles of consumers and consumers organization in order to protect the fundamental rights and interests of consumers, and also to provide for basic matters necessary for facilitating comprehensively the policy for protection of consumers, and to accomplish thereby the improvement and rationalization of their consuming life.

Article 2 (Definition) For the purpose of this Act,

1. the term “enterprisers” means those who manufacture (including to process and pack; hereinafter the same shall apply), import or sell goods, or furnish services;
2. the term “consumers” means those who use or utilize for their consuming life goods and services furnished by enterprisers, or those who are designated by the Presidential Decree; and
3. the term “consumers organization” means an organization which is organized by consumers in order to protect and• improve the rights and interests of consumers.

Article 3 (Fundamental Rights of Consumers) Consumers shall enjoy the following rights for their security and interests:

1. Right to have their life, body and property protected against any danger and injury caused by all goods and services;
2. Right to be furnished of knowledge and information necessary for selecting goods and services;
3. Right to select freely the other party of transaction, purchasing place, price, conditions of transaction, etc. for using or utilizing goods and services;
4. Right to reflect their opinions in policies of the State and local governments and business activities, etc. of enterprisers, which have an influence on their consuming life;
5. Right to obtain proper compensation for damages sustained due to use or utilization

- of goods and services according to prompt and fair procedure;
6. Right to receive education necessary for carrying on a rational consuming life; and
 7. Right to organize for themselves an organization and act through it in order to protect their rights and interests.

Article 4 (Roles of Consumers) Consumers shall acquire knowledge necessary for improvement of their own security and interests, and at the same time act independently and rationally, and thereby play a positive role in the improvement and rationalization of consuming life.

CHAPTER II DUTIES, etc. OF STATE AND LOCAL GOVERNMENTS

Article 5 (Duties of State and Local Governments) In order to make the fundamental rights of consumers as prescribed in Article 3 realized, the State and local governments shall have the following obligations

1. Enactment of related laws and regulations;
2. Maintenance and operational improvement of necessary administrative organization;
3. Establishment and execution of necessary policy; and
4. Support and encouragement of sound organized activities of consumers.

Article 6 (Prevention of Danger and Injury)

(1) In order to prevent any danger and injury to the life, body and property of consumers due to goods and services under his jurisdiction, the head of the central administrative agency shall determine criteria to be observed by enterprisers with respect to -the following matters:

1. Important contents of goods and services, such as ingredients, content, structure, etc.;
2. Contents and method to be indicated, such as directive matters, cautions, etc., for using or utilizing goods and services; and
3. Other matters as deemed necessary for preventing any danger and injury.

(2) If the head of the central administrative agency determines or modifies the criteria under Paragraph (1), he shall notify it publicly.

(3) The head of the central administrative agency shall examine, inspect or investigate periodically whether or not enterprisers observe the criteria for goods and services under his control, as referred to in Paragraph (1), and if they might inflict any

danger or injury on the life, body and security on property of consumers, he may order enterprisers to remove, withdraw, destroy or ban them. -

- (4) If an enterpriser fails to conform to an order of removal, withdrawal or destruction as referred to in Paragraph (3), the head of the central administrative agency may remove, withdraw or destroy directly them under the conditions as prescribed by the Presidential Decree.

Article 7 (Propriety of Weighing and Standards)

- (1) In order to prevent consumers from sustaining any loss by weighing in transaction with enterprisers, the State shall take measures necessary for weighing goods and services.
- (2) The State shall specify the standards of goods and services in order to accomplish a quality improvement, of goods and rationalization of consuming life, and take measures necessary for disseminating them.

Article 8 (Criteria for Indication)

- (1) If it is required to prevent consumer from taking wrong selection in use of goods or utilizing services due to any indication or package, etc., the head of the central administrative agency shall determine the following criteria for indication on goods and services under his control:
1. Use, ingredients, performance, dimension, date of manufacture and price of goods;
 2. Name, address and telephone number of enterpriser who has manufactured, imported and processed goods;
 3. Method of use, cautions in use and matters of warning;
 4. Period of quality guaranty or the period of validity with respect to goods, such as food or medicine, etc., which are likely degenerated in the course of distribution; and
 5. Agency (including address and telephone number) to settle any complaint against goods or damage against consumers, if any, and method of such report.
- (2) When the head of the central administrative agency determines or changes the criteria for indication under Paragraph (1), he shall notify it publicly.

Article 9 (Making of Criteria for Advertisement)

- (1) In the following cases, the head of the central administrative agency may make criteria concerning contents and method of advertisement for goods and services under his control:
1. Where any wrong or excessive consumption of foodstuff, favorite food or

- medicines may inflict any injury on the life or body of consumers; and
2. Where any wrong use or utilization of industrial products or services may inflict any injury on the life or body of consumers or any damage on their property.
 - (2) When the head of the central administrative agency determines or changes the criteria for advertisement under Paragraph (1), he shall notify it publicly.

Article 10 (Propriety of Transaction)

- (1) In order to protect consumers from unreasonable damage caused by unfair transaction conditions or method enterprisers, the State shall establish and implement a necessary policy.
- (2) The State may designate and notify publicly unreasonable acts of enterprisers, which are deemed likely to prevent a rational selection of consumers and to inflict damages on consumers.
- (3) The State shall take measures necessary for protection of consumers, such as enactment of laws, etc., with respect to special forms of transaction, transaction based on any stipulation, visiting or installment sale, etc.
- (4) The term stipulation” used in Paragraph (3) means contents of a contract provided for in advance by one of the contracting parties for the purpose of concluding many contracts.

Article 11 (Enlightenment of Consumers) The State and local governments shall conduct enlightenment and education on matters, such as knowledge, information, etc. on goods, services and rationalization of consuming life, which consumers should be aware of, so that consumers make a sound consuming life with an independence.

Article 12 (Remedy of Consumers’ Damages)

- (1) The State and local governments shall take necessary measures so as to settle promptly and fairly grievances and damages of consumers.
- (2) The State may lay down by item the compensation criteria for consumers’ damages for the purpose of settling smoothly disputes between consumers and enterprisers.

Article 13 (Establishment, etc. of Testing and Inspection Facilities)

- (1) The State and local governments shall prepare a mechanism and facilities to carry out tests, inspection or investigation on the standards, quality, safety, etc. of goods and services, and if deemed necessary for protection of consumers, or upon a request of consumers, conduct a test, inspection or investigation, publish the results thereof, and take necessary measures for protecting consumers.

- (2) Any enterpriser may furnish information and state his opinion as to a tests inspection or investigation as referred to in Paragraph (1).
- (3) Necessary matters concerning the procedure for a request of test, inspection or investigation, furnishing of information and statement of opinion under Paragraphs (1) and (2) shall be determined by the Presidential Decree.

Article 14 (Inspection, Presentation of Materials, etc.)

- (1) The head of the central administrative agency may, if necessary for enforcement of this Act, have public officials under his jurisdiction to inspect goods, facilities, manufacturing process of goods and other objects of enterprisers, or have enterprisers to make a report on their activities or to present relevant goods or documents, , etc. under the conditions as prescribed by the Presidential Decree.
- (2) Any official conducting an inspection under Paragraph (1), shall show the interested persons a certificate specifying his authority.
- (3) Any official who performs duties as prescribed in this Act, shall not use the details which he learned through the goods or documents as inspected or presented under Paragraph (1), for the purpose other than of enforcing this Act

CHAPTER III DUTIES OF ENTERPRISERS

Article 15 (Cooperation for Protection of Consumers) Enterprisers shall take measures necessary for protection of consumers with respect to goods or services supplies or furnished by them, and cooperate positively with policies of the State and local governments for protection of consumers.

Article 16 (Prevention, etc, of Danger and Injury)

- (1) Enterprisers shall not manufacture, import or sell goods, or furnish services, which are in contravention to the criteria as prescribed in Article 6 (1).
- (2) Enterprisers shall indicate matters falling under Subparagraphs of Article 8 (1), unless it is substantially difficult or impossible to do so.
- (3) Enterprisers shall not violate the criteria for advertisement under Article 9 (1).
- (4) Enterprisers shall not do any act as designated or notified publicly under Article 10 (2).

Article 17 (Establishment of Organization for Damage Compensation)

- (1) Enterprisers shall establish and operate a proper organization to reflect any justifiable opinion or dissatisfaction raised by consumers with respect to goods or

services, and to settle the compensation for damages.

- (2) If it is deemed necessary for facilitating the establishment and operation of an organization for damage compensation under Paragraph (1), the competent Minister may order enterprisers as designated by the Presidential Decree to establish and operate an organization for damage compensation.

CHARTER IV CONSUMERS ORGANIZATION

Article 18 (Activities of Consumers Compensation)

- (1) Consumers organization shall carry out the following activities
1. Recommendation to the State and local governments on a policy for protection of consumers;
 2. Tests and inspection on goods or services, and investigation on conditions or method of transaction;
 3. Investigation and study on problems of consumers;
 4. Education and enlightenment of consumers; and
 5. Consultation and furnishing of information for settlement of consumers' complaints and damages, and induction of autonomous relief of enterprisers.
- (2) If a technical test, inspection or investigation is required in settlement of consumers' complaints as referred to in Subparagraph 5 of Paragraph (1), or a dispute takes place between consumers and enterprisers, the consumers organization shall refer the settlement to the Korea Consumers Protection Center as prescribed in Article 26.
- (3) In a case which is deemed necessary for protection and improvement of rights and interests of consumers as a result of investigation, etc, as referred to in Subparagraph 2 of Paragraph (1), and which is prescribed by the Presidential Decree, the consumers organization may publish the results of such investigation, etc.

Article 19 (Registration of Consumers Organization)

- (1) The consumers organization falling under any of the following Subparagraphs shall be registered with the Economic Planning Board under the conditions as prescribed by the Presidential Decree:
1. Consumers organization which desires to carry out activities as prescribed in Subparagraphs 2 and 5 of Article 18 (1); and

2. Consumers organization which desires to receive a subsidy under Article 20,
- (2) Any consumers organization which desires to register under Paragraph (1), shall have equipment and manpower suitable for its activities.

Article 20 (Grant of Subsidy) If it is deemed necessary for a sound growth and development of consumers organization, the state may grant a subsidy.

CHAPTER V CONSUMERS POLICY DELIBERATION COMMITTEE

Article 21 (Establishment of Deliberation Committee) In order to deliberate a fundamental policy concerning the protection of consumers and the improvement of national consuming life, the Consumers Policy Deliberation Committee (hereinafter referred to as “Deliberation Committee”) shall be established in the Economic Planning Board.

Article 22 (Composition of Deliberation Committee)

- (1) The Deliberation Committee shall be composed of twenty or less members including a chairman.
- (2) The chairman shall be the Minister of the Economic Planning Board, and members shall consist of the heads of the related ministries and agencies, and persons commissioned by the Minister of the Economic Planning Board from among those having expertise pertaining to issues of consumers, representatives of consumers and those representing the economic circle.
- (3) The term of commissioned members other than the heads of the related ministries and agencies among those as referred to in Paragraph (2) shall be three years.

Article 23 (Function of Deliberation Committee) The Deliberation Committee shall deliberate matters of the following ones, which are prescribed by the Presidential Decree:

1. Matters as prescribed in Subparagraphs of Article 5;
2. Establishment of criteria under Articles 6 (1), 8 (1), 9 (1) and 12 (2);
3. Designation and public notice under Article 10 (2); and
4. Other matters of basic policy on the protection of consumers and the consuming life, which are referred to it by the chairman.

Article 24 (Hearing of Opinion) If it is necessary for deliberating matters as prescribed in Subparagraphs of Article 23, the Deliberation Committee may hear the opinions of person having expertise pertaining to issues of consumers, consumers or

enterprisers concerned.

Article 25 (Operational Regulations) Except as provided for in this Act, necessary matters concerning the organization and operation of the Deliberation Committee shall be determined by the Presidential Decree.

CHAPTER VI KOREA CONSUMERS PROTECTION CENTER

SECTION 1 Establishment, etc.

Article 26 (Establishment)

- (1) The Korea Consumers Protection Center shall be established for the purpose of carrying out effectively a consumers protection policy.
- (2) The Korea Consumers Protection Center shall be a juristic person.
- (3) The Korea Consumers Protection Center may establish its branches in proper places with the approval of the Minister of the Economic Planning Board.
- (4) The Korea Consumers Protection Center shall be constituted officially by effecting a registration of establishment in the seat of its principal office.

Article 27 (Articles of Association)

- (1) The Korea Consumers Protection Center shall include the following matters in its articles of association:
 1. Object;
 2. Name;
 3. Matters concerning its principal office and branches;
 4. Matters concerning the fund;
 5. Matters concerning staffs and personnel;
 6. Matters concerning operation of the Board of Directors;
 7. Matters concerning the dispute mediation committee;
 8. Matters concerning activities;
 9. Matters concerning property and accounting;
 10. Matters concerning public notice;
 11. Matters concerning modification of articles of association; and
 12. Matters concerning establishment, revision and repeal of internal rules.
- (2) If the Korea Consumers Protection Center desires to modify articles of association, it shall be authorized by the Minister of the Economic Planning Board.

Article 28 (Activities)

- (1) The Korea Consumers Protection Center shall carry out the following activities:
1. Settlement of complaints and remedy of damages of consumers;
 2. Execution of tests, inspection or investigation on standards, quality, safety, etc. of goods and services, if necessary for protecting consumers;
 3. Study and recommendation on measures relating to the protection of consumers;
 4. Collection and furnishment of various information for rationalization of consuming life;
 5. Education and public relations of consumers;
 6. Comprehensive research and study for improvement of national life; and
 7. Other activities relating to protection of consumers.
- (2) The following matters shall be excluded from objects to be settled by the Korea Consumers Protection Center in carrying out activities as referred to in Subparagraph 1 of Paragraph (1):
1. Remedy of damages caused by supply of goods or services by the State or local governments;
 2. Remedy of damages in a case where a dispute mediation organization corresponding to the consumers dispute mediation committee as prescribed in Section 3 is established separately with respect to a special transaction field as prescribed by other laws; and
 3. Other remedy of damages as prescribed by the Presidential Decree.
- (3) If it is deemed necessary for protection and improvement of consumers' rights and interests as a result of activities as referred to in Subparagraphs 1 and 2 of Paragraph (1), and if it is prescribed by the Presidential Decree, the Korea Consumers Protection Center may publish the results of its activities, unless it is deemed necessary to protect the operational secret of enterprisers or their organization, or for the public interest.

Article 29 (Request for Test and Inspection)

- (1) If the president of the Korea Consumers Protection Center deems it necessary for carrying out activities as prescribed in Subparagraphs 1 and 2 of Article 28 (1), he may request a national or public test and inspection institution for a test and inspection on goods concerned.
- (2) Any institution which has received a request for test and inspection under Paragraph (1), shall comply preferentially with it unless there is any special reason.

Article 30 (Prohibition of Use of Similar Name) Any person other than the Korea Consumers Protection Center shall not use the name as “the Korea Consumers Protection Center” or similar one.

SECTION 2 Officers and Board of Directors

Article 31 (Officers and Term)

- (1) The Korea Consumers Protection Center shall have eight or less directors including a president and an auditor.
- (2) Three of the directors shall be permanent and others, nonpermanent.
- (3) The president shall be appointed by the President upon a proposition of the Minister of the Economic Planning Board from among those who are learned and experienced on issues of consumers.
- (4) Directors shall be appointed by the Minister of the Economic Planning Board upon a proposition of the president from among those who are learned and experienced on issues of consumers.
- (5) The auditor shall be appointed by the Minister of the Economic Planning Board upon a proposition of the president.
- (6) The term of the president and the directors shall be three years, and that of the auditor, two years.

Article 32 (Duties of Officers)

- (1) The president shall represent the Korea Consumers Protection Center, and manage its general activities.
- (2) Directors shall take partial charge of activities of the Korea Consumers Protection Center under the condition as specified in the articles of association, and if the president is absent, a person who is designated by the Minister of the Economic Planning Board from among directors, shall act for him.
- (3) The auditor shall inspect and audit activities and accounts of the Korea Consumers Protection Center.

Article 33 (Board of Directors)

- (1) In order to deliberate and decide important matters of the Korea Consumers Protection Center, the board of directors shall be established in it.
- (2) The board of directors shall be composed of the president and directors.
- (3) The president shall convene the board of directors, and preside over it.

- (4) The auditor may attend the board of directors, and state his opinion.

SECTION 3 Consumers Dispute Mediation Committee

Article 34 (Establishment)

- (1) There shall be established the Consumers Dispute Mediation Committee (hereinafter referred to as “Mediation Committee”) in the Korea Consumers Protection Center.
- (2) The Mediation Committee shall deliberate and decide the following matters:
1. Mediation and decision on consumers’ dispute;
 2. Establishment, revision and repeal of the Consumers Dispute Mediation Regulations; and
 3. Other matters referred to it by the president.
- (3) Necessary matters concerning operation, mediation procedure, etc. of the Mediation Committee shall be determined by the Presidential Decree.

Article 35 (Composition)

- (1) The Mediation Committee shall be composed of seven or less members including a chairman, of whom two members shall be permanent, and others, nonpermanent.
- (2) Members shall be appointed or commissioned by the Minister of the Economic Planning Board upon a proposition of the chairman from among the below enumerated persons:
1. Those who are or were in a position equivalent to or higher than associate professor in a college, university or authorized research institution, and have majored in a field related to protection of consumers;
 2. Those who are or were in a Grade IV or higher position of public official, and have experience of practice in activities for protection of consumers;
 3. Those who are qualified as judge, public prosecutor or lawyer.
 4. Those who are or were in a staff position of a consumers organization; and
 5. Those who are or were in a staff position of an enterpriser or enterprisers organization.
- (3) The chairman shall be appointed by the Minister of the Economic Planning Board from among permanent members.
- (4) When the chairman is unable to perform his duties due to an accident, a member designated by the Minister of the Economic Planning Board shall act for him.

- (5) The term of members shall be three years, and it shall be renewable.
- (6) In order to carry out effectively activities of the Mediation Committee, the expert committees classified by field of activities may be established.
- (7) Matters concerning composition and operation of expert committees as referred to in Paragraph (6) shall be determined by the Presidential Decree.

Article 36 (Guarantee of Members' Status) No member shall be removed from office against his will, unless he is sentenced to a punishment of qualification suspension or more severe one, or he is unable to perform his duties owing to a mental or physical impediment.

Article 37 (Quorum for Decision) A meeting of the Mediation Committee shall make a decision by a vote of four or more members.

Article 38 (Exclusion, Challenge and Evasion of Members)

- (1) Any member of the Mediation Committee shall be excluded from a deliberation and decision on a case claiming a remedy for damages (hereinafter in this Article referred to as "case") in a case falling under any of the following Subparagraphs:
 - 1. Where he or his spouse or ex-spouse becomes a party to the case, or has a relation to the case as a person having a joint right or obligation;
 - 2. Where he is or was a kinship relation with a party of the case;
 - 3. Where he has given testimony or expert opinion on the case; and
 - 4. Where he takes or took part in the case as a representative of a party.
- (2) If there exist circumstances under which it is difficult to expect an impartial deliberation and decision from a member, the party may apply for a challenge to the president. In this case, the president shall decide on the application for challenge without a decision from the Mediation Committee.
- (3) If a member falls under any causes as referred to in Paragraph (1) or (2), he may evade himself from the deliberation and decision on the case.

SECTION 4 Remedy of Damages

Article 39 (Request for Remedy of Damages)

- (1) Consumers may request the Korea Consumers Protection Center for remedy of damages caused by use of goods or utilization of services.
- (2) When the State, local government, consumers organization or enterpriser receives a request for remedy of damages from consumers, the settlement of it may be

entrusted to the Korea Consumers Protection Center.

- (3) In a case where the president has received a request for remedy of damages under Paragraphs (1) and (2), if its contents are judged unsuitable to be settled by the Korea Consumers Protection Center, he shall inform the applicant of the reason, and may discontinue the settlement of the case.

Article 40 (Request for Inspection and Presentation of Materials) If it is deemed necessary for the Korea Consumers Protection Center to confirm facts in settling a case claiming for remedy of damages, the Minister of the Economic Planning Board may entrust employees of the Korea Consumers Protection Center with a request for inspection and presentation of materials under Article 14 (1). In this case, the provisions of Article 14 (2) and (3) shall be applicable to employees of the Korea Consumers Protection Center.

Article 41 (Notification, etc. of Illegal Fact) When the president has confirmed in the course of settlement of a case claiming a remedy of damages, a fact that the interested person violated the laws and regulations, he shall inform it to the interested agency and request to it for a proper measure.

Article 42 (Recommendation of Agreement) The president may recommend the parties of a claim for remedy of damages to agree on compensation for damages.

Article 43 (Mediation)

- (1) If an agreement as referred to in Article 42 is not reached within thirty days after receiving a claim for remedy of damages under Article 39 (1) or (2), the president shall immediately request the Mediation Committee for mediation, and settle the case according to its decision.
- (2) The Mediation Committee may, if necessary for the mediation as referred to in Paragraph (1), seek the advice of the expert committees.
- (3) The Mediation Committee may hear the opinions of the interested persons, consumers organization or competent agency before undertaking mediation under Paragraph (1).

Article 44 (Term of Remedy for Damages)

- (1) When the Mediation Committee receives a request for mediation under Article 43 (1), it shall undertake the mediation within thirty days.
- (2) Notwithstanding the provisions of Paragraph (1), in a case where it is impossible to complete the mediation within the prescribed period due to inevitable circumstances, if it is desirable to extend the term, the Mediation Committee shall

inform the party claiming for remedy of damages, and a person entrusted under Article 39 (2), with the reason thereof and term specified.

Article 45 (Effect of Mediation)

- (1) When mediation is undertaken under Article 43, the president shall promptly notify the parties of the result.
- (2) If the parties accept the mediation within fifteen days after receiving a notification under Paragraph (1), the Mediation Committee shall prepare a mediation paper on which parties shall write and put their name and signatures.
- (3) The contents of the mediation paper as referred to in Paragraph (2) shall have the same effect as a judicial compromise.

Article 46 (Discontinuation of Procedure for Remedy of Damages)

- (1) If one of the parties brings a lawsuit in a competent court during a procedure for settlement of remedy of damages which is taken by the Korea Consumers Protection Center, he may request the Korea Consumers Protection Center to discontinue the settlement of remedy of damages.
- (2) The Korea Consumers Protection Center shall, upon a request as referred to in Paragraph (1) discontinue without delay the procedure for remedy of damages, and notify it to the parties.

SECTION 5 Accounting, Supervision, etc.

Article 47 (Contribution) In order to meet expenses necessary for establishment, equipment, operation and activities of the Korea Consumers Protection Center, the State and local government may contribute to the Korea Consumers Protection Center in the limit of the budget.

Article 48 (Fund)

- (1) In order to appropriate funds to be needed in operation and activities of the Korea Consumers Protection Center, a fund may be established and operated at the Korea Consumers Protection Center.
- (2) The fund of the Korea Consumers Protection Center shall be composed of the contribution of the State and local governments, and that of persons excluding enterprisers or enterprisers organization.
- (3) Matters necessary for use, operation and management of the fund as referred to in Paragraph (1) shall be determined by the Presidential Decree.

Article 49 (Supervision)

- (1) The Minister of the Economic Planning Board shall direct and control the Korea Consumers Protection Center, and he may, if necessary, give instructions or issue an order concerning activities to the Korea Consumers Protection Center.
- (2) The Korea Consumers Protection Center shall prepare each year a plan of activities and a draft budget to obtain approval of the Minister of the Economic Planning Board, and prepare an annual statement of accounts and a statement of auditor's opinion thereto to obtain of the Minister of the Economic Planning Board.
- (3) The Minister of the Economic Planning Board may, if necessary, have the Korea Consumers Protection Center to report matters concerning its activities, accounts and property, or may inspect them.

Article 50 (Fiction as Public Officials in Application of Penal Provisions) The officers of the Korea Consumers Protection Center, members of the Mediation Committee and staff and personnel as prescribed by the Presidential Decree shall be considered as public officials in application of Article 129 to 132 of the Criminal Code.

Article 51 (Applicable Provisions) The provisions of the Civil Code relating to the incorporated foundation shall be applicable to matters not provided for in this Act with respect to the Korea Consumers Protection Center.

CHAPTER VII PENAL PROVISIONS

Article 52 (Penal Provisions)

- (1) Any person who falls under any of the following Subparagraphs, shall be punished by imprisonment for not more than one year or by a fine not exceeding 10,000,000 Won:
 1. A person who has violated an order issued under Article 6 (3); and
 2. A person who has violated the provisions of Article 16.
- (2) In a case as referred to in Paragraph (1), both punishment of imprisonment and fine may be imposed concurrently.
- (3) Any person who falls under any of the following Subparagraphs, shall be punished by a fine not exceeding 3, 000,000 Won:
 1. A person who has refused, interfered with or evaded an inspection under Article 14

- (1), and a person who has presented falsely related goods or documents;
2. A person who has violated an order issued under Article 17 (2);
3. A person who has carried out activities as prescribed in Subparagraph 1 of Article 19 (1) without making a registration under the said Article; and
4. A person who has violated the provisions of Article 30.

Article 53 (Joint Penal Provisions) If a representative of a juristic person or an agent, employee or other serviceman of a juristic person or individual has committed an offense as prescribed in Article 52 in connection with activities of the juristic person or individual, the fine as prescribed in the said Article shall also be imposed on the juristic person or individual, in addition to 'the punishment of the person who committed such offense.

ADDENDA

Article 1 (Enforcement Date) This Act shall enter into force as of April 1, 1987.

Article 2 (Preparation for Establishment of Korea Consumers Protection Center)

- (1) The Minister of the Economic Planning Board shall appoint seven or less foundation members within three months from the enforcement date of this Act, and have them to carry out affairs concerning the establishment of the Korea Consumers Protection Center.
- (2) The foundation members shall prepare the articles of association of the Korea Consumers Protection Center to obtain approval of the Minister of the Economic Planning Board.
- (3) The foundation members shall, upon obtaining the approval under Paragraph (2), make, without delay, a registration for establishment of the Korea Consumers Protection Center in the joint names.
- (4) The foundation members shall transfer their affairs to the president immediately after the establishment registration of the Korea Consumers Protection Center.
- (5) The foundation members shall be considered to be discharged at the time when the transfer of affairs is finished under Paragraph (4).
- (6) The establishment expenses of the Korea Consumers Protection Center shall be borne by the Korea Consumers Protection Center.

Article 3 (Interim Measures concerning Consumers Protection Committee) The former Consumers Protection Committee existing at the time of the enforcement of

this Act shall be considered as the Consumers Policy Deliberation Committee under this Act.

三、韓國消費者保護法施行令

ENFORCEMENT DECREE OF THE CONSUMERS PROTECTION ACT

Wholly Amended by Presidential Decree No. 12121, Apr. 1, 1987

Amended by Presidential Decree No. 12676 Apr. 1, 1989

Presidential Decree No. 13870 Mar. 1, 1993

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose) This Decree aims to provide for matters delegated by the Consumers Protection Act (hereinafter referred to as Act) and those necessary for the enforcement of the Act.

Article 2 (Scope of Consumers) The term “those who are designated by the Presidential Decree” in Subparagraph 2 of Article 2 of the Act means those who use or utilize goods or services furnished by enterprisers for their production activities, and who fall under any of the following Subparagraphs:

1. Those who use or utilize finally such furnish^{4d} goods or services Provided, That those who use the furnished goods as raw materials (including intermediate materials) and capital goods, are excluded; and
2. Those who use such furnished goods for agricultural (including stockbreeding) and fishery activities: Provided, That stockbreeders who have obtained permission of the Minister of Agriculture, Forestry and Fisheries under the proviso of Article 13-2 (1) of the Livestock Act, and those who operate a deep-sea fishery and obtain a license of the Administrator of the Fisheries Administration under Article 23 (1) of the Fisheries Act, are excluded.

CHAPTER II DUTIES, etc. OF STATE AND LOCAL GOVERNMENTS

Article 3 (Establishment and Execution of Consumers Protection Policy)

- (1) The head of the central administrative agency shall establish each year a policy for protection of consumers on matters under his jurisdiction under Subparagraph 3 of Article 5 of the Act.
- (2) The consumers protection policy as referred to in Paragraph (1) shall include

matters concerning the denomination, subject, contents, needed funds, financing scheme, operational method, etc. of activities for protection of consumers.

(3) The Minister of the Economic Planning Board shall establish a comprehensive consumers protection policy by putting together all consumers protection policies as referred to in Paragraph (1) through deliberation of the Consumers Policy Deliberation Committee.

(4) The comprehensive consumers protection policy as referred to in Paragraph (3) shall include the following matters:

1. Direction of the consumers protection policy;
2. Plans of activities and investment for protection of consumers;
3. Direction for promotion and support of consumers organization; and
4. Other matters necessary for carrying forward the consumers protection policy.

(5) The head of the central administrative agency shall carry forward a consumers protection policy under his jurisdiction in accordance with the comprehensive consumers protection policy as referred to in Paragraph (3).

Article 4 (Establishment and Execution of Consumers Protection Policy of Local Governments) The mayor of the Seoul Special City, mayor of a direct control city or provincial governor (hereinafter referred to as “provincial governor”) shall establish and execute, each year a consumers protection operational plan suitable to the actual situation of the area concerned according to the comprehensive consumers protection policy as prescribed in Article 3 (3) under Subparagraph 3 of Article 5 of the Act.

Article 5 (Bringing of Accomplished Results for Deliberation) The Minister of the Economic Planning Board shall put together the actual results of the consumers protection policy carried forward by, and under the jurisdiction of, the head of the central administrative agency under Article 3 (5) and those of the consumers protection operational plan carried forward by the provincial governor under Article 4, and bring them each year to the Consumers Policy Deliberation Committee for deliberation.

Article 6 (Support for Organized Activities of Consumers)

(1) The State and local governments shall support and promote the following activities of consumers under Subparagraph 4 of Article 5 of the Act:

1. Activities of consumers organization under Article 18 of the Act;
2. Activities, such as education, joint purchasing and selling activities, etc;

carried out by the consumers cooperative association, etc. other than the consumers organization as prescribed in Article 18 of the Act; and

3. Other organized activities of consumers as deemed necessary for improving rights and interest of consumers.

(2) The State and local governments may subsidize or loan needed funds for those who carry out activities as referred to in Subparagraphs of Paragraph (1), within the limit of the budget.

Article 7 (Collection, Removal, Destruction, etc. of Hazardous Goods)

(1) When the head of the central administrative agency orders a collection, removal, destruction or ban of hazardous goods or services under Article 6 (3) of the Act, he shall notify it in writing to the enterpriser with the reason therefor and a considerable term necessary for implementing it specified. In this case, he shall specify the effect that if the enterpriser fails to collect, remove or destroy such hazardous goods at the expiration of the term, he would do it directly under Article 6 (4) of the Act.

(2) If an enterpriser fails to collect and destroy the goods within the period as referred to in Paragraph (1), the head of the central administrative agency may have a public official under his jurisdiction collect and destroy them, except in a case of goods owned or possessed by a person other than the enterpriser.

(3) When a public official as referred to in Paragraph (2) collects and destroys hazardous goods, he shall make the owner or possessor of such goods take part therein, and if the owner or possessor refuses to take part therein or it is not confirmed for a considerable period where the owner or possessor is, he shall make one or more public officials concerned other than one as referred to in Paragraph (2) take part therein.

(4) Any public official who collects and destroys hazardous goods under Paragraph (2), shall show a certificate attesting his authority to a person who owns or possesses such goods.

(5) When the head of the central administrative agency has ordered a collection, removal, destruction or ban of hazardous or services under Paragraph (1), or collected and destroyed them directly under Paragraph (2), he shall publish the results.

Article 8 (Designation of and Public Notice on Unreasonable Acts of Enterprisers)

The head of the central administrative agency shall designate and notify publicly

unreasonable acts of enterprisers under Article 10 (2) of the Act.

Article 9 (Establishment of Consumers' Grievance Machinery) The provincial governor shall establish and operate a machinery to settle consumers' grievances; and damages under Article 12 (1) of the Act.

Article 10 (Establishment of Compensation Criteria for Consumers' Damages)

- (1) The Minister of the Economic Planning Board shall establish and notify publicly the compensation criteria for consumers' damages under Article 12 (2) of the Act.
- (2) In establishing the compensation criteria for consumers' damages under Paragraph (1), the Minister of the Economic Planning Board shall consult by item with the head of the competent central administrative agency, and make it a just compensation by hearing opinions of experts concerned, such as representatives of consumers and enterprises, professors of colleges and universities, etc.

Article 11 (Public Notice on Test and Inspection Institution) In a case where the head of the central administrative agency or provincial governor has established a mechanism and facilities to carry out tests, inspections or investigations (hereinafter referred to as "inspection institution") under Article 13 (1) of the Act, he shall notify it publicly.

Article 12 (Request for Test, Inspection, etc.)

- (1) If a consumer desires to request a test, inspection or investigation on goods or service under Article 13 (1) of the Act, he shall make it to central administrative agency, local government, inspection institution or the Korea Consumers Protection Center as prescribed in Article 26 of the Act.
- (2) The central administrative agency and local governments shall, upon receiving a request under Paragraph (1), entrust the inspection institution or the Korea Consumers Protection Center with settlement thereof.
- (3) The inspection institution or the Korea Consumers Protection Center shall, upon receiving a request under Paragraph (1), or an entrustment under Paragraph (2), comply with it unless there is any special circumstance, and inform the requesting or entrusting person of the result of test, inspection or investigation within a month from the day on which it receives the request or entrustment. In such case, if there exists an inevitable circumstance unable to inform the result within a month, it shall notify it to the requesting or entrusting person with the

reason therefor and the term of information specified.

- (4) Expenses needed for test, inspection or investigation as referred to in Paragraph (1) shall be borne by the requesting person.

Article 13 (Inspection, Presentation of Materials, etc.) When the head of the central administrative agency has a public official under his jurisdiction to carry out an inspection, or orders enterprisers to make a report on their activities or to present goods or documents concerned Article 14 (1), he shall do it in writing specifying the contents and term.

CHAPTER III DUTIES OF ENTERPRISERS

Article 14 (Establishment of Consumers Damage Compensation Organization by Enterprisers)

- (1) The term “enterprisers as designated by the Presidential Decree” in Article 17 (2) of the Act means enterprisers who are designated and notified publicly by the competent. Minister from among those who operate any of the following businesses:
- 1 .Manufacturing industry;
 2. Electricity and gas industry;
 3. Wholesale and retail trade;
 4. Transportation and communication business;
 5. Financing and insurance business; and
 6. Other businesses which might inflict considerable damages on consumers, and which are designated through a deliberation of the Consumers Policy Deliberation Committee.
- (2) The criteria for selecting enterprisers as referred to in Paragraph (1) shall be determined by the Minister of the Economic Planning Board through a deliberation of the Consumers Policy Deliberation Committee.

Article 15 (Scale, etc. of Consumers Damage Compensation Organization)

- (1) The scale of the consumers damage compensation organization to be established by enterprisers under Article 17 (2) of the Act shall be determined by the Minister of the Economic Planning Board through a deliberation of the Consumers Policy Deliberation Committee.
- (2) The title of the damage compensation organization as referred to in Paragraph

(1) shall be represented in such manner that it is recognized obviously that the organization takes charge of affairs to protect consumers.

Article 16 (Presentation of Operational Achievements) Enterprisers as prescribed in Article 14 (1) shall submit each year to the competent Minister the operational records on the protection of consumers in the current year by the 20th of January in the following year, and the competent Minister shall put the records together and submit it to the Minister of the Economic Planning Board by the end of January.

CHAPTER IV CONSUMERS ORGANIZATION

Article 17 (Publication of Results of Investigation, etc.)

(1) The term “a case which is prescribed by the Presidential Decree” in Article 18 (3) of the Act means a case which falls under any of the following

Subparagraphs:

1. Where an enterpriser has violated the provisions of Article 16 of the Act, or fails to fulfill duties as provided for by other laws relating to consumers; and
2. Where a consumers organization has compared and examined the standards, quality, conditions or methods of transaction, etc. of goods or services in order to help consumers to select them.

(2) Any test and inspection on length, mass, volume, etc. of goods among matters to be published under Paragraph (1) and not requiring special equipment shall go through an objective and fair procedure, and those on quality, performance, ingredients, etc. of goods and requiring special equipment shall go through a test and an inspection of an inspection institution as prescribed on Article 11, the Korea Consumers Protection Center or an inspection institution designated by the head of the central administrative agency and the provincial governor.

Article 18 (Registration of Consumers Organizations)

(1) Any consumers organization which desires to register under Article 19 (1) of the Act, shall submit to the Minister of the Economic Planning Board an application stating the following matters:

1. Denomination;
2. Seat of office;
3. Name and address of representative;
4. Date of establishment; and

5. Number of members.

- (2) When a consumers organization submits an application as referred to in Paragraph (1), the articles of association, list of main equipment and documents specifying performance shall be attached to it.
- (3) When the Minister of the Economic Planning Board has received an application for registration under Paragraph (1), if he deems that the applicant secures sufficient equipment and personnel to carry out activities as prescribed in Subparagraphs 2 and 5 of Article 18 (1) of the Act, he shall deliver a certificate of registration to the consumers organization.
- (4) If there is any change in matters as prescribed in Paragraph (1) 1 to 3 and (2), the consumers organization which has the certificate of registration delivered under Paragraph (3), shall report it to the Minister of the Economic Planning Board within twenty days from the day on which the change takes place.

Article 19 (Presentation of Operational Records by Registered Consumers

Organization) Any consumers organization registered under Article 18 shall submit each year the operational records of the current year to the Minister of the Economic Planning Board by the 15th of February in the following year.

CHAPTER V CONSUMERS POLICY DELIBERATION COMMITTEE

Article 20 (Members of Deliberation Committee)

- (1) The heads of related ministries and agencies who become members of the Consumers Policy Deliberation Committee (hereinafter referred to as “Deliberation Committee”) under Article 22 (2) of the Act, shall be the Ministers of Home Affairs; Finance; Justice; Agriculture, Forestry and Fisheries; Trade, Industry and Resources; Health and Social Affairs; Labor, Transportation; and Communications. <Amended by Presidential Decree No. 13870, Mar. 6, 1993>
- (2) The number of members commissioned by the Minister of the Economic Planning Board under Article 22 (2) of the Act shall be less than nine.

Article 21 (Matters to be deliberated by Deliberation Committee) Matters which are subject to a deliberation of the Deliberation Committee under Article 23 of the Act, shall be as follows;

1. Enactment of related laws and regulations, and revisions of important contents;

2. Establishment of the comprehensive consumers protection policy under Article 3 (3);
3. Matters as prescribed in Subparagraphs 2 and 3 of Article 23 of the Act and related to policies of two or more central administrative agencies; and
4. Matters as prescribed in Subparagraphs 4 of Article 23 of the Act.

Article 22 (Duties of Chairman)

- (1) The chairman of the Deliberation Committee shall represent the Deliberation Committee and exercise general control over its affairs.
- (2) If the chairman is absent by accident, a member who is in the order as prescribed in Article 20 (1), shall act for him.

Article 23 (Meetings of Deliberation Committee)

- (1) The chairman shall convene meetings of the Deliberation Committee, and preside at them.
- (2) The meeting of the Deliberation Committee shall be commenced with attendance of a majority of all members including the chairman, and make decisions with a concurring vote of a majority of members present.

Article 24 (Allowance) Members of those present at a meeting of the Deliberation Committee, who are not public officials, may receive allowances within the limit of the budget.

Article 25 (Secretary)

- (1) There shall be a secretary in the Deliberation Committee.
- (2) The secretary shall appointed by the Minister of the Economic Planning Board from among public officials under his jurisdiction.
- (3) The secretary shall manage general affairs of the Deliberation Committee by the orders of the chairman.

Article 26 (Operational Rules) Except as provided in this Decree, matters necessary for operation of the Deliberation Committee shall be determined by the chairman through a decision of the Deliberation Committee.

Article 27 (Establishment of Local Consumers Policy Deliberation Committee)

- (1) In order to deliberate matters necessary for establishing and implementing consumers protection policy of local governments, the Local Consumers Policy Deliberation Committees shall be established in the Seoul Special City, the direct control cities and the provinces
- (2) Matters necessary for composition and operation of the Local Consumers Policy

Deliberation Committees as referred to in Paragraph (1) shall be determined by the provincial governor.

CHAPTER VI KOREA CONSUMERS PROTECTION CENTER

Article 28 (Request for Approval of Branch Establishment) When the Korea Consumers Protection Center (hereinafter referred to as “Protection Center”) desires to obtain an approval of a branch establishment under Article 26 (3) of the Act, it shall submit to the Minister of the Economic Planning Board a request stating the following matters:

1. Denomination of the branch;
2. Seat of the branch;
3. Scheduled date of establishment;
4. Reason for establishment;
5. Organization of the branch; and
6. Other necessary matters.

Article 29 (Objects to be excluded from Damages Remedy Proceeding of the Protection Center) The term “remedy of damages as prescribed by the Presidential Decree” in Subparagraph 3 of Article 28 (2) of the Act means the following remedy of damages: <Amended by Presidential Decree No. 12676, Apr. 1, 1989>

1. Remedy of damages relating to a dispute, on matters of duties between a mandator and a lawyer, which is subject to a mediation of the local bar association under Article 59 of the Lawyers Act;
2. Remedy of damages relating to a dispute, on an insurance contract which is subject to a deliberation of the insurance dispute mediation organization under Articles 197-2 to 197-8 of the Insurance Business Act; and
3. Remedy of damages relating to a dispute between a client and a financial institution which is subject to a supervision or inspection of the Office of Bank Supervision and Examination under Article 28 of the Bank of Korea Act and the Securities Supervisory Board under Article 130 of the Securities and Exchange Act.

Article 30 (Publication of Results of Damages Remedy and Inspection, etc.) The term “case as prescribed by the Presidential Decree” on Article 28 (3) of the Act means the following cases;

1. Statistics or special cases concerning the remedy of damages, which are deemed necessary to inform consumers; and
2. Cases as prescribed in Subparagraphs of Article 17 (1).

Article 31 (Request for Test and Inspection)

- (1) The term “national or public test and inspection institution in Article 29 (1) of the Act means the inspection institution as prescribed in Article 11.
- (2) Any inspection institution which receives a request for test and inspection under Article 29 (1) of the Act, shall inform the Protection Center of the results of test and inspection within fifteen days from the day’ on which it receives the request, unless there is any inevitable circumstance. In this case, if it is impossible to inform them within fifteen days to inevitable circumstances, it shall notify it to the Protection Center with the reason therefor and the term of notification specified.
- (3) Expenses needed for test and inspection under Paragraph (2) shall be borne by the Protection Center.

Article 32 (Meeting of Mediation Committee)

- (1) The chairman of the Consumers Dispute Mediation Committee as prescribed in Article 34 (1) of the Act (hereinafter referred to as “Mediation Committee”) shall convene meetings of the Mediation Committee, and preside at them.
- (2) When the chairman desires to convene a meeting, he shall determine the date and place of the meeting and matters to be discussed in the meeting, and notify it in writing to each member at latest three days before the meeting commences, unless it is inevitable due to urgent circumstances, etc.

Article 33 (Secretary)

- (1) There shall be a secretary in the Mediation Committee.
- (2) The secretary shall be appointed by the president from among staff and personnel of the Protection Center.
- (3) The secretary manage general affairs of the Mediation Committee by the order of chairman of the Mediation Committee.

Article 34 (Presentation of Materials) The Mediation Committee shall give both parties an impartial and sufficient opportunity to present evidence and related materials.

Article 35 (Request for Test, Inspection or Investigation)

- (1) The Mediation Committee may, if necessary, request the president a test,

inspection or investigation.

- (2) The president shall, upon receiving a request under Paragraph (1), conduct without delay a test, inspection or investigation, and inform it to the Mediation Committee.

Article 36 (Composition of Expert Committees)

- (1) The expert committees as prescribed in Article 35 (6) of the Act shall be composed of ten or less expert members by each field.
- (2) Expert members shall be commissioned by the president from among those of rich learning and experience in the fields concerned.

Article 37 (Convocation of Expert Committees)

- (1) Meetings of expert committees shall be convened by the chairman of the Mediation Committee.
- (2) When the chairman of the Mediation Committee desires to convene a meeting of the expert committee, he shall determine the date, time and place of the meeting and matters to be discussed in the meeting, and notify it in writing to the expert members at latest three days before the meeting commences, unless it is inevitable due to urgent circumstances, etc.

Article 38 (Allowance, etc. of Mediation Committee Members and Expert

Members) Nonpermanent members of the Mediation Committee and expert committees may receive allowances and actual expenses in the limit of budget.

Article 39 (Operational Rules) Except as provided in this Decree, detailed matters necessary for the operation and settlement procedure of the Mediation Committee and the composition and operation of the expert committees shall be determined by the president.

Article 40 (Claim for Remedy of Damages)

- (1) Any person who desires to claim or request a remedy of damages under Article 39 (1) and (2) of the Act, shall submit to the Protection Center a claim or request stating the following matters:
 1. Name or denomination and address of the claimant;
 2. Name or denomination and address of the claimee;
 3. Contents of damages; and
 4. Other reference materials.
- (2) When the Protection Center receives claim for damages under Paragraph (1), it shall inform it without delay to claimee.

Article 41 (Recommendation of Agreement)

- (1) The recommendation of agreement as prescribed in Article 42 of the Act shall be given through a consultation with parties.
- (2) In a case where the parties agree to compensation for damages as a result of consultation under Paragraph (1), a written agreement shall be drawn up, signed and affixed seals by the parties, and confirmed by the president

Article 42 (Hearing of Opinions from Interested Persons, etc.)

- (1) When the Mediation Committee desires to hear opinions of interested persons, consumers organization or competent authority under Article 43 (3) of the Act, it shall fix the time and place, and notify it to the interested persons, etc, at latest three days before it hears such opinions, unless it inevitable due to urgent circumstances etc.
- (2) When the Mediation Committee heard opinions of the interested persons, consumers organization or competent authority under Paragraph (1), it may pay necessary actual expenses to the person who stated his opinion, within the limit of budget.

Article 43 (Special Cases concerning Attendance of Party)

- (1) If one of the parties fails to attend with disregard to a notification under Article 42 (1), the Mediation Committee may proceed the procedure of settlement with attendance of one party only.
- (2) Any party who desires to comply with a request for stating an opinion under Article 42 (1), may designate as his representative a consumers or enterprisers organization, etc. to attend for him.

Article 44 (Operation and Management of Fund)

- (1) The Protection Center shall manage a fund created under Article 48 (1) of the Act by establishing a separate account.
- (2) When the Protection Center desires to reduce the principal of the fund, it shall obtain approval of the Minister of the Economic Planning Board through a decision of the Board of Directors.
- (3) When the Protection Center desires to determine matters necessary for management and operation of the fund, it shall obtain approval of the Minister of the Economic Planning Board. The same shall also be applicable when it modifies them.

Article 45 (Activities Plan, etc.) The Protection Center shall submit to the Minister

of the Economic Planning Board the activities plan and budget of the following year not later than the 10th of December each year.

Article 46 (Statement of Accounts) The Protection Center shall submit to the Minister of the Economic Planning Board a statement of account of the current year with the following documents not later than the 31st of March in the following year:

1. Balance sheet and statement of profit and loss in the current year;
2. A comparative table of the business plan and accomplished results in the current year;
3. A statement of the certified public accountant's views;
4. A statement of auditor's opinions of the Protection Center, and
5. Other reference documents.

Article 47 (Fiction as Public Officials in Application of Penal Provisions) The term "staff and personnel as prescribed by the Presidential Decree" in Article 50 of the Act means staff and personnel who are engaged in affairs related to a remedy of consumers' damages, and in test, inspection or investigation activities.

ADDENDA

- (1) (Enforcement Date) This Decree shall enter into force as of April 1, 1987.
- (2) (Interim Measure concerning Registration of Consumers Organization) Any consumers organization which has been registered with the central administrative agency and authorized pursuant to the provisions of other laws, and which has carried out activities as prescribed in Subparagraphs 2 and 5 of Article 18 (1) of the Act or received a subsidy, before the enforcement of this Decree, shall be considered to be registered under Article 18: Provided, That an organization considered to be registered shall submit documents as prescribed in Article 18 by June 30, 1987.

ADDENDA <Presidential Decree No. 12676, Apr. 1, 1989;
Enforcement Decree of the Insurance Business Act>

- (1) (Enforcement Decree) This Decree shall enter into force as of April 1, 1989.
- (2) to (4) Omitted.

ADDENDA <Presidential Decree No. 13870, Mar 6, 1993;

Presidential Decree relating to Organizations of the Ministry of Trade,
Industry and Resources and Institutions attached to it>

Article 1 (Enforcement Date) This Decree shall enter into force as of the date of its promulgation.

Articles 2 to 4 Omitted.

四、新加坡消費者保護法

CONSUMER PROTECTION (TRADE DESCRIPTIONS AND SAFETY REQUIREMENTS) ACT

ARRA AVGEMENT OF SECT JOWS

PART I PRELIMINARY

Section

1. Short title.
2. Interpretation.
3. Appointment of Director of Consumer Protection and other officers.

PART II PROHIBITION OF FALSE TRADE DESCRIPTIONS

4. Prohibition of false trade descriptions.
5. False trade descriptions.
6. Applying a trade description to goods.
7. Trade descriptions used in advertisements.
8. Trade marks containing trade descriptions.

PART III POWER TO REQUIRE INFORMATIVE MARKING AND TO IMPOSE SAFETY REQUIREMENTS

9. Informative marking, etc., of goods.
10. Information, etc., to be given in advertisements.
11. Safety requirements.
12. Regulations under sections 9 and 11.
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PROVISIONS AS TO OFFENCES

Section

- 15. Penalty for offences,
- 16. Time limit for prosecution.
- 17. Offences by bodies corporate.
- 18. Offences due to fault of another person.
- 19. Defence of mistake, accident, etc.
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MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

22. Power of Director to require goods for testing or analysis and furnishing of information.

- 23. Power to enter premises and inspect and seize goods and documents.
- 24. Obstruction of officers.
- 25. Notice of test and intended prosecution.
- 26. Forfeiture of goods.
- 27. Goods seized may be delivered to owner or other person.
- 28. Protection of officers.
- 29. Savings for civil rights.
- 30. Jurisdiction of District and Magistrate's Courts.
- 31. Compensation order.
- 32. Regulations.

The Schedule - Specified laws.

An Act to make provisions prohibiting misdescriptions of goods supplied in the course of trade; to confer power to prescribe requirements relating to informative marking and advertisement of goods and to their safe composition, construction or design, and for purposes connected therewith.

(1st August 1975)

PART I

PRELIMINARY

1. Short title

This Act may be cited as the Consumer Protection (Trade Descriptions and Safety Requirements) Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires —

“advertisement” includes a catalogue, a circular and a price list;

“Director” means the Director of Consumer Protection appointed under section 3;

“goods” includes ships, aircraft, vehicles, animals, plants and all kinds of movable property;

“premises” includes any place, stall, ship, aircraft or vehicle;

“supply”, with its grammatical variations and cognate expressions, includes offer to supply or having goods in possession for the purpose of supply ;

“trade description” means any description, statement or indication which, directly or indirectly and by whatever means given, relates to any of the following matters:

- (a) quantity, length, width, height, area, volume, capacity or weight of any goods;
- (b) method of manufacture, production, processing or reconditioning of any goods;
- (c) composition of any goods;
- (d) fitness for purpose (including expiry date), strength, performance, behaviour or accuracy of any goods;
- (e) degree of fineness of gold and silver goods;
- (f) physical characteristics of any goods not included in paragraphs (a) to (e);

- (g) testing of any goods by any person and the results thereof
 - (h) approval of any goods by any person or their conformity with a type approved by any person;
 - (i) place or date of manufacture, production, processing or reconditioning of any goods;
 - (j) person by whom any goods are manufactured, produced, processed or reconditioned; and
 - (k) other history, including previous ownership or use, of any goods.
- (2) Where any trade description is subject to the provisions of the written laws specified in the Schedule, the provisions of this Act shall not have effect in relation to any such description which is applied in accordance with the requirements of that written law, and the Minister may, by order published in the Gazette, amend the Schedule.
- (3) For the purposes of this Act, a trade description published in any newspaper, book or periodical or in any film or sound or television broadcast shall not be deemed to be a trade description applied in the course of a trade or business unless it is or forms part of an advertisement.

3. Appointment of Director of Consumer Protection and other officers

- (1) The Minister may appoint a Director of Consumer Protection, a Deputy Director of Consumer Protection, and such number of Assistant Directors of Consumer Protection and other officers as he may consider necessary or expedient for the purposes of this Act.
- (2) The powers and duties of the Director under this Act may be exercised and discharged by the Deputy Director or an Assistant Director of Consumer Protection.

PART II

PROHIBITION OF FALSE TRADE DESCRIPTIONS

4. Prohibition of false trade descriptions

Subject to the provisions of this Act, any person who in the course of a trade or business —

- (a) applies a false trade description to any goods; or
- (b) supplies any goods to which a false trade description is applied,

shall be guilty of an offence.

5. False trade descriptions

For the purposes of this Part—

- (a) a false trade description means a trade description which by reason of anything contained therein or omitted therefrom is false or likely to mislead in a material respect as regards the goods to which it is applied or in connection with which it is used, and includes every alteration of a trade description whether by way of addition, effacement or otherwise which makes the description false or likely to mislead in a material respect; and
- (b) a false indication, or anything likely to be taken as an indication which would be false, that any goods comply with a standard specified or recognized by any person or implied by the approval of any person shall be deemed to be a false trade description, if there is no such person or no standard as specified, recognized or implied.

6. Applying a trade description to goods

- (1) A person applies a trade description to goods if he—
 - (a) affixes or annexes it to or in any manner marks it on or incorporates it with—
 - (i) the goods themselves; or
 - (ii) anything in, on or with which the goods are supplied
 - (b) places the goods in, on or with anything which the trade description has been affixed or annexed to, marked on or incorporated with, or places any such thing with the goods; or
 - (c) uses the trade description in any manner likely to be taken as referring to the goods.
- (2) An oral statement may amount to the use of a trade description.
- (3) Where goods are supplied in pursuance of a request in which a trade description is used and the circumstances are such as to make it reasonable to infer that the goods are supplied as goods corresponding to that description, the person supplying the goods shall be deemed to have applied that trade description to the goods.

7. Trade descriptions used in advertisements

- (1) This section shall have effect where in an advertisement a trade description is used in relation to any class of goods.

- (2) The trade description shall be taken as referring to all goods of the class, whether or not in existence at the time the advertisement is published —
- (a) for the purpose of determining whether an offence has been committed under section 4 (a); and
 - (b) where goods of the class are supplied by a person publishing or displaying the advertisement, also for the purpose of determining whether an offence has been committed under section 4 (b).
- (3) In determining for the purposes of this section whether any goods are of a class to which a trade description used in an advertisement relates, regard shall be had not only to the form and content of the advertisement but also to the time, place, manner and frequency of its publication and all other matters making it likely or unlikely that a person to whom the goods are supplied would think of the goods as belonging to the class in relation to which the trade description is used in the advertisement.

8. Trade marks containing trade descriptions

A trade description which is or is part of a trade mark within the meaning of the Trade Marks Act may be a false trade description when applied to any goods, except where all of the following conditions are satisfied:

- (a) it could have been lawfully applied to the goods if this Act had not been passed;
- (b) on the commencement of this Act the trade mark either is registered under the Trade Marks Act or is in use to indicate a connection in the course of trade between those goods and the proprietor of the trade mark;
- (c) the trade mark as applied is used to indicate such a connection between the goods and the proprietor of the trade mark or a registered user of the trade mark under the Trade Marks Act; and
- (d) the person, who is the proprietor of the trade mark is the same person as, or a successor in title of, the proprietor on 1st August 1975.

PART III

POWER TO REQUIRE INFORMATIVE MARKING AND TO IMPOSE SAFETY REQUIREMENTS

9. Informative marking etc., of goods

- (1) Where it appears to the Minister necessary or expedient in the interest of persons to whom any goods are supplied that the goods should be marked with or accompanied by any information (whether or not amounting to or including a trade description) or instruction relating to the goods, the Minister may by regulations impose requirements for securing that the goods are so marked or accompanied, and control or prohibit the supply of goods with respect to which those requirements are not complied with.
- (2) Where any regulations made under this section are in force with respect to goods of any description, any person who, in the course of any trade or business, supplies goods of that description in contravention of those regulations shall, subject to the provisions of this Act, be guilty of an offence.

10. Information etc., to be given in advertisements

- (1) Where it appears to the Minister necessary or expedient in the interest of persons to whom any goods are to be supplied that any description of advertisements, of the goods should contain or refer to any information (whether or not amounting to or including a trade description) relating to the goods, the Minister may by regulations impose requirements as to the inclusion of that information, or of an indication of the means by which it may be obtained, in such description of advertisements of the goods as may be specified in the regulations.
- (2) Regulations made under this section may specify the form and manner in which any such information or indication is to be included in advertisements of any description and may make different provision for different circumstances.
- (3) Where an advertisement of any goods to be supplied in the course of any trade or business fails to comply with any requirement imposed by regulations made under this section, any person who publishes the advertisement shall, subject to the provisions of this Act, be guilty of an offence.

11. Safety requirements

- (1) The Minister may, if he considers it necessary or expedient for the purpose of protecting the safety of consumers, by regulations impose with respect to any prescribed class or description of goods—
 - (a) requirements for securing that goods of that class or description should

comply with those requirements whether as to composition or contents, design, construction, finish or packing as the Minister thinks fit; and
(b) requirements for securing that goods of that class or description should be marked with or accompanied by any information, warning or instruction, and control or prohibit the supply of goods with respect to which those requirements are not complied with.

(2) Subject to the provisions of this Act, where regulations made under this section are in force with respect to any class or description of goods, any person who, in the course of any trade or business, supplies such goods in contravention of those regulations shall be guilty of an offence.

(3) A contravention of the regulations made under this section by a person referred to in subsection (2) shall be deemed to be a breach of a statutory duty for which action may be brought by any other person who may be affected by the contravention.

12. Regulations under sections 9 and 11

Regulations made under sections 9 and 11 may —

- (a) specify a class or description of goods notwithstanding that the goods are for use only as component parts of other goods;
- (b) make different provisions for different classes or descriptions of goods or for different circumstances;
- (c) provide for the form or manner in which information or instruction is to be given; and
- (d) contain such exemptions from the operation of those sections as may be provided.

13. Application of this Part

The provisions of this Part shall not apply to any goods which are subject to and regulated the provisions of any of the written laws specified in the Schedule.

PART IV

OTHER MIS-STATEMENTS

14. False representation as to supply or approval of goods

- (1) If any person in the course of any trade or business gives by whatever means any false indication direct or indirect that any goods supplied by him or any

methods adopted by him are or are of a kind supplied to or approved by any person including any government or government department or agency or any international body or agency whether in Singapore or abroad, he shall, subject to the provisions of this Act, be guilty of an offence.

- (2) Subsection (1) shall have effect without prejudice to any written law prohibiting or restricting the use of any name, emblem, insignia, seal, flag, pennant, title, coat of arms, sign, words or letters or any other form of description.

PART V

PROVISIONS AS TO OFFENCES

15. Penalty for offences

A person guilty of an offence under this Act for which no other penalty is specified shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

16. Time limit for prosecution

No prosecution for an offence under this Act shall be commenced after the expiration of 3 years from the commission of the offence.

17. Offences by bodies corporate

Where an offence under this Act committed by a body corporate is proved to have been committed with the consent and connivance of, or be attributable to any neglect on the part of, any director, manager, secretary or any other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

18. Offence due to fault of another person

Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first- mentioned person.

19. Defence of mistake, accident, etc.

- (1) In any proceedings for an offence under this Act, it shall, subject to subsection (2), be a defence for the person charged to prove —

- (a) that the commission of the offence was due to a mistake on his part or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and
 - (b) that he took all reasonable precautions and exercise all due diligence to avoid the commission of such offence by himself or any person under his control.
- (2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession identifying or assisting in the identification of that other person.
- (3) In any proceeding for an offence under this Act of supplying goods to which a false trade description is applied, it shall be a defence for the person charged to prove that he did not know, and could not with reasonable diligence have ascertained, that the goods did not conform to the description or that the description had been applied to the goods.

20. Innocent publication of advertisement

In proceedings for an offence under this Act committed by the publication of an advertisement, it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this Act.

21. Composition of offences

The Director may compound any offence under this Act by accepting from the person reasonably suspected of having committed that offence a sum not exceeding \$2,000.

PART VI

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

22. Power of Director to require goods for testing or analysis and furnishing of information

The Director may require any person carrying on a trade or business which consists of or includes the manufacture, assembly, production or importation of any goods in respect of which regulations made under section 11 are applicable —

- (a) to supply free of charge to the Director samples of goods for the purpose of testing or analysis; and
- (b) to furnish to the Director such information as he may require in respect of those goods.

23. Power to enter premises and inspect and seize goods and documents

(1) The Director or an officer authorised by him may, at all reasonable hours, exercise the following powers:

- (a) he may, for the purpose of ascertaining whether any offence under this Act has been committed, inspect any goods and enter any premises;
- (b) if he has reasonable cause to suspect that an offence under this Act has been committed, he may for the purpose of ascertaining whether it has been committed, require any person carrying on a trade or business or employed in connection with a trade or business to produce any books or documents relating to the trade or business and may take copies of, or of any entry in, any such books or documents;
- (c) if he has reasonable cause to believe that an offence under this Act has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
- (d) he may seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act; and
- (e) he may, for the purpose of exercising his powers under this subsection to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of this Act and of any regulations made thereunder are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, he may do so himself.

(2) The Director or an officer authorised by him shall, on seizing any goods or

documents in the exercise of his powers under this section, inform the person from whom they are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the machine as being the proprietor or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(3) The Director or an officer authorised by him entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary.

(4) If any person discloses to any other person —

(a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of this section; or

(b) any information obtained by him in pursuance of this Act, he shall be guilty of an offence unless the disclosure was made in or for the purpose of the performance of functions under this Act.

24. Obstruction of officers

(1) Any person who —

(a) wilfully obstructs the Director or an officer acting in pursuance of this Act;

(b) wilfully fails to comply with any requirement under section 23 properly made to him by the Director or such an officer; or

(c) without reasonable cause fails to give the Director or such an officer any other assistance or information which he may reasonably require for the purpose of the performance of his functions under this Act.

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

(2) If any person, in giving any such information as is mentioned in subsection

(1), makes any statement which he knows to be false, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

25. Notice of test and intended prosecution

Where any goods seized in pursuance of this Act are submitted to a test, then —

(a) if the goods were seized, the Director shall inform the person mentioned

in section 23 (2) of the result of the test; or

- (b) if the goods were purchased and the test leads to the institution of proceedings for an offence under this Act, the Director shall inform the person from whom the goods were purchased, or, in the case of goods sold through a vending machine, the person mentioned in section 23 (2), of the result of the test,

and shall, where as a result of the test proceedings for an offence under this Act are instituted against any person, allow him to have the goods tested on his behalf if it is reasonably practicable to do so.

26. Forfeiture of goods

- (1) All goods seized in exercise of any power conferred under this Act shall be liable to forfeiture.
- (2) An order for the forfeiture or for the release of any goods seized in exercise of any power conferred by this Act shall be made by the court before which the prosecution with regard thereto has been held and an order for the forfeiture of the goods shall be made if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the goods were the subject-matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of that offence.
- (3) In the absence of any prosecution with regard to any goods seized in the exercise of any power conferred by this Act, the goods shall be deemed to be forfeited at the expiration of one month from the date of the seizure unless a claim thereto is made before then in accordance with subsection (4).
- (4) A person asserting that he is the owner of any goods seized and that they are not liable to forfeiture may personally or by his agent authorised in writing give written notice to the Director that he claims those goods.
- (5) On receipt of such notice the Director may direct that such goods be released or may refer the matter to a court for decision.
- (6) All things forfeited or deemed to be forfeited shall be delivered to the Director and shall be disposed of in accordance with the directions of the Minister.
- (7) Where any goods seized in exercise of the powers conferred by this Act are of a perishable nature or where the custody of those goods involves unreasonable expense and inconvenience they may be sold at any time and

the proceeds of the sale held to abide by the result of any prosecution or claim under this section.

27. Goods seized may be delivered to owner or other person

The Minister may upon application made to him in writing through the Director order any goods seized in exercise of the powers conferred by this Act whether forfeited or taken and deemed to be forfeited to be delivered to the owner or other person entitled thereto upon such terms and conditions as he may consider fit.

28. Protection of officers

No person shall be personally liable in respect of any act done by him in the execution or purported execution of this Act and within the scope of his employment if he did it in the honest belief that his duty under this Act required or entitled him to do it.

29. Savings for civil rights

A contract for the supply of any goods shall not be void or unenforceable by reason only of a contravention of any provision of this Act.

30. Jurisdiction of District and Magistrate's Courts

Notwithstanding anything to the contrary in the Criminal Procedure Code, a District Court or Magistrate's Court shall have jurisdiction to try any offence under this Act and to impose the full penalty or punishment in respect of any such offence.

31. Compensation order

- (1) The court before which a person is convicted of an offence under this Act may, on application or otherwise, make an order requiring him to pay such compensation, not exceeding \$1,000 as the court thinks just, for any loss or damage resulting from that offence to any person who has suffered such loss or damage; and section 403 of the Criminal Procedure Code shall be applicable to any order made under this section.
- (2) A compensation order made under this section shall not prejudice any right to a civil action for the recovery of damages beyond the amount of compensation paid under the order.

32. Regulations

The Minister may make regulations for any purpose for which regulations are authorised or required to be made under this Act and generally for carrying out the purposes and provisions of this Act.

THE SCHEDULE
SPECIFIED LAWS
The Sale of Food Act.

五、瑞典消費者銷售法

THE CONSUMER SALES ACT

Swedish Code of Statutes 1990:932

Issued on 6 September 1990.

In accordance with a decision of the Riksdag (Parliament), the following is hereby ordained.

Introductory Provisions

Section 1. Sphere of Application

This Act applies to sales of personal property which a person engaged in business activities, etc. sells in the course of such activities to a consumer principally for private use.

The Act also applies in cases where the seller is not engaged in business activities, etc. as referred to in the previous paragraph and the sale is effected on behalf of the seller by a person engaged in business activities, etc in the course of such activities. In such cases, both the person engaged in business activities, etc and the seller are responsible for the seller's obligations under this Act.

Section 2. Where applicable this Act also applies to exchanges of personal property.

This Act applies to orders for goods which are to be manufactured, except where the party ordering the goods undertakes to supply a substantial proportion of the materials.

This Act does not apply to contracts in which the party supplying the goods shall also undertake the labour or other services, if the services comprise the predominant proportion of the obligations of this party.

Section 3. Contractual Terms which Deviate from the Act

Terms of contract which in comparison with the provisions of this Act are to the detriment of the buyer are null and void in claims against the buyer unless the Act specifies otherwise.

The first paragraph does not apply to sales of building construction components if the buyer is assured of protection by a guarantee, insurance and contract complying with the terms for public housing financing.

Nor does the first paragraph apply to the sale of gas supplied by conduit, if the general terms of the contract applied in connection with such supplies have been approved by the National Board for Consumer Policies.

Delivery of the Goods

Section 4. Place of Delivery

Unless other provisions are implied in the contract, the goods shall be made available for collection at the seller's place of business at the time the contract was concluded.

Section 5. Time of Delivery

Unless it is implied in the contract that the goods shall be delivered at a specific time, on request or without delay, they shall be delivered within reasonable time after the conclusion of the contract.

If the buyer has not received credit, the seller is not liable to hand over the goods until they have been paid for.

Section 6. Delivery

The goods have been delivered when they are in the possession of the buyer.

Section 7. Costs Arising from the Goods

Unless other provisions are contained in the contract, the seller shall be responsible for transport costs and other costs for the goods which occur before delivery and which are not due to delayed delivery as a result of circumstances attributable to the buyer.

Section 8. Risk for the Goods

If the buyer bears the risk for the goods, he is liable to pay for the goods even if they have been spoiled, lost, have deteriorated or are diminished through events which are not attributable to the seller.

The risk for the goods passes to the buyer when the goods are delivered.

If sale on approval has been agreed and the goods have been handed over, the buyer bears the risk until the goods have been returned.

Delay by the Seller

Section 9. What Constitutes Delay

There is delay on the part of the seller if the goods are not delivered or are delivered too late and this is not attributable to the buyer or to circumstances which

are attributable to the buyer.

Section 10. Remedies in the Case of Delay

In the case of delay on the part of the seller, the buyer may withhold payment in accordance with Section 11. He may choose between demanding that the seller fulfil the contract in accordance with Section 12 and declaring the contract avoided (cancelled) in accordance with Section 13. Furthermore, the buyer may claim damages from the seller in accordance with Section 14.

Section 11. Right to Withhold Payment

The buyer may withhold as much of the payment as is required to give him security for his claim on grounds of the delay.

Section 12. Right to Claim Performance by the Seller

The buyer may adhere to the sale and demand performance by the seller.

However, the seller is not liable to fulfil his obligations if there is an impediment to his performance which he cannot overcome or if performance would require sacrifices which are unreasonable in view of the buyer's interest in fulfilment of the contract by the seller. If the above-mentioned circumstances cease within reasonable time, the buyer may demand that the seller fulfil the contract.

The buyer forfeits the right to demand that the seller fulfil the contract, if he waits for an unreasonably long time before presenting his claim.

Section 13. Right to Declare the Contract Avoided

The buyer may declare the contract avoided if the seller's delay in delivering the goods is of substantial importance to him.

If the buyer has allowed the seller a fixed additional period of time for delivery of the goods and if this period of time is not unreasonably short, the buyer may also declare the contract avoided if the goods are not handed over within the additional period of time.. During the additional period of time, the buyer may only declare the contract avoided if the seller notifies him that he will not fulfil the contract within this time.

If the buyer has claimed performance by the seller and has not allowed him any additional time, the buyer may declare the contract avoided if the goods are not delivered within reasonable time after the claim was presented.

If the sale refers to goods which are to be manufactured or acquired especially for the buyer in accordance with the buyer's instructions or wishes, and if the seller cannot make use of the goods in any other way without substantial loss, the buyer

may only declare the contract avoided if his purpose in entering into the contract is essentially frustrated by the delay in delivery and the seller was aware of this or should have been aware of this.

Section 14. Right to Damages

The buyer has the right to compensation for the damage he suffers as a result of the seller's delay in delivering the goods, unless the seller proves that the delay has been caused by an impediment beyond his control which he could not reasonably be expected to take into account at the time of the sale and whose consequences he could not reasonably have avoided or overcome.

If the delay is caused by a party the seller has engaged to wholly or partly fulfil the contract, the seller is free from liability to pay damages only if the party he engaged is also free from liability under the preceding paragraph. This also applies if the delay is due to a supplier engaged by the seller or by any other party at an earlier stage in the sales transaction.

Section 15. Notice of Avoidance and Damages

If the goods have been delivered too late, the buyer may not declare the contract avoided or claim damages on grounds of the delay, unless he notifies the seller that he is declaring the contract avoided or wishes to claim damages within reasonable time after having been informed of the delivery. However, if the buyer declares the contract avoided, he does not need to specially notify the seller that he also wishes to claim damages. In cases specified in Section 1, paragraph two, notification of avoidance or claim for damages may instead be made to the person engaged in business activities, etc.

Goods Which Do Not Conform With The Contract

Section 16. What Constitutes Non-Conformity

The goods must comply with what is implied by the contract as regards type, quantity, quality, other characteristics and also the packing or packaging they shall be accompanied by the necessary directions for their assembly, use, storage and care.

Unless the contract implies otherwise, the goods

1. shall be fit for the purposes for which goods of the same description would ordinarily be used,
2. shall be fit for the specific purposes for which the goods were intended to be used, if the seller at the time of the sale must have understood such specific purposes and

the buyer had reasonable cause to rely on the seller's skill and judgement.

3. shall possess the qualities of goods which the seller has referred to in providing samples or models and
4. shall be contained or packaged in a customary or otherwise adequate manner, if packaging is required to preserve or protect the goods.

It shall be considered that the goods are non-conforming,

1. if they do not comply with the provisions of paragraphs one and two
2. if, prior to conclusion of the contract, the seller has failed to inform the buyer of circumstances concerning the qualities or use of the goods which he was aware of or should have been aware of and which the buyer could justifiably expect to be informed of, providing that his failure to inform the buyer can be assumed to have influenced the contract or,
3. if the goods do not comply in any other respect with what the buyer could justifiably assume.

Section 17.

Notwithstanding the fact that the goods have been sold "in their existing condition" or with any other similar general reservation, they shall be considered non-conforming if they are in a condition which is inferior to that which the buyer had good reason to expect considering the price of the goods and other circumstances.

When second-hand goods have been sold by auction, they are considered to be sold "in their existing condition". In applying the preceding paragraph, regard shall be given to the price estimated or indicated by the auctioneer.

Section 18.

The goods do not conform with the contract if they

1. are sold in breach of prohibitions under Section 4 of the Marketing Act (1975:1418) or Section 6 of the Act on Product Safety (1988:1640) or in breach of any other prohibition on sale notified in legislation or by an authority, fundamentally for the purpose of preventing the user of the goods from suffering ill health or accident or of otherwise preventing the use of goods which are not reliable from a safety aspect, or
2. are so defective that use of them involves manifest danger to life or health.

Section 19.

It shall also be considered that the goods do not conform with the contract if they do not conform with descriptions of the qualities or use of the goods provided by the

seller in marketing the goods or in other contexts prior to the sale and which may be assumed to have influenced the sale.

The goods shall further be considered to be non-conforming if they do not conform with descriptions of the characteristics or use of the goods which a party other than the seller at an earlier stage in the sales transaction or on behalf of the seller, has given in marketing the goods prior to the sale, and which can be assumed to have influenced the sale. However, the goods shall not be considered to be non-conforming if the seller was neither aware of these descriptions nor should have been aware of them.

The preceding paragraphs do not apply if the descriptions have been corrected in time and in a clear manner.

It shall also be considered that the goods do not conform with the contract if the seller has failed to provide the information about the qualities or use of the goods which he is obliged to provide under the Marketing Act (1975:1418) or has failed to provide safety information about the goods which it is his obligation to provide under the Act on Product Safety (1988:1604). This also applies if the manufacturer of the goods or any other party who has been involved in transactions with the goods at an earlier stage has been notified of this obligation and the seller was aware of, or should have been aware of, the neglect in fulfilling this obligation. However, a prerequisite for considering that the goods do not conform with the contract in accordance with this paragraph is that failure to notify the buyer may be assumed to have influenced the contract.

Section 20.

When judging the question of whether the goods do not conform with the contract, heed shall be paid to the condition of the goods at the time when the goods are handed over. The seller is responsible for any failure to conform with the contract which exists at this time, even though such non-conformity does not appear until later.

However, if the buyer fails to collect or receive at the right time goods which are made available for him, the seller is not responsible for deterioration which occurs subsequently and which is due exclusively to the nature of the goods.

If the goods deteriorate after delivery, the goods shall be considered not to conform with the contract if the deterioration is the result of breach of contract by the seller.

Section 21.

If the seller has undertaken, or any other party has undertaken on his behalf, by guarantee or a similar pledge to be responsible for the goods, or a proportion thereof, or for a characteristic of the goods during a certain period, the goods shall be considered not to conform with the contract if, during the specified period, they deteriorate in the respect covered by the pledge.

The preceding paragraph does not apply if it is probable that the deterioration is due to an accident or comparable incident or to negligence, abnormal use or similar circumstances attributable to the buyer.

Section 22. Remedies in the Case of Goods Which Do Not Conform with the Contract

If the goods do not conform with the contract, under Sections 23-29 the buyer may claim rectification, delivery of substitute goods, price reduction; or compensation to rectify the non-conformity, or may declare the contract avoided. In addition, he may claim damages under Sections 30-32. He may also withhold payment under Section 25.

Section 23. Complaint

The buyer may not claim that the goods do not conform with the contract unless he has notified the seller of the nonconformity within reasonable time after he noticed or should have noticed the non-conformity (complaint). However, in cases referred to in Section 1, paragraph two, notification of nonconformity may be made to the person engaged in business activities, etc.

If a party other than the seller has undertaken to rectify non-conformity in goods on behalf of the seller, the complaint may be lodged with this party.

If the buyer does not make a complaint about nonconformity in the goods within two years of having received them, he forfeits the right to do so, unless other provisions are contained in a guarantee or similar pledge.

Section 24.

Notwithstanding Section 23, the buyer may claim that the goods do not conform with the contract, if the seller has acted with gross negligence or in breach of faith and honour or if nonconformity is of a nature as described in Section 18.

Section 25. Right to Withhold Payment

The buyer may withhold as much of the payment as is required to give him security for his demands on the grounds that the goods do not conform with the contract.

Section 26. Rectification and Delivery of Substitute Goods

The buyer is entitled to demand that the seller rectifies non-conformity or delivers substitute goods if this can be achieved without unreasonable cost or inconvenience to the seller.

Rectification or delivery of substitute goods shall take place within a reasonable time after the seller has presented his demand and without cost or substantial inconvenience for the buyer.

Section 27.

Even though the buyer does not so demand, the seller has the right to rectify non-conformity or make substitute delivery at his own expense if, when the buyer makes a complaint, he offers without delay to rectify non-conformity or make substitute delivery and such measures can take place within a reasonable time after the claim is presented and without cost or substantial inconvenience to the buyer.

The seller may not claim that he was not given the opportunity to rectify non-conformity or make a delivery of substitute goods if the buyer has rectified the non-conformity and, in view of the circumstances, the buyer could not reasonably be required to wait for rectification or delivery of substitute goods by the seller.

Section 28. Right to Price Reduction or Avoidance

If the question of rectification or the delivery of substitute goods has not been raised or does not take place within reasonable time after complaint is made, the buyer may demand a price reduction which corresponds to the non-conformity or may declare the contract avoided in accordance with Section 29.

Furthermore, the buyer is entitled to compensation for the cost of rectifying non-conformity, where this cost is not unreasonably high or is covered by a price reduction received by the buyer.

However, the buyer is not entitled to price reduction for the sale of second-hand goods at an auction.

Section 29.

The buyer may declare the contract avoided if nonconformity is of substantial importance to him.

Section 30. Damages

The buyer is entitled to compensation for the damage he suffers because the goods do not conform with the contract unless the seller proves that failure to deliver goods which conform with the contract is due to an impediment beyond his control

which he could not reasonably be expected to have taken into account at the time of the sale and whose consequences he could not reasonably have avoided or surmounted.

If failure to deliver goods which conform with the contract is due to a person entrusted by the seller to wholly or partially fulfil the contract, the seller is only free from liability for damages if this person is also free from liability in accordance with the first paragraph. This also applies if non-conformity is due to a supplier whom the seller has engaged or any other party at an earlier stage in the sales transaction.

The buyer is always entitled to compensation if, at the time of the sale, the goods deviated from what the seller had especially pledged.

Section 31.

The seller's liability for damages in accordance with Section 30 also covers damage, due to defect in the goods sold, which is caused to other property belonging to the buyer or any member of his household and which is primarily intended for private purposes.

Section 32. Extent of Damages in the Case of the Seller's Delay and in the Case of Goods Which Do Not Conform with the Contract

Damages due to delay on the part of the seller or goods which do not conform with the contract cover compensation for expenses, loss of income, price difference as referred to in Section 33 other loss due to the delay or the non-conformity of the goods. Damages under this Act, except in cases referred to in Section 31, do not cover compensation for loss which the buyer suffers as a result of damage to anything other than the goods sold.

The seller and the buyer may reach agreement that compensation in accordance with the first or second paragraph shall not cover loss in a commercial or business undertaking.

Section 33. Price Difference

If the contract has been declared avoided and the buyer has made a covering purchase at a higher price, damages cover compensation for the price difference between the sales price and the covering purchase price if the covering purchase was made with sufficient care and within a reasonable time after the contract was declared avoided. Otherwise, if the current price for such goods as are covered by the sale at the time of avoidance exceeds the price under the terms of sale, damages cover this price difference.

Section 34. Adjustment of Damages

If the obligation to pay damages due to the seller's delay or goods which do not conform with the contract is unreasonably burdensome in view of the financial circumstances of the party liable for damages, damages may be adjusted in accordance with what is reasonable. In this connection, existing insurances and insurance opportunities on the buyer's side, the possibilities of the liable party to foresee and prevent the damage and any other special circumstances shall also be taken into account.

Price, etc

Section 35. Price to be Paid by the Buyer

If the price is not implied or stated in the contract, the buyer shall pay what is reasonable with regard to the nature and condition of the goods, the current price at the time of the sale and other circumstances.

Section 36. Time of Payment

If the time when payment is to be made is not implied by the contract, the buyer shall pay what the seller so requires, but not until the goods are placed at the disposal of the buyer.

Section 37. Cancellation of the Order

If the buyer cancels an order for the goods before the goods have been delivered, the seller does not have the right to insist on the sale and to demand payment.

Instead, he is entitled to compensation in accordance with Section 41.

Delay by the Buyer

Section 38. What is Meant by Delay

Delay on the part of the buyer occurs if the price is not paid at the right time and where this is not due to the seller or to any circumstance attributable to the seller.

Section 39. Remedies in the case of Delay

In the case of delay on the part of the buyer, the seller may retain the goods in accordance with Section 5. The seller may choose between requiring that the buyer make payment or declaring the contract avoided in accordance with Section 40. If the seller declares the contract avoided, he may also claim damages from the buyer in accordance with Section 41.

Section 40. Avoidance

The seller may declare the contract avoided if the buyer's delay in making payment constitutes a substantial breach of contract.

If the seller has prescribed a specific additional time for payment and this period is not unreasonably short, the contract may also be declared avoided if the buyer fails to make payment within this period. In the course of the additional period, the seller may only declare the contract avoided if the buyer notifies him that he will not make payment within this period.

If the goods have come into the possession of the buyer, the seller may only declare the contract avoided if he has reserved the right to avoidance or if the buyer rejects the goods. Once the price has been paid in full, the seller may not declare the contract avoided.

Section 41. Damages

If the seller declares the contract avoided or the buyer cancels the order for the goods, under Section 37 the seller is entitled to compensation for

1. special costs incurred in order to enter into or to fulfil the contract, to the extent that he cannot profit from such costs in some other way,
2. special costs resulting from avoidance of the contract or cancellation of the order, and
3. other loss with a sum which is reasonable with regard to the price of the goods, the time of avoidance of the contract or cancellation of the order, the extent of work undertaken and other circumstances.

The seller may reserve the right to receive compensation determined in advance in the case of avoidance of the contract or cancellation of the order if such compensation is reasonable with regard to what a seller may normally be assumed to receive as compensation in accordance with the first paragraph.

The seller is not entitled to compensation in accordance with the first and second paragraphs if the buyer cancels the order for goods before the seller has accepted an offer which the buyer has made to the seller. Furthermore, the seller is not entitled to compensation if the buyer proves that the delay or the cancellation of the order was due to the law, to a failure or breakdown in public transport or means of effecting payment or other similar impediment which the buyer could not reasonably have anticipated in connection with the sale and the results of which he could not reasonably have avoided or overcome.

Joint Provisions

Section 42. Limitation of Damage

The injured party shall take reasonable measures to limit his damage. If he neglects to take such measures, he must himself bear a corresponding proportion of the loss.

Section 43. Effects of Avoidance and Delivery of Substitute Goods

If the contract is declared avoided, the seller's obligation to hand over the goods and the buyer's obligation to pay the purchase price no longer apply.

To the extent that the sale has been completed, either party may require the other party to return what he has received. In this connection, each party may retain what he has received until the other party supplies what he is to return and also makes payment or provides acceptable security for damages and interest for which he may be liable.

If the seller is to undertake the delivery of substitute goods, the buyer may retain what he has received until delivery of substitute goods takes place.

Section 44.

If the contract is declared avoided, the buyer shall pay for any gain he has made from the goods and also pay reasonable compensation if he has had any other benefit from the goods.

If the seller is to return payment made, he shall pay interest from the day on which he received payment.

Section 45. Lapse of the Right to Avoidance and Delivery of Substitute Goods

The buyer may only declare the contract avoided or require delivery of substitute goods if he can return the goods in a substantially unchanged and undiminished state.

However, the right to declare the contract avoided or to require delivery of substitute goods is not forfeited if

1. the goods have been spoiled, lost, impaired or diminished as a result of their nature or of any other circumstance which is not due to the buyer,
2. the goods have been spoiled, impaired or diminished as a result of a measure which was required to investigate whether the goods were without fault or
3. the goods have been used by the buyer for anticipated use before he was aware of or should have been aware of the non-conformity which gives him cause to declare the contract avoided or to require delivery of substitute goods.

Furthermore, the right, to declare the contract avoided or to require delivery of

substitute goods is not forfeited if the buyer compensates the seller for the loss in the value of the goods which is the result of the deterioration or the diminution of the goods.

Section 46. Claim against a Person Engaged in Business Activities, etc at an Earlier Stage in the Sales Transaction

If the seller is insolvent, has discontinued his business activity or cannot be contacted, the buyer is entitled to make a claim on the grounds that the goods do not conform with the contract against a person engaged in business activities, etc at an earlier stage in the sales transaction who has transferred the goods for resale.

The first paragraph only applies to the extent that a corresponding claim on the grounds that the goods do not conform with the contract might have been asserted against the person involved in business activities, etc at an earlier stage in the sales transaction by the party who acquired the goods from such a person. However, a contract which restricts the right to assert a claim may only, be cited against the buyer if such a restriction might have been agreed, with legally binding effect, between the buyer and the seller. Failure to complain at an earlier stage does not affect the buyer's right.

If the buyer wishes to make a claim under this Section against a person involved in business activities, etc at an earlier stage in the sales transaction, a complaint in accordance with Section 23 may be made to such a person or to the seller. If complaint has not been made to a person involved in business activities, etc at an earlier stage in the sales transaction, the buyer forfeits his right against this person unless he notifies this person of his claim within a reasonable time after he has realized or should have realized that he had .cause to present the claim.

Section 47. Certain Notifications

If a notification which the buyer shall make to the seller or to anyone else in accordance with Section 15, 23, 26 or 46 has been dispatched in an appropriate manner, the notification may be cited, even if it has been delayed, distorted or has not arrived. This also applies to notification regarding prescription of an additional period of time which the seller may make to the buyer in accordance with Section 40.

This Act enters into force on 1 January 1991.

This Act constitutes annulment of the Consumer Sales Act (1973:877).

However, previous provisions apply as regards contracts entered into before this

Act came into force.

On behalf of the Government

ODD ENGSTROM

LEILA FREIVALDS

(Ministry of Justice)

六、瑞典行銷法

THE MARKETING PRACTICES ACT

(1975:1418, as last amended 1985:926)

Section 1. Object of the Act

The object of this Act is to promote consumers interests in connection with the marketing of goods, services and other commodities by tradesmen and to counteract improper marketing which adversely affects consumers or other tradesmen.

Section 2. Improper Marketing

A tradesman who, in the marketing of any goods, service or other commodity, advertises or takes other action which, by conflicting with good commercial standards or otherwise, adversely affects consumers or tradesmen, may be prohibited by the Market Court from continuing therewith or undertaking any similar action. A prohibition may also be issued to an employee of a tradesman and to any other acting on behalf of a tradesman, as well as to any other person who has substantially contributed to the action.

Section 3. Information

A tradesman who, in the marketing of any goods, service or other commodity, omits to deliver information of particular significance to consumers, may be enjoined by the Market Court to give such information. An injunction may also be issued to an employee of a tradesman and to any other person acting on behalf of a tradesman.

An injunction referred to in the first paragraph may stipulate that the information shall:

1. be given through labelling of the goods or be furnished in other form at the point of sale.
2. be given in advertisements or other representations used by the tradesman for marketing purposes,
3. be given in a certain form to a consumer who so requests.

Section 4. Safety of Products, etc.

A tradesman who offers for sale to a consumer goods for personal use may be prohibited by the Market Court from continuing therewith if the properties of the goods may involve a special risk of personal injury or of damage to property. The

same applies if the goods are manifestly unfit for their main purpose.

To the extent it is needed to prevent that the goods mentioned in the first paragraph is offered for sale in the way mentioned in that paragraph, the Market Court may prohibit a tradesman who in the name of manufacturer, importer or otherwise offers goods for sale to another tradesman to continue therewith.

A prohibition may also be issued to an employee of a tradesman and to any other person acting on behalf of a tradesman.

The first to third paragraphs shall be applicable likewise when goods is offered for hire against remuneration or services are performed against remuneration.

A prohibition under this Section may not be issued insofar as a statute or a resolution of a public authority contains special regulations concerning the goods, with the same purpose as the prohibition would fulfil.

Section 5. Penalty Clause

A prohibition or injunction under Sections 2-4 shall be issued under penalty of a fine, unless for special reasons this is deemed unnecessary.

Section 6. Punishable Practices

A tradesman who, in the marketing of any goods, service or other commodity, intentionally uses a misleading representation relating to his own or to another business and likely to affect the demand for the commodity shall be liable to a fine or to imprisonment for a term not exceeding one year.

The first paragraph shall apply likewise to an employee of a tradesman and to any other person acting on behalf of a tradesman.

Section 7.

A tradesman who, in return for a stamp or other certificate supplied in connection with the sale of goods, services or other commodity, offers to a consumer a consideration other than money shall be liable to a fine or to imprisonment for a term not exceeding one year. This shall not apply, however, if the certificate confers the right only to overhaul, repair, or the like, in respect of the sold commodity.

Section 8.

A tradesman who, in a case other than referred to in Section 7, offers to a consumer two or more items of goods at an all-in price, or offers to a consumer who purchases any item of goods the acquisition of another item of goods the acquisition of another item without payment or at a particularly low price, shall, if the goods manifestly lack any natural connection and such action makes it difficult for the

consumers to judge the value of the offer, be liable to a fine or to imprisonment for a term not exceeding one year. The provisions of this Section concerning goods apply also to services and other commodities.

Section 9.

A person who has contravened an injunction issued under penalty of a fine shall not be held liable for a criminal offence under this Act as a result of an act embraced by the prohibition.

If the crime is petty no punishment shall be imposed for an offence referred to in Sections 6-8.

Section 10. Rules of Procedure

A question concerning the issuing of a prohibition or injunction under Sections 2-4 shall be considered upon an application. An application shall be lodged by the Consumer Ombudsman.

If, in a certain case, the latter decides not to lodge an application, this may be done by an association of consumers, employees or tradesmen or, as regards a prohibition under Section 2, by a tradesman affected by the act complained of.

Section 11.

On demand by the Consumer Ombudsman a tradesman shall submit a statement or explanation in a matter concerning the application of Sections 2-4. In a matter where it may be presumed that a decision to issue a prohibition or injunction may be made, a tradesman is also under obligation, on demand by the Consumer Ombudsman, to furnish documents, merchandise samples and the like which may be of significance for the inquiry in the case.

If a demand as stated in the first paragraph is not complied with, the Consumer Ombudsman may order the tradesman to discharge his obligation under penalty of a fine not exceeding 10, 000 crowns.

If special reasons exist, the Consumer Ombudsman shall pay compensation for a merchandise sample and the like furnished as stated in the first paragraph.

Section 12.

A decision concerning the issuing of a prohibition or injunction under Sections 2-4 shall not constitute a hindrance to reconsideration of the matter in question if altered circumstances or other special reasons give occasion therefor.

may order the person concerned to fulfil his obligation under penalty of a fine not exceeding 10,000 crowns.

For a merchandise sample and the like furnished as stated in the first paragraph the Ombudsman will pay compensation if special reasons exist.

Regulations governing the obligation for a person who furnishes merchandise samples and the like as stated in the first paragraph to bear the costs of the Consumer Ombudsman for sampling and examination of samples will be issued by the government or by an authority appointed by the government.

Section 17.

Proceedings regarding non-compliance with a prohibition issued under penalty of a fine shall be brought before an ordinary court of law by the Consumer Ombudsman. If the Market Court has issued an injunction under penalty of a fine upon an application by some other, the latter may also institute proceedings for the imposition of the fine.

A public prosecution for an offence against this Act may be brought only after permission of the Consumer Ombudsman.

Section 18.

In the event of non-compliance with a prohibition issued under penalty of a fine as stated in Section 2 or of the provisions of Sections 6-8 an ordinary court of law may, insofar as it deems reasonable, direct that a misleading representation which appears on any goods, packaging, advertising matter, commercial document or the like shall be deleted or altered in such a way that it is no longer misleading. If this aim cannot be attained by other means, the court may order that the property be destroyed.

Property referred to in the first paragraph may be seized pending the court's order. Such seizure shall be governed by the stipulations, where applicable, concerning seizure under criminal law.

The first and second paragraph shall apply likewise to an offer referred to in Section 7

Section 19. Damages

A person who disobeys a prohibition referred to in Section 2 or the provisions of Sections 6-8 shall make good a loss thereby caused to a competing tradesman. The right to such compensation shall be forfeited if the claim is not instituted within five years from the time when the loss was incurred.

A consumer's right to damages is governed by special regulations.

Section 20. Other Regulations

The government may direct that the following provisions shall apply in respect of a foreign State.

As regards any goods carrying an incorrect or misleading designation of origin which directly or indirectly indicates that the goods have been produced or manufactured in the foreign State, or at any place, situated therein, an ordinary court of law may issue directions as stated in Section 18 also in cases other than those referred to. This shall not apply, however, if according to commercial custom the designation serves solely to characterize the nature of the goods or if it is accompanied by a statement which clearly indicates that the goods were not produced or manufactured in the State or at the place named.

An application for such directions as stated in the second paragraph may be made by a prosecutor or, if the latter has decided not to make an application, by a person conducting business in goods of the same kind as those to which the application relates.

Section 21.

The section is repealed from January 1st, 1981.

Section 22.

An appeal may not be made against a demand by the Consumer Ombudsman as stated in Section 11, first paragraph, first sentence, or, after such a demand, against an order under penalty of a fine.

A complaint against a decision of the Consumer Ombudsman in any other matter referred to in Section 11 or in a matter referred to in Section 16, first and second paragraph, may be made by appeal to the Fiscal Court of Appeal. The same applies to a complaint against a decision of a public authority according to regulations as stated in Section 16, last paragraph.

This Act shall enter into force on July 1, 1976.

Through this Act the Marketing Practices Act (1970:412) is annulled. Any action taken in accordance with the provisions of the latter Act shall have effect as though the corresponding provisions of the new Act had been applied.

七、瑞典消費者保險法

THE CONSUMER INSURANCE ACT

(1980:38, amended 1980:890)

Introductory Provisions

Section 1.

This Act applies to contracts of insurance which consumers enter into with insurance companies principally for private purposes and which may be assigned to one of the following types of insurance

1. Household insurance
2. Homeowner's insurance
3. Holiday home insurance
4. Travel insurance
5. Third party motor insurance or other motor vehicle insurance
6. Yacht insurance

The provisions of the Act shall not apply in respect of third party motor insurance in so far as such insurance is regulated by the Motor Traffic Damage Act (1975:1410).

The Act shall not apply to a contract of insurance which is based on a collective agreement or on a group agreement and is managed by a representative of the group. Nor is the Act applicable to insurance of houses for an indefinite period.

Section 2.

In this Act the term "policy holder" refers to the person who has entered into a contract of insurance with an insurance company. The term "the insured" refers to the person whose interest has been insured against loss or on whose life or health an insurance policy has been taken out.

Section 3.

Insurance contract provisions which are less favourable to the policy holder, the insured or other person entitled to indemnity than the provisions of this Act would be, are void unless otherwise stated.

Section 4.

In relation to any person other than the policy holder the provisions of Sections 25, 54-58, 86-88, 95, 96, 122 and 123 of the Insurance Contracts Act (1927:77) shall

also apply in respect of contracts of insurance referred to in this Act. Where these provisions are applicable Section 3, paragraph 1, of the Insurance Contracts Act shall also apply.

Provisions designed to ensure that insurance contract provisions are fair and equitable are to be found in the Insurance Business Act (1948 433).

Information

Section 5.

Before an insurance policy is entered into, the insurance company shall provide such information concerning its premiums and other terms of insurance as is necessary to enable the consumer to assess the cost and extent of the insurance. The information shall be provided in such a form as to facilitate the choice of the type of insurance.

Such information need not be provided where either the consumer states that he does not require the information or it is impracticable to give it.

Section 6.

Where an insurance policy has been entered into the insurance company shall, if it has not already done so, furnish the policy holder as soon as possible with clear information in writing about any terms of the insurance policy which constitute a substantial limitation of the scope of the insurance policy as compared with what it is reasonable for consumers in general to expect.

Where in accordance with Section 17, paragraph 2, or Section 19, paragraph 1, the insurance company seeks an alteration of the terms of insurance contained in the contract, the company shall at the same time state in writing the reasons for this change and furnish information as to the new terms.

During the period of insurance, the insurance company shall be under a duty, where the policy holder so requests, to furnish information in relation to the premium and other terms of the insurance contract.

Section 7.

In the course of assessing a loss, the insurance company shall, except where this is unnecessary in the circumstances, inform the person claiming indemnity of the facilities available for the adjudication of any dispute concerning the indemnity. Where there exists any risk that the right to indemnity may be forfeited by reason of any statutory prescription, the company shall also point this out. The information shall

be furnished in writing.

Section 8.

In the event of failure to furnish information in accordance with Sections 54, the provisions of the Marketing Practices Act (1975:1418) on failure to furnish information in the course of marketing shall apply.

An order to furnish information in accordance with Section 5 or Section 6, paragraph 3, may stipulate that the information shall be furnished in writing.

The Right to Insurance

Section 9.

An insurance company may not refuse to allow a consumer to enter into a contract of insurance of a type which the company normally makes available to the general public.

The provisions of the preceding paragraph shall not apply if having regard to the risk of the occurrence of the event insured, the probable extent of the loss, or other circumstances, the insurance company has special reasons for not providing the insurance.

Period of Insurance

Section 10.

The period of insurance is the period for which a contract of insurance is made. It may not exceed one year unless there exist special reasons for a longer period of insurance.

Section 11.

The period of insurance shall commence on the date which has been agreed upon or which appears from the circumstances.

If the period of insurance is not established in accordance with the provisions of the preceding paragraph, the period of insurance shall commence on the day following the date on which the policy holder informed the insurance company that he wished to enter into the contract of insurance. If, however, the contract of insurance is entered into by payment of the premium by the policy holder, the period of insurance shall commence only on the day following the date on which the premium was paid. The same shall apply if the contract of insurance otherwise is valid only provided that the premium is paid before the period of insurance commences.

Section 12.

Upon the expiry of the period of insurance, the insurance shall be renewed in the cases and on the terms which are stated in Sections 14-17.

In the case of a renewed insurance, the period of insurance shall commence when the previous period of insurance expires.

Section 13.

The liability of the insurance company for the events insured shall begin with the commencement of the period of insurance and shall continue until the expiry of the period of insurance or until the insurance ceases to be in force because of cancellation or for any other reason. A different period of liability may, however, be agreed upon in so far as the need for insurance constitutes a reason.

The policy holder is not under a duty to pay a premium except for the period during which the insurance company is at risk.

Renewal of the Insurance**Section 14.**

A contract of insurance shall be renewed if it has not been cancelled with effect at the expiry of the period of insurance and if the policy holder has not by that time entered into a similar contract of insurance with another insurance company.

The provisions of the preceding paragraph shall not apply if it appears from the agreement or the circumstances that the contract of insurance is not to be renewed.

Section 15.

The insurance company may not cancel the contract of insurance with effect at the expiry of the period of insurance unless the company has special reasons for no longer providing the insurance.

Cancellation by the insurance company shall have effect only if written notice of cancellation is sent to the policy holder not later than fourteen days before the expiry of the period of insurance. If the policy holder can show that it is probable that this notice has been delayed or has failed to reach him owing to circumstances beyond his control, the contract of insurance shall cease to have effect not earlier than one week after the date on which the notice reached him and not later than three months after the date on which the insurance company sent the notice to him.

Section 16.

Should the policy holder wish to cancel the insurance with effect at the expiry of

the period of insurance, he may give notice of cancellation at any time beforehand.

Section 17.

An insurance shall be renewed for the normal period of insurance which most closely corresponds to the period of insurance last in force and on such other terms as have applied during this period.

If the insurance company has required amendment of the terms of insurance in a written notice which has been sent to the policy holder not later than fourteen days before the expiry of the period of insurance. The renewed contract of insurance shall apply to the period and on the terms in general which the company has offered.

Termination in advance, etc

Section 18.

The insurance company may cancel the contract of insurance with effect before the expiry of the period of insurance if the policy holder or the insured has shown gross disregard of his obligations towards the insurance company or if other particularly strong reasons exist.

Cancellation by the insurance company shall take effect fourteen days after the date on which the insurance company sent a written notice of cancellation to the policy holder. If the policy holder can show that it is probable that that notice was delayed or failed to reach him owing to circumstances beyond his control, the contract of insurance shall cease to have effect not earlier than one week after the date on which the notice reached him and not later than three months after the date on which the insurance company sent the notice to him.

With regard to cancellation on account of delay in the payment of premium, the provisions of Section 25 shall apply.

Section 19.

The provisions of the insurance policy may, if so required by the insurance company, be altered during the period of insurance if the policy holder or the insured has disregarded his obligations towards the insurance company intentionally or by negligence other than of a minor nature or if particularly strong reasons exist. The alteration shall take effect fourteen days after the date on which the insurance company sent a written notice of the alteration to the policy holder.

If the insurance company has required alteration of the terms of insurance under the provisions of the preceding paragraph, the policy holder may cancel the contract

of insurance with effect from the date on which the alteration would otherwise have taken effect. The notice of cancellation shall be given before this time.

Section 20.

The policy holder may cancel the insurance with immediate effect if his need of insurance has ceased to exist or if some other similar circumstance has arisen.

If a contract of insurance has been renewed under Section 14 or if the provisions of the insurance policy have been altered during the period of insurance under Section 19, paragraph 1, the policy holder may, before he has paid any part of the premium required, cancel the insurance with immediate effect. A renewed contract of insurance shall also cease to have effect immediately if, without paying the premium for this insurance, the policy holder enters into a similar contract of insurance with another insurance company:

Payment of Premium

Section 21.

The first premium for an insurance shall be paid within fourteen days of the date on which the insurance company sent a written notice to the policy holder demanding payment.

The provisions of the preceding paragraph shall not apply if the contract of insurance is entered into by payment of the premium by the policy holder or if the insurance otherwise is valid only provided that the premium is paid before the period of insurance commences.

Section 22.

The premium for a renewed insurance shall be paid not later than the date on which the new period of insurance commences.

The premium need not, however, be paid earlier than one month after the insurance company has sent a written notice to the policy holder regarding the payment.

Section 23.

If the insurance contract provides for more than one premium period, the premium for each period after the first shall be paid not later than the first day of the period. A premium relating to a period longer than one month, however, need not be paid earlier than one month after the insurance company has sent a written notice to the policy holder regarding the payment.

Section 24.

If the premium is not paid on the due date, the insurance company may, in so far as is reasonable, charge a default payment in accordance with what may have been stipulated in the insurance contract.

Section 25.

In the event of delay in the payment of the premium, the insurance company may cancel the contract of insurance with effect fourteen days after the date on which a written notice of cancellation was sent to the policy holder. If the policy holder can show that it is probable that this notice was delayed or has failed to reach him owing to circumstances beyond his control, the contract of insurance shall cease to have effect not earlier than one week after the date on which the notice reached him and not later than three months after the date on which the insurance company sent the notice to him.

The contract of insurance shall not cease to be valid if the premium is paid before the expiry of the period which is indicated in the preceding paragraph. The policy holder shall be reminded of this fact in the notice of cancellation.

Nor does the contract of insurance cease to have effect in accordance with the provisions of the first paragraph of this article if the policy holder has been unable to pay the premium on the date when it falls due because he has fallen seriously ill or has been deprived of his liberty or because he has not received his pension or the remuneration earned from his main employment. The same shall apply if some other similar unexpected event has prevented the policy holder from paying the premium on the due date. When the obstacle to payment ceases to exist, the policy holder shall immediately pay the premium. Should the policy holder not do this, the insurance shall cease to have effect. If the delay has continued for three months, the insurance shall cease to have effect even if the obstacle continues to exist.

Section 26.

If the policy holder pays the premium after the contract of insurance has ceased to have effect in accordance with the provisions of Section 25, he shall be considered thereby to have applied for a new contract of insurance as from the day after the date on which the premium was paid. If the insurance company is not willing to provide insurance as applied for by the policy holder, a written notification to that effect shall be sent to the policy holder within fourteen days of the date on which the premium was paid. Otherwise a new contract of insurance shall be considered to have been

entered into in accordance with the application of the policy holder.

Payment of Additional Premium

Section 27.

If an additional premium is to be paid during the period of insurance, this premium shall be paid within fourteen days of the date on which the insurance company sent a written notice to the policy holder demanding the payment.

Section 28.

If an additional premium is not paid on the due date: the insurance company may recalculate the period of insurance for the changed insurance on the basis of the premium which has been paid. After written notification of such recalculation of the period of insurance has been sent to the policy holder, the insurance shall be valid for the shorter period which follows from the recalculation, but for not less than fourteen days after the notice has been sent.

Section 29.

If a contract of insurance is terminated in advance, the insurance company is entitled only to the premium which would have been fixed if the contract insurance had initially been entered into for the period for which it has been in force. Should a renewed contract of insurance be terminated in advance, the insurance company is not, however, entitled to a premium higher than that corresponding to the insurance has covered.

If the policy holder has paid in advance a premium higher than that to which the insurance company is entitled under the preceding paragraph, the company shall repay the excess amount.

Reduction of Insurance Indemnity

Section 30.

If at the time of entering into a contract of insurance the policy holder intentionally or by negligence other than of a minor nature furnishes incorrect information or fails to disclose a material circumstance, the insurance indemnity may be reduced, with effect for all insured. The reduction shall be made on the basis of what is reasonable having regard to the influence which the true state of affairs has had upon the occurrence of the event insured and upon the extent of the loss and to the intent or negligence of the policy holder and other circumstances.

Section 31.

If an insured fails intentionally or by negligence to act according to his obligations under the terms of the insurance contract, the insurance indemnity may be reduced, in so far as he himself is concerned. The reduction shall be made on the basis of what is reasonable having regard to the influence which the failure has had upon the occurrence of the event insured and upon the extent of the loss and to the intent or negligence of the insured and other circumstances.

Equalled to the actions of an insured are those of any other person who acts with his consent. Also equalled thereto are those of any other person who has a substantial economic interest in common with the insured with regard to the insured property. The same rule shall apply to any person who, in place of the insured or together with him, has the insured property in his charge, if such has been provided in the contract of insurance.

Section 32.

If an insured intentionally causes the occurrence of the event insured, he forfeits all right of indemnity from the insurance as far as he himself is concerned.

If an insured causes the occurrence of the event insured by gross negligence, the insurance indemnity may be reduced in so far as he himself is concerned; this shall not, however, apply to insurance providing damages to a third party. If an insured causes the occurrence of the event insured by negligence other than of a minor nature, the insurance indemnity may be reduced in so far as he himself is concerned if such has been provided in the contract of insurance; this shall not, however, apply to insurance covering damages for a third party. Such a provision may be included in the contract of insurance only if its inclusion called for in order to prevent the occurrence of the event insured or if other special reasons exist. The reduction shall be made on the basis of what is reasonable having regard to the negligence of the insured and to other circumstances.

Equalled to the actions of an insured are those of any other person who acts with his consent. Also equalled thereto are the actions of any other person who has a substantial economic interest in common with the insured with regard to insured property, unless there are special reasons to the contrary.

Section 33.

Even if the policy holder or the insured has acted in a manner which according to Sections 30-32 may lead to reduction or forfeiture of the insurance indemnity, these

provisions shall not apply if the policy holder was in a mental state such as is envisaged in Section 33, paragraph 2, of the Penal Code, or if he was less than twelve years old.

In the application of Section 31, paragraph 2, or Section 32, paragraph 3, the actions of a person who is in a mental state such as is envisaged in Section 33, paragraph 2, of the Penal Code or who is less than twelve years old shall be regarded as equivalent to the actions of an insured only if he acted with the consent of the insured.

Section 34.

If a person entitled to indemnity, after the occurrence of the event insured, intentionally or by gross negligence states incorrectly or fails to disclose or conceals a circumstance which is material to the determination of his right to an insurance indemnity, the indemnity to which he would otherwise have been entitled may be reduced to such extent as is reasonable having regard to the circumstances.

Underinsurance

Section 35.

If under the terms of the insurance contract the sum insured is to equal the value of insured property or other insured interest and the sum is substantially lower than that value, an insurance indemnity for loss or damage to the property or other interest may be reduced in proportion to the underinsurance.

Double Insurance

Section 36.

If an interest is insured against the same risk with two or more insurance companies, each company is liable towards the insured as if that company alone had provided insurance.

The insured is not, however, entitled to a higher indemnity from the insurance companies than in total corresponds to his loss. If the sum of the amounts for which the companies are liable exceeds the loss, the insurance companies shall contribute in proportion to the amounts for which each company is liable.

Adjustments of Claims

Section 37.

When an insurance company has received notice of the occurrence of an event insured, the company shall without delay take such measures as are necessary in order to adjust the claim. The claim shall be dealt with promptly, having regard to the due interests of the person entitled to indemnity and other injured parties.

The terms of an insurance policy shall contain provisions for the valuation of damaged property and other loss which is a consequence of the event insured.

Section 38.

An insurance indemnity shall be paid not later than one month after the person entitled to the indemnity gave notice of the loss and provided such information as might in the circumstances reasonably be required of him in order to enable the insurance company to adjust the claim. This rule concerning the time of payment shall not, however, apply to an indemnity in the form of an annuity or to the extent that the right to an indemnity is contingent on property being reinstated or replaced, on the decision of an administrative authority or on the occurrence of some other similar event after the expiry of the period just stated.

If it is clear that the person claiming an insurance indemnity is entitled to at least a certain sum, that sum shall be paid immediately and shall be deducted at the final payment of indemnity.

Section 39.

The right to an insurance indemnity shall be forfeited if the person entitled thereto does not file a suit against the insurance company within three years of his learning that he had such a claim and at the latest within ten years from the time when the claim arose.

If the claim for an insurance indemnity has been presented to the insurance company within the period specified in the preceding paragraph, there shall always be available to the person entitled to an indemnity a period of six months during which he can file a suit commencing from the time when the insurance company announced its final decision concerning the indemnity.

The presenting to an officially appointed average adjuster of a claim for indemnity under a contract of yacht insurance shall be equivalent to filing a suit.

Section 40.

An insurance company shall forfeit the right to any unpaid premium when six months have elapsed from the date when the premium should have been paid, unless the contract of insurance has been cancelled before that date by the company or has

ceased to be in force, for reasons other than cancellation by the company.

Disputes Regarding the Right to Enter into or Maintain a Contract of Insurance

Section 41.

If an insurance company, contrary to Section 9, has refused to allow a consumer to enter into a contract of insurance, a court shall at the petition of the consumer declare that the consumer is entitled to enter into the contract of insurance.

The court may declare that the period of insurance shall be deemed to have commenced on the date which would have applied if the insurance company had granted the consumer's application for insurance.

A suit to obtain a declaration under the preceding paragraph must be filed within one month of the date on which the consumer received from the insurance company notification of its decision and of the reasons therefor with a reminder of the action that the consumer must take if he wishes to have the decision reversed.

If a suit is not filed within the time stated in the preceding paragraph, the right to such an action shall be forfeited.

Section 42.

If an insurance company, contrary to Section 15, 18 or 25, has cancelled a contract of insurance, a court shall at the petition of the policy holder declare the cancellation to be void.

A suit to obtain a declaration under the preceding paragraph must be filed within one month of the date on which the insurance company sent the notice of cancellation together with a written notification of the reasons for the decision to cancel the contract of insurance and a reminder of the action which the policy holder must take if he wishes to have the decision reversed.

If a suit is not filed within the time stated in the preceding paragraph, the right to such an action shall be forfeited.

Section 43.

The court may on request issue a declaration under Section 41 or Section 42 to apply for the period until a final decision is reached. Such a declaration may not, however, be issued unless the insurance company has the opportunity to submit a statement concerning the request.

Before such a dispute as is mentioned in Section 41 or Section 42 is resolved, the court shall obtain an opinion from the National Private Insurance Supervisory

Authority, unless such an opinion is superfluous.

1. This act shall enter into force on 1 January 1981.
2. The renewal of a contract of insurance which takes place after 1 January 1981 shall be subject to the provisions of Sections 14-17, even though the contract of insurance was entered into before that date. The new Act shall apply to the renewed insurance.
3. If the cancellation or other termination in advance of a contract of insurance or the alteration of the terms of an insurance contract during the period of insurance is based on a state of affairs which has arisen after 1 January 1981, Sections 18-20 shall apply even if the contract of insurance was entered into before that date. If the contract of insurance is terminated in advance after 1 January 1981, Section 29 shall apply.
4. If a premium is to be paid after 1 January 1981, Sections 21-25, 27 and 28 shall apply even if the contract of insurance was entered into before that date.
5. If an event insured has occurred after 1 January 1981, Sections 30-38 shall apply even if the contract of insurance was entered into before that date.
6. The provisions of Section 39 shall also apply to claims which have arisen before 1 January 1981 and which are yet subject to prescription under older provision. If a premium is to be paid after 1 January 1981, Section 40 shall apply even if the contract of insurance was entered into before that date.

八、瑞典送達到戶銷售法

THE DOOR-TO-DOOR SALES ACT (SFS 1981:1361)

Introductory Provision

Article 1

This Act shall apply when a trader, in his professional capacity, surrenders, assigns or sells movables to or performs services for a consumer, mainly for personal use, if the pertinent contract is concluded

1. during a visit to a private home, meaning a visit to the consumer's home or to the home of another consumer's or to any other place where the consumer is not only to be found occasionally,
2. in the course of a telephone conversation that constitutes an element in selling or other similar activity, or
3. during an excursion organized by the trader away from his business premises.

Notwithstanding the foregoing, the Act shall not apply if

1. the total price by the consumer is less than 300 Swedish kronor,
2. the contract covers sales and/or delivery of foodstuffs from a trader who is a regular roundsman,
3. the contract concerns securities within the meaning of the Securities Trading Act (1991:980),
4. the contract concerns the construction of a building or other permanent installation on land or in water,
5. the contract is an insurance contract, or
6. the contract is concluded during a visit to a private home that is taking place at the express request of the consumer and the contract concerns goods or services that are covered by the consumer's request or are directly related to such goods or services. (SFS 1992:1111)

Article 2

When a consumer has made an offer to a trader who has not made an immediate decision on the matter, what is stated in this Act in regard to contracts shall instead apply to the offer.

Article 3

Contract terms which, in comparison with the provisions of this Act, are to the consumer's disadvantage are not valid in regard to the latter.

The Trader's Obligation to Provide Information, etc

Article 4

When a contract is concluded during a visit to a private home, or during an excursion organized by the trader away from his business premises, the trader shall at the same time hand over to the consumer a document apprising him of the contents of the present Act and of the name and address of a person against whom the right of cancellation pursuant to Article 6 may be exercised. The consumer shall sign one copy of the document as an acknowledgment that he or she has received it. The informational document that is handed over, to the consumer shall be accompanied by a preprinted form that the latter can use in order to exercise his or her right of cancellation.

When the contract is entered into in the course of telephone selling or other similar activity by telephone, the trader shall, within three days, hand or send to the consumer a confirmation of what has been agreed, together with the document and the form referred to in the first paragraph of this Article.

The documents and forms referred to in the first and second paragraphs shall be in the form prescribed by the Government or by the authority appointed by the Government. (SF8 1992:1111)

Article 5

If the provisions of Article 4 are not observed the consumer is not bound by the contract.

If the consumer wishes the contract to be annulled under the first paragraph of this Article, the trader must be notified to that effect within one year from the date on which — if the contract concerns the supply or making available of movables — the consumer took delivery of the goods or a material part thereof, or within one year from the date on which — if the contract concerns a service — the trader commenced the performance of the service. Failing this, the consumer shall forfeit his or her right to demand the annulment of the contract. (SFS 1992-1111)

The Right of a Consumer to Cancel a Contract

Article 6

The consumer has the right to waive a binding contract (right to cancel) by handing or sending to the trader a written communication to this effect within a week from the day stated in Article 7 (cooling-off period).

If a consumer waives an offer such as is referred to in Article 2, a contract concluded by the acceptance of the offer becomes void.

Article 7

In the case of a contract covering the supply or making available of movables, the cooling-off period runs from the day on which the consumer took delivery of the goods or a material part thereof or, prior thereto, examined the goods or similar goods, except that it cannot begin to run until the day on which the documents referred to in Article 4 are received by the consumer.

In the case of a contract to supply a service, the cooling-off period runs from the day on which the documents referred to in Article 4 were received by the consumer. The same applies to a contract for supplying or making available movables, if the trader has entered into a written agreement to this effect with the consumer in cases where

1. the goods have been manufactured or substantially changed in accordance with the special wishes of the consumer, or
2. it would not, be reasonable, on the grounds that the goods are bulky or some other similar circumstance, to permit the start of the cooling-off period to be delayed until the consumer has received the goods or a substantial portion thereof or has examined the goods or similar goods. (SFS 1992:1111)

Article 8

In the case of a contract concerning the supply or making available of movables, the consumer may exercise his or her right of cancellation only if the goods he or she has received have been kept in an essentially unchanged condition. However, this does not apply if the goods have been damaged or changed as a consequence of some action that was necessary to permit the examination of the goods or as a consequence of some circumstance for which the consumer cannot be deemed responsible. (SFS 1992:1111)

The effect of a consumer exercising his right to cancel a contract

Article 9

If the consumer exercises his or her right of cancellation in respect of a contract

covering the supply or making available of movables, the goods that he or she has received shall be held available at the place where they were received. However, the goods may be held available at some other place indicated by the consumer if the trader can fetch them from that place without inconvenience.

If the goods have been sent by post to the consumer, the latter shall return them in the same way provided that the trader provides suitable packaging and the consumer does not have to defray the cost of return postage.

If the consumer exercises his or her right of cancellation in respect of a contract covering a service, the provisions contained in the first and second paragraphs of this Article shall apply to material that the consumer has received, provided that the consumer does not incur significant inconvenience and does not incur expenses. (SFS 1992:1111)

Article 10

If the consumer exercises his or her right of cancellation, the trader shall refund what the consumer has paid. The consumer is entitled to retain the goods, and in applicable cases the material, until the trader has fulfilled that obligation.

If, in cases such as are referred to in the first paragraph of Article 9, the trader does not collect the goods, or in applicable cases the material, within three months from the day on which the cooling-off period began to run, title to the said property passes to the consumer free of charge. The same applies if, in cases such as are referred to in the second paragraph of Article 9, the trader fails to refund what the consumer has paid within the same period. (SFS 1992:1111)

Article 11 ceased to be valid (SFS 1992:1111)

Authority Vested in a Trader's Representative

Article 12

If a trader employs the services of a representative, this representative shall always be regarded as authorized to act on behalf of the trader when it comes to entering into contracts such as are referred to in this Act, guaranteeing benefits that are intended to be included in such a contract and receiving payment on behalf of the trader. The trader may not limit this authority, to the detriment of the consumer. (SFS 1992:353)

This Act enters into force on 1 January 1993.

In the case of contracts concluded prior to the entry into force of this Act earlier provisions remain valid.

本選輯委請理律法律事務所翻譯，由該所保有著作人格權，著作財產權歸本會所有，並同意依著作權法第三十七條規定授權該所利用該著作。

外國消費者保護法

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