The Consumer Protection in the CARICOM Single Market & Economy

One of the obligations that Suriname has as a result of its membership in the Caribbean Community and is participation in the CARICOM Single Market is the obligation to safeguard consumer interests. A Consumer Protection law, once adopted, is also in the interest of the business community in Suriname. Suppliers of goods and services will have greater awareness about their dealings with consumers. It promotes also a level playing field and prevents unfair competition. For example, all the companies have to apply the same standard for health and safety and adhere to the same rules for warranty.

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Twelve (12) Member States of the Caribbean Community indicated in 2006 that they were ready to operate the CARICOM Single Market. These countries had to implement various legislative and administrative measures in order to become Single Market ready. One of the critical legal steps was to give legal effect to the Revised Treaty of Chaguaramas by signing, ratifying and enacting it into domestic legislation and subsequently publishing it in the Official Gazette of the country. Some of these legal steps were slightly different for Suriname due to the fact that the legal system is different than most of the other Member States of the Caribbean Community. The Revised Treaty of Chaguaramas entered into legal effect on January 1st, 2006, so Member States, thus also Suriname, are obliged to honor all their Treaty commitments and obligations.

In its ruling in the Hummingbird case the Caribbean Court of Justice (CCJ) therefore rightfully pointed out that “there is no doubt that Suriname came under a legal obligation scrupulously to observe all its treaty obligations from 1st January 2006, the date of the entry into force of the Revised Treaty. From that date forward, the rule of pacta sunt servanda, enshrined in Article 26 of the Vienna Convention on the Law of Treaties 1969, became operative: “every treaty in force is binding upon the parties to it and must be performed by them in good faith”. The State of Suriname was simultaneously bound by Article 9 of the Revised Treaty to take all appropriate measures to ensure the carrying out of its treaty obligations. (CCJ: Paragraph 17 : 23-02-2012)”

One of the obligations that Suriname has as a result of its membership in the Caribbean Community and is participation in the CARICOM Single Market is the obligation to safeguard consumer interests. The promotion and protection of consumer interests is enshrined in the Revised Treaty of Chaguaramas in Chapter Eight, in particular in Articles 184 and 185. In order to assist Member States with the implementation of consumer protection legislation, the Caribbean Community (CARICOM) Secretariat developed a Model Consumer Protection Bill. Member States can use the Model Bill as desired, in particular adapt it to circumstances at the national level, but they are obliged to incorporate the main provisions of the Model Bill into their national law. This is necessary, because Member States agreed to the harmonization of critical laws, one of which was consumer protection. This is not strange, because you don’t want to have different consumer protection laws in a Single Market. The same applies to other areas, such as competition and company registration.

The Model Consumer Protection Bill provides for, inter alia, the promotion and protection of consumer interests in relation to the supply of goods and the provision of services; the protection of life, health and safety of consumers; the advancement of consumers’ social well-being within the market system; and the establishment a Consumer Affairs Commission.

The Model Consumer Protection Bill has substantive provisions, which must promote and protect the interests of consumers. The Model Bill caters for both Ex Ante and Ex Post protection. Ex Ante protection tries to prevent that the interest of consumers
is violated, while Ex Post protection tries to remedy situations, where this has happened. Examples of Ex Ante protection are:

- encouraging improvements in consumer awareness as well as responsible and informed consumer choice and behavior;
- empowering a Consumer Affairs Commission to carry out investigations on its own initiative with a view to facilitating better understanding of market practices as well as to make information available to consumers;
- assigning responsibilities to suppliers before they engage in contractual relationships with consumers.

Examples of Ex Post Protection are:

- establishing effective and efficient redress systems;
- establishing liability for defects and damage arising from consumption of goods;
- returning of goods, which are different than purchased or not working properly.

What will the Consumer Protection law, once adopted, mean for the business community in Suriname? First of all, consumer protection legislation must be viewed as a positive development by the business community, because suppliers of goods and services will have a greater awareness concerning their dealings with consumers, in particular what is allowed and what is not, when doing business. For example, suppliers of goods and services will have to ensure that products and services meet required standards for health and safety. A car dealer will have to ensure that the cars, which are being sold, meet the required standards for health and safety. The same applies to all other goods. We just had the end of the year celebration. It is practice in Suriname to enjoy fireworks in December. Suppliers of fireworks will have to ensure that it is meeting the required standards for health and safety.

Furthermore, suppliers can’t engage in deceptive, misleading, fraudulent and unfair practices. Unfortunately, there still are some suppliers of goods and services, who engage in these practices and get away with them. One personal experience in Suriname was that certain items in supermarkets don’t have the indicated quantity, because shop keepers might be using small amounts of these items or the content might have spilled during shipment. This was especially the case with items, which are not sealed, such as certain laundry detergents, dish washers and sprays (deodorants / insecticides). In Suriname there were also complaints about gas cylinders.

Suppliers will also have to ensure that they are not using misleading advertisements. “Buy one, get one free” will have to mean exactly that. 200 monthly free minutes for subscribing to mobile telephone services must exactly mean that. It can’t be 200 minutes in the first month and thereafter 60 minutes. Free service after 8 pm must exactly mean that. Suppliers of goods and services will thus have to ensure that their advertisements conform to ethical standards.
Furthermore, suppliers of goods and services will have to issue explicit warranties, regardless if the goods are new or used or if the service is to repair a good, for example an appliance or equipment. A manufacturer’s warranty, which was attached to a good or service will be deemed to have been issued by the supplier, thus resulting in liability to the consumer. For example, if a consumer buys a microwave, which has a 2 years manufacturer’s warranty attached to it, the supplier will be responsible for repairs within the two years or to replace it, if it malfunctions.

The Consumer Protection Act will deal with issues, such as labeling, rights of the consumers to receive information in the official language of Suriname, rights of the consumers to cancel appointments, rights of consumers to cancel purchases, the documents of sale, information concerning repaired goods, guarantees, Pyramid sales, exceptions and recalls. It is clear that a comprehensive public education is needed to make the business community fully aware of the content of the Model CARICOM Consumer Protection Bill.

The Ministry of Commerce and Industry of Suriname has responsibility for consumer affairs in Suriname. The Ministry has already taken some crucial steps to lift consumer affairs in Suriname to a higher level, such as through the establishment of a Consumer Affairs Division. But, more needs to be done. The next critical step is to implement the Model CARICOM Consumer Protection Bill to cater for the legislative framework for consumer protection in Suriname in a more holistic way, inclusive the establishment and operation of a Consumer Affairs Commission. In Barbados the Fair Trading Commission is responsible for both competition and consumer protection matters, so maybe Suriname can emulate this. But, in doing this, Suriname must ensure that the Commission gives both matters equal attention. Of course Suriname has the option to establish a standalone Consumer Affairs Commission, if this is deemed in the best interest of consumers, because as indicated before the obligation that Suriname has is to safeguard consumer interests.