

Annex 1: Legislative Proposal for Amendment of Consumer Protection Act 2012

1. Title of the Proposal: Amendment of Consumer Protection Act 2012

Type of Legal Measure: Consumer Protection Act 2012

Lead Ministry/Commission/Agency: Competition and Consumer Affairs Authority

Expected Date of Adoption: To be decided

2. PROBLEM IDENTIFICATION:

The current Consumer Protection Act 2012 has several gaps that limit its effectiveness in addressing emerging consumer challenges in Bhutan's evolving marketplace. The Act requires significant updates to align with practical realities and provide comprehensive protections for consumers. Key issues include:

- 1) Inadequate Penalty Provisions:** The existing penalty framework is limited in scope and lacks proportionality to the nature and severity of violations. This undermines its deterrent effect on businesses engaging in unfair practices.
- 2) Inefficient Consumer Dispute Mechanism:** The current dispute resolution framework includes redundant provisions, such as the role of consumer advocates in mediation, which have proven inapplicable. There is a need to remove these inefficiencies and introduce practical and effective mechanisms that enhance consumer redress.
- 3) Limited Role of the CCAA in Dispute Settlement:** The role of the Competition and Consumer Affairs Authority (CCAA) in consumer dispute resolution needs to be strengthened to provide clear authority and capacity for effective enforcement and mediation.
- 4) Ambiguity in the Application of the Act:** The scope of the Act needs clearer definitions, particularly regarding the types of disputes it covers. For example, consumer disputes currently apply only to transactions between consumers and businesses and exclude other potential areas of conflict.
- 5) Redundant and Outdated Provisions:** Some provisions in the Act are no longer relevant or necessary and need to be removed to streamline the legal framework. For instance, **Section 49 (Assessment of damages in hire-purchase agreements)** and **Section 15 (Land and buildings)** are not essential and should be eliminated. Additionally, critical provisions, such as those addressing misleading and false representations under **Chapter III**, need to be strengthened to ensure robust consumer protection.
- 6) Alignment with International Best Practices:** The legal framework must be updated to incorporate international standards and best practices, ensuring that Bhutan's consumer protection laws remain relevant and effective in a globalized economy.

- 7) **Undefined Criminal Aspects:** The Act does not adequately address criminal offenses related to consumer rights violations. A clearer distinction between civil and criminal liabilities is required for effective enforcement.
- 8) **Evolving Consumer Issues:** The current Act does not sufficiently address new and complex challenges, such as those arising in digital markets, online transactions, and emerging industries. Consumers face risks such as digital fraud, and inadequate redress mechanisms in these sectors.

3. OBJECTIVE OF THE PROPOSAL:

The objective of amending the Consumer Protection Act 2012 is to strengthen Bhutan's legal framework for consumer protection by addressing existing gaps, removing inefficiencies, and aligning the Act with evolving market dynamics and international best practices. The proposal seeks to enhance safeguards against unfair trade practices, particularly in the context of evolving consumer issues. It aims to streamline the Act by eliminating redundant provisions, while introducing new provisions to improve clarity and applicability. Additionally, the amendment intends to improve the efficiency of consumer redress mechanisms by replacing outdated processes and enhancing the role of the Competition and Consumer Affairs Authority (CCAA) in dispute settlement. Updated penalty provisions will ensure proportionality and accountability, while clearer definitions of the Act's scope will address ambiguities in its application. Furthermore, the amendment will align the legal framework with global best practices, reform CCAA as per the Civil Service Reform Act, distinguishing civil and criminal aspects to strengthen enforcement. Ultimately, the proposal aims to create a robust and equitable system that fosters trust, promotes market fairness, and empowers both consumers and businesses.

4. POLICY OPTIONS:

1) What are the options that are available to reach the objective and what range of alternatives will be considered?

To achieve the objectives of strengthening the consumer protection framework and addressing emerging challenges, the following options are available for consideration:

Option 1: Amendment of the Existing Act:

This option involves revising the entire Consumer Protection Act 2012 to address the identified gaps, emerging consumer issues, and inconsistencies within its provisions. By comprehensively amending the Act, it will be possible to harmonize various sections, enhance enforcement mechanisms, and align the legal framework with international best practices. This approach ensures a cohesive, future-ready legal structure that adequately protects consumers while fostering fair trade and competition.

Option 2: Amendment of Specific Provisions of the Act:

Under this option, only selected provisions of the Act would be amended to address immediate issues or gaps. For instance, strengthening penalty clauses, updating dispute resolution mechanisms, and redefining certain provisions could be undertaken without

revising the entire Act. While this approach may address specific shortcomings, it risks leaving broader structural issues unresolved, potentially leading to fragmented implementation and legal ambiguity.

Option 3: Repeal of the Existing Act:

This option involves repealing the Consumer Protection Act 2012 and replacing it with a new Act. While this could offer an opportunity to build a modern and comprehensive consumer protection framework from scratch, it is resource-intensive and time-consuming. Moreover, repealing the existing Act may create temporary legal voids, potentially disrupting consumer protection efforts and enforcement mechanisms during the transition period.

Preferred Option:

The amendment of the existing Act is the most practical and effective option. It allows for a thorough revision of outdated or ineffective provisions while retaining the foundational framework of the Act. This approach ensures that the identified gaps are addressed comprehensively, emerging consumer issues are incorporated, and the provisions of the Act are harmonized for clarity and consistency. By building upon the existing legal foundation, this option balances the need for reform with practicality, ensuring minimal disruption while achieving the desired improvements.

2) How have the principles of subsidiarity and proportionality been taken into account?

Subsidiarity and Proportionality Considerations:

The principles of subsidiarity and proportionality will be carefully considered during the revision process of the Consumer Protection Act 2012, should the proposal be approved. Subsidiarity will ensure that issues requiring uniformity across various levels of mediation and dispute settlement are addressed effectively. This includes clearly defining the roles and responsibilities at the gewog, regional, and headquarters levels, as well as the functions of the Dispute Settlement Committees, aligning these frameworks with international best practices.

Proportionality will also be a key consideration, ensuring that the measures introduced are necessary, balanced, and do not impose undue burdens on stakeholders. The goal will be to craft amendments that effectively address the identified gaps in the Act while maintaining an equitable balance between consumer rights and business interests, ensuring practical and fair outcomes for all parties involved.

5. IMPACTS – POSITIVE AND NEGATIVE:

1) On a preliminary basis, what are the likely positive and negative impacts of the selected options, particularly in terms of economic, social and environmental consequences?

Preliminary Impacts:

Positive Impacts:

- **Economic:** The amendments will contribute to a fairer marketplace by reducing fraud and ensuring more informed consumers. This will likely lead to greater consumer confidence, boosting spending and stimulating economic growth. It will also foster a more competitive environment, encouraging businesses to innovate.
- **Social:** General consumer including vulnerable groups, such as low-income consumers and rural populations, will benefit from clearer protections and stronger enforcement, reducing the likelihood of exploitation. The amendments will also improve consumer redress, contributing to a more equitable society.
- **Environmental:** Indirect positive environmental impacts may arise from increased consumer awareness of green products and eco-friendly practices encouraged through fair advertising and sustainable business practices.

Negatives Impacts:

Negative Impacts: No negative impacts are anticipated, as the revision of the Act is expected to enhance enforcement efficiency, strengthen consumer protection, and make the law more predictable by eliminating ambiguities.

2) Who Would Be Affected?

- **Consumers:** Consumers will benefit from stronger protections and enhanced avenues for redress. Vulnerable groups, such as low-income and rural consumers, will be particularly impacted by the amendments.
- **Businesses:** The revision of the Act will foster greater discipline within businesses, encouraging the development of a business culture rooted in fair trade practices. With a clear and predictable legal framework in place, businesses will benefit from enhanced certainty in their operations. The law's transparency and the removal of discretionary powers from implementing agencies will ensure a consistent and impartial approach, enabling businesses to better plan and operate without fear of arbitrary decisions. This will ultimately contribute to a more stable and competitive market environment, benefiting businesses in the long term.
- **Regulatory Authorities:** The revision of the Act will strengthen the CCAA by enhancing its enforcement capabilities, allowing for more effective oversight and regulation of market activities. This will improve the efficiency of consumer protection efforts and make the regulatory framework more adaptable to emerging market challenges, ensuring that the CCAA can respond swiftly and effectively to evolving consumer needs and market dynamics.