

A BILL

i n t i t u l e d

An Act to amend the Consumer Protection Act 1999.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Consumer Protection (Amendment) Act 2017.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 3

2. The Consumer Protection Act 1999 [*Act 599*], which is referred to as the “principal Act” in this Act, is amended in subsection 3(1) by deleting the definition of “credit instrument”.

New Part IIIB

3. The principal Act is amended by inserting after Part IIIA the following Part:

“PART IIIB**CREDIT SALE TRANSACTIONS****Application of Part IIIB**

24K. (1) Without prejudice to the provisions in the Contracts Act 1950, the Specific Relief Act 1950 and the Sale of Goods Act 1957, the provisions of this Part shall apply to all credit sale agreements.

(2) This Part shall not apply to a credit sale transaction entered into between a purchaser and a co-operative society that is registered under the Co-operative Societies Act 1993 [Act 502] or any sale transaction involving a credit card.

Interpretation for purposes of Part IIIB

24L. For the purpose of this Part—

“credit facility” means a facility provided by a credit facility provider to a purchaser under a credit sale transaction which allows the payment of goods sold to be made in instalments;

“credit facility provider” means any person, including a seller, who provides credit facilities to a purchaser in a credit sale transaction;

“credit sale agreement” means an agreement entered into between a purchaser, who is a consumer, and a credit facility provider for the sale of goods by which—

- (a) a credit facility is provided by the credit facility provider to the purchaser in a credit sale transaction of such goods; and
- (b) the credit payment for the purchased goods is made by the purchaser to the credit sale provider by instalments;

“credit sale transaction” means a credit transaction between a credit facility provider and a purchaser for the payment of purchased goods by way of instalments;

“dealer” means a person, other than the employee of a credit facility provider, who negotiates on behalf of the credit facility provider for the purposes of making a credit sale agreement;

“goods” means any goods or class of goods prescribed by the Minister under section 24M;

“seller” means any person who sells goods to any purchaser through a credit sale transaction;

“statutory rebate” means—

- (a) a rebate on the outstanding terms charges calculated according to the prescribed formula; or
- (b) a rebate on the amount of premium paid in respect of the insurance of goods,

granted upon early settlement of the payment of the total outstanding amount payable under a credit sale agreement;

“terms charges” means an interest calculated at a rate per annum on the initial amount financed by a credit facility provider in a credit sale agreement;

“total outstanding amount payable” means the total amount payable by a purchaser under a credit sale agreement and the amount derived from the terms charges on overdue instalments which has yet to be paid less—

- (a) the total amount of the instalments paid by or on behalf of the purchaser, excluding deposit; and
- (b) statutory rebate, if any.

Power of Minister to prescribe goods

24M. For the purpose of this Part, a credit sale agreement may only be made in respect of any goods or class of goods as prescribed by the Minister.

Preconditions of credit sale agreement

24N. (1) Before any credit sale agreement is entered into in respect of any goods or class of goods, a seller or credit facility provider, or any person acting on behalf of the seller or credit facility provider, or a dealer, who carries out negotiations leading to the making of the credit sale agreement shall serve on the prospective purchaser a prescribed written statement relating to the summary of financial obligation of the prospective purchaser duly completed and signed by the seller, the credit facility provider, the person acting on behalf of the seller or the credit facility provider, or the dealer, as the case may be.

(2) After the service of the written statement referred to in subsection (1) and upon an application being made—

(a) by the prospective purchaser to the seller or the person acting on behalf of the seller or the credit sale provider, or the dealer, referred to in subsection (1), the seller, person or dealer shall take such steps to obtain the consent of the credit facility provider to provide the credit facility to the prospective purchaser and the credit facility provider may give its consent; or

(b) by the prospective purchaser to the credit facility provider referred to in subsection (1), the credit facility provider may give its consent to provide the credit facility to the prospective purchaser.

(3) A credit facility provider may impose a processing fee which shall not exceed the prescribed fee on the prospective purchaser who makes the application under subsection (2).

(4) The credit facility provider may impose only one processing fee in respect of one credit sale agreement irrespective of the number of goods purchased under the agreement.

(5) After the consent of the credit facility provider to provide the credit facility to the prospective purchaser has been given under subsection (2), the seller or the credit facility provider, or the person acting on behalf of the seller or the

credit facility provider, or the dealer, as the case may be, shall serve on the prospective purchaser a prescribed written statement relating to the consent of the credit facility provider to provide the credit facility to the prospective purchaser duly completed and signed by the credit facility provider.

(6) The written statements referred to in subsections (1) and (5) shall be served by delivering the written statements personally to the prospective purchaser or any person acting on his behalf who shall acknowledge receipt of the written statements.

(7) Any prospective purchaser who has been served with the written statement referred to in subsection (1) or (5) shall not be under any obligation to enter into any credit sale agreement, and no payment or other consideration shall be required from him in respect of the preparation or service of such written statement.

(8) No credit sale agreement shall be entered into within the period of ten working days after the service of the written statement under subsection (5).

(9) Notwithstanding subsection (8), the prospective purchaser may elect to enter into a credit sale agreement after three working days from the date of service of the written statement under subsection (5).

(10) A credit facility provider shall refund the processing fee imposed under subsection (3) to the prospective purchaser if—

(a) the consent of the credit facility provider to provide the credit facility is not given under subsection (2);
or

(b) the prospective purchaser elects not to enter into the credit sale agreement.

(11) A credit sale agreement entered into in contravention of subsection (1), (5), (6), (7), (8) or (9) shall be void.

(12) If a dealer or a person acting on behalf of the seller or credit facility provider carries out negotiations leading to the making of a credit sale agreement in contravention of subsection (1) or (5), and thereafter the seller or credit facility provider enters into a credit sale agreement, notwithstanding that the credit sale agreement is void, the dealer or such person commits an offence.

(13) Any person who—

- (a) imposes an obligation on a prospective purchaser to enter into any credit sale agreement after the written statement referred to in subsection (1) or (5) has been served on the prospective purchaser; or
- (b) requires a prospective purchaser to make any payment or other consideration in respect of the preparation or service of the written statement referred to in subsection (1) or (5),

notwithstanding that the credit sale agreement is void, commits an offence.

(14) A credit facility provider who enters into a credit sale agreement in contravention of subsection (1), (5), (6), (8) or (9), notwithstanding that the credit sale agreement is void, commits an offence.

(15) A credit facility provider who fails to comply with subsection (3), (4) or (10) commits an offence.

Credit sale agreement to be made in writing

240. (1) A credit sale agreement in respect of any goods or class of goods shall be made in writing and in the national language or English language.

(2) A credit sale agreement which contravenes subsection (1) shall be void.

(3) A credit facility provider who enters into a credit sale agreement which does not comply with subsection (1), notwithstanding that the credit sale agreement is void, commits an offence.

Contents of credit sale agreement

24P. (1) Every credit sale agreement—

(a) shall contain the following information:

- (i) the date on which the credit sale agreement comes into force;
- (ii) the number of monthly instalments to be paid by the purchaser under the credit sale agreement;
- (iii) the amount of each of the instalments, and the person to whom and the place at which the payments of the instalments are to be made;
- (iv) the date for the payment of each of the instalments;
- (v) the description of any part of consideration which is provided or is to be provided otherwise than in cash;
- (vi) the description of the goods which is sufficient to identify them;
- (vii) the address where the goods under the credit sale agreement are kept or used;
- (viii) the terms charges, and ancillary charges including late payment charges, processing fee, storage fee, collection fee or delivery charges, if any; and
- (ix) the rights and obligations of the purchaser and credit facility provider;

(b) shall contain the following information in a tabular form:

- (i) the cash price, that is the price at which the purchaser might have paid for the goods, if he purchased the goods in cash, at the time of signing of the credit sale agreement;

Bill

- (ii) the amount paid or provided by way of deposit, including any booking fee, by the purchaser showing separately the amount paid in cash and the amount provided by any consideration other than cash, if any;
- (iii) the freight charges, that is any amount incurred for the expenses of delivering the goods to the purchaser, and including any amount incurred based on the delivery order of the purchaser, if any;
- (iv) the vehicle registration fee, that is any amount payable for the vehicle registration fee in respect of a motor vehicle, if any;
- (v) any amount payable for insurance in respect of the goods or any of the goods, if any;
- (vi) the total of the amount referred to in subparagraphs (i), (iii), (iv) and (v) less the deposit referred to in subparagraph (ii), if any;
- (vii) the terms charges;
- (viii) the annual percentage rate for terms charges which shall be calculated in accordance with the prescribed formula;
- (ix) the balance originally payable, that is the total of the amount referred to in subparagraphs (vi) and (vii); and
- (x) the total amount payable which shall consist of—
 - (A) the amount referred to in subparagraphs (ii), (vi) and (vii); or
 - (B) the amount referred to in subparagraphs (i), (iii), (iv), (v) and (vii); and

(c) shall not contain any information which differs in any material way from the information specified in paragraphs (1)(a) and (b).

(2) A credit sale agreement which contravenes subsection (1) shall be void.

(3) A credit facility provider who enters into a credit sale agreement in contravention of subsection (1), notwithstanding that the credit sale agreement is void, commits an offence.

Ownership in purchased goods under credit sale agreement

24Q. Upon the signing of a credit sale agreement, the ownership in the purchased goods shall pass to the purchaser.

Rights and obligations of purchaser

24R. (1) In relation to a credit sale agreement, a purchaser—

- (a) is entitled to choose whether the agreement is to be made in the national language or the English language before the agreement is signed;
- (b) is entitled to an implied guarantee that he shall have and enjoy quiet possession of the goods; and
- (c) is entitled to an implied guarantee that the goods shall be free from any charge or encumbrance.

(2) In relation to a credit sale agreement, a purchaser shall—

- (a) furnish the monthly amount of instalment payable to the credit facility provider on the agreed date of payment of each instalment;
- (b) cause the purchased goods to be insured in his name during the period of the agreement, where applicable; and

- (c) upon a request by a credit facility provider under paragraph 24s(1)(a), inform the credit facility provider in writing where the goods are kept or used, or if the goods are not in his possession, to whom he has delivered the goods or the circumstances under which he has lost possession of the goods.

Rights and obligations of credit facility provider

24s. (1) In relation to a credit sale agreement, a credit facility provider is entitled to—

- (a) request, by notice in writing, the purchaser to state in writing where the goods are kept or used, or if the goods are not in the purchaser's possession, to whom the purchaser has delivered the goods or the circumstances under which the purchaser has lost possession of the goods;
- (b) cause the goods to be insured in the name of the purchaser against any risks that the credit facility provider thinks fit, if any, for the period of the credit sale agreement; and
- (c) collect any booking fee or deposit from the purchaser in respect of any purchased goods, where applicable.

(2) In relation to a credit sale agreement, a credit facility provider shall—

- (a) serve a copy of the credit sale agreement to the purchaser within twenty-one days after the making of the credit sale agreement;
- (b) give a receipt to the purchaser in respect of each payment of instalment made;
- (c) subject to subsection (3), at any time before the final payment of instalment is made under the credit sale agreement, and within twenty-one days after the

credit facility provider has received a request in writing from the purchaser, supply to the purchaser a statement signed by the credit facility provider showing—

- (i) the total amount paid to the credit facility provider by or on behalf of the purchaser;
 - (ii) the amount which has become due under the agreement but remains unpaid;
 - (iii) the amount which is to become payable under the agreement; and
 - (iv) the amount derived from the terms charges on overdue instalments;
- (d) issue an authority card to any person acting on behalf of the credit facility provider for the purposes of collecting or receiving the payment of instalments or any outstanding amount under the credit sale agreement, or collecting or receiving goods surrendered by the purchaser under section 24w; and
- (e) where the dealer or person acting on behalf of the credit facility provider for the purposes of collecting or receiving the payment of instalments or any outstanding amount under the credit sale agreement, or collecting or receiving goods surrendered by the purchaser, has ceased to be such dealer or person, inform the purchaser in writing of such cessation and that no payment of instalments or surrender of goods shall be made to such dealer or person.

(3) The credit facility provider may not comply with the request referred to in paragraph (2)(c) if he has supplied to the purchaser the statement referred to in that paragraph within a period of three months immediately preceding the receipt of the request.

(4) A credit facility provider who fails to comply with subsection (2) commits an offence.

Limitation on terms charges

24r. (1) The rate of the terms charges in respect of any goods or class of goods under a credit sale agreement as calculated in accordance with the prescribed formula shall not exceed the prescribed rate in respect of the goods or class of goods.

(2) Where a credit sale agreement is entered into in contravention of subsection (1), the purchaser may, by notice in writing to the credit facility provider, elect—

(a) to treat the agreement as void; or

(b) to have the excess amount reduced from the total amount of the terms charges payable by him under the agreement.

(3) Where the purchaser elects to treat the credit sale agreement as void under paragraph (2)(a)—

(a) the agreement shall be void;

(b) the credit facility provider shall refund to the purchaser any amount paid out of the total amount payable or other consideration provided by or on behalf of the purchaser under the agreement; and

(c) the purchaser shall surrender the purchased goods to the credit facility provider.

(4) Where the purchaser elects to have the excess amount reduced from the total amount of the terms charges payable by him under paragraph (2)(b), the credit facility provider shall reduce the excess amount from the total amount of the terms charges payable under the credit sale agreement.

(5) If after the reduction made under subsection (4), it is found that the total amount of the terms charges payable has been overpaid by the purchaser under the credit sale agreement, the purchaser may set off the amount of the overpayment against the total amount payable under the agreement.

(6) A credit facility provider who fails to comply with subsection (1), paragraph (3)(b) or subsection (4) commits an offence.

(7) A purchaser who fails to comply with paragraph (3)(c) commits an offence.

(8) In this section, “excess amount” means the difference between the amount of the terms charges in respect of any goods or class of goods under a credit sale agreement and the amount of the terms charges as calculated according to the prescribed rate.

Limitation on period of payment of instalments and charges

24u. (1) The period of payment of instalments under a credit sale agreement shall not exceed the prescribed period.

(2) The rate of late payment charges on overdue instalments imposed under a credit sale agreement shall not exceed the prescribed rate.

(3) A credit facility provider who fails to comply with subsection (1) or (2) commits an offence.

Default in payment of instalments by purchaser

24v. (1) In the event of default in payment of two consecutive instalments by a purchaser under a credit sale agreement, the credit facility provider shall issue a notice to the purchaser on the settlement of the overdue instalments under the agreement.

(2) Upon receipt of the notice under subsection (1), the purchaser may within twenty-one days elect to—

- (a) pay the overdue instalments and the late payment charges to the credit facility provider;
- (b) make an early settlement of the credit sale agreement by paying the total amount payable under the agreement to the credit facility provider; or

(c) terminate the credit sale agreement and surrender the purchased goods to the credit facility provider in accordance with section 24w.

(3) If the purchaser elects to make an early settlement under paragraph (2)(b), the credit facility provider shall grant the statutory rebate to the purchaser.

(4) If the purchaser fails to make the election under subsection (2), the credit facility provider may recover, through legal proceedings, the total outstanding amount payable by the purchaser under the credit sale agreement as a debt due to the credit facility provider.

(5) A credit facility provider who fails to comply with subsection (1) or (3) commits an offence.

Surrender of goods

24w. (1) A purchaser may, at any time or upon making the election under paragraph 24v(2)(c), surrender the purchased goods to the credit facility provider.

(2) The purchaser shall surrender the purchased goods on a date as agreed by the credit facility provider and the purchaser, and at the place of business of the credit facility provider nearest to the place where the purchased goods are kept or used or at another place as agreed by the credit facility provider and the purchaser.

(3) Where the purchased goods are surrendered under subsection (1), the credit facility provider shall not impose any cost incurred by the credit facility provider in storing the purchased goods or any other incidental cost.

(4) Upon receipt of the purchased goods surrendered by the purchaser under subsection (1), the credit facility provider shall sell or otherwise dispose of the purchased goods.

(5) If the purchased goods surrendered by the purchaser under subsection (1) are sold or disposed of, the purchaser is entitled to the best price that could reasonably be obtained by the credit facility provider upon the sale or disposal of the purchased goods.

(6) If there is any surplus between the proceeds of sale or disposal of the purchased goods surrendered and the total outstanding amount payable under the credit sale agreement, the credit facility provider shall pay the amount of the surplus to the purchaser.

(7) If there is any deficiency between the proceeds of sale or disposal of the purchased goods surrendered and the total outstanding amount payable under the credit sale agreement, the purchaser shall pay the amount of the deficiency to the credit facility provider.

(8) If the purchaser fails to pay the amount of the deficiency to the credit facility provider under subsection (7), the credit facility provider may recover, through legal proceedings, the amount of the deficiency as a debt due to the credit facility provider.

(9) A credit facility provider who fails to comply with subsection (3), (4) or (6) commits an offence.

Restriction on disclosure or circulation of personal data

24x. A credit facility provider shall not disclose or circulate the personal data of a purchaser obtained under a credit sale transaction to a third party unless the purchaser has been informed of the purpose of such disclosure or circulation and a written consent of the purchaser has been obtained.

Prohibition on repossession of goods

24y. A credit facility provider shall not at any time, whether upon default of payment of instalments or otherwise, repossess the purchased goods from the purchaser.

Contravention of section 24x or 24y to be an offence

24z. (1) A credit facility provider who contravenes section 24x or 24y commits an offence and shall, on conviction, be liable—

- (a) if such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit, and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit; or
- (b) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years, or to both, and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding six years, or to both.

(2) In the case of a continuing offence, the offender shall, in addition to the penalties under subsection (1), be liable to a fine not exceeding two thousand ringgit for each day or part of a day during which the offence continues after conviction.

Regulations relating to credit sale transactions

24AA. (1) The Minister may make such regulations as may be necessary or expedient in respect of credit sale transactions and credit sale agreements.

(2) Without prejudice to the generality of subsection (1), such regulations may prescribe—

- (a) the procedure relating to the making and execution of credit sale agreements including the conduct of the parties prior to and after the making of the agreement; and
- (b) the formula and the rate for terms charges, period of instalments, statutory rebates, late payment charges, booking fees and ancillary charges.”.

Amendment of section 123

4. Section 123 of the principal Act is amended—

- (a) by renumbering the existing section as subsection (1); and
- (b) by inserting after the renumbered subsection (1) the following subsection:

“(2) Without prejudice to the power of investigation under this Part, an Assistant Controller investigating any commission of an offence under this Act may exercise all or any of the powers in relation to police investigation in seizable cases provided by the Criminal Procedure Code [Act 593].”.

New section 123A

5. The principal Act is amended by inserting after section 123 the following section:

“Complaints to Assistant Controller

123A. (1) An Assistant Controller may, upon a complaint by a person, conduct an investigation on any person who has committed or is committing any offence under this Act.

(2) The complaint shall specify the person against whom the complaint is made and details of the alleged offence under this Act.”.

New sections 124A, 124B, 124C, 124D and 124E

6. The principal Act is amended by inserting after section 124 the following sections:

“Power of Assistant Controller to require provision of information

124A. (1) This section applies to a person if the Assistant Controller, in carrying out an investigation under this Part, has reason to believe that the person—

- (a) has any information or any document that is relevant to the performance of the Assistant Controller’s powers and functions under this Act; or

(b) is capable of giving any evidence which the Assistant Controller has reason to believe is relevant to the performance of the Assistant Controller's powers and functions under this Act.

(2) Notwithstanding the provisions of any other written law, the Assistant Controller, by written notice, may direct any person—

- (a) to provide the Assistant Controller, within the period and in the manner and form specified in the notice, any information referred to in subsection (1);
- (b) to produce to the Assistant Controller, within the period and in the manner specified in the notice, any document referred to in subsection (1), whether in physical form or in electronic media;
- (c) to make copies of, or extracts from, any document referred to in subsection (1) and to produce copies or extracts of such documents, as the case may be, to the Assistant Controller within the period and in the manner specified in the notice;
- (d) if the person is an individual, to appear before the Assistant Controller at the time and place specified in the notice to give any information, either orally or in writing, and produce any document referred to in subsection (1), whether in physical form or in electronic media;
- (e) if the person is a body corporate, to cause a relevant and competent officer of the body corporate to appear before the Assistant Controller at the time and place specified in the notice to give any information, either orally or in writing, and produce any document referred to in subsection (1), whether in physical form or in electronic media;
- (f) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear before the Assistant

Controller at the time and place specified in the notice to give any information, either orally or in writing, and produce any document referred to in subsection (1), whether in physical form or in electronic media; or

(g) to make a statement to the Assistant Controller providing an explanation of any information or document referred to in subsection (1) within the period and in the manner and form specified in the notice.

(3) Where the Assistant Controller directs any person to produce any document under subsection (2) and the person is not in custody of the document, that person shall—

(a) state, to the best of his knowledge and belief, where the document may be found; and

(b) identify, to the best of his knowledge and belief, the last person who had custody of the document and state, to the best of his knowledge and belief, where that last-mentioned person may be found.

(4) Any person directed to provide information or document under subsection (2) shall ensure that the information or document provided is true, accurate and complete and such person shall provide an express representation to that effect, including a declaration that he is not aware of any other information or document which would make the information or document provided untrue or misleading.

(5) Any person who refuses or fails to comply with the direction made by the Assistant Controller under subsection (2) commits an offence.

Assistant Controller may retain documents

124B. (1) An Assistant Controller may take and retain, for as long as is necessary, possession of any document obtained under this Part.

(2) The person who provided the document referred to in subsection (1) is entitled to be supplied, as soon as practicable, with a copy certified by the Assistant Controller to be a true copy of the document.

(3) Notwithstanding the provisions of any other written law, the certified copy of the document shall be admissible as evidence as if it were the original document.

(4) If the Assistant Controller is satisfied that the retaining of the document is no longer necessary, the Assistant Controller may return the document to the person who provided the document, as soon as practicable.

Access to records

124c. (1) Any person shall, if at any time directed by the Assistant Controller, allow the Assistant Controller to have access to his books, records, documents, things or matters for the purposes of carrying out any of the Assistant Controller's functions or powers under this Act.

(2) Any person who fails to comply with the direction made by the Assistant Controller under subsection (1) commits an offence.

Power to enter premises, and inspect goods and documents, etc.

124d. Any Assistant Controller may, at all reasonable hours, exercise the following powers:

- (a) to enter any premises, other than premises used only for dwelling, and inspect or verify any goods or document;
- (b) to take samples of goods or records found in the premises for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;

- (c) to make copies of or take extracts from any book, document, record or other article found in the premises; and
- (d) to require, 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 order made under this Act are duly observed, 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, the Assistant Controller may do so himself.

Power of arrest

124E. (1) Any Assistant Controller may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under section 14, 16, 20 or 23.

(2) Any Assistant Controller making an arrest under subsection (1) shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person shall be dealt with as is provided for by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.”.

Amendment of section 125

7. The principal Act is amended by inserting after subsection 125(5) the following subsections:

“(6) The Assistant Controller conducting a search under paragraph (1)(a) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(7) The Assistant Controller making a search of a person under subsection (6) may seize or take possession of, and place in safe custody, all things other than the necessary clothing found upon the person and any other things for which there is reason to believe are the instruments or evidence of the offence, and such things may be detained until an order by the court is made for its disposal.”.

New sections 126A and 126B

8. The principal Act is amended by inserting after section 126 the following sections:

“Warrant admissible notwithstanding defects

126A. A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission therein or in the application for such warrant, and any book, record, document, goods or thing seized under such warrant shall be admissible in evidence in any proceedings under this Act.

Access to recorded information, computerized data, etc.

126B. (1) Any Assistant Controller exercising his powers under section 125 or 126 shall be given access to any recorded information, or computerized or digitalized data, whether stored in a computer or otherwise.

(2) In exercising his powers, the Assistant Controller—

- (a) may inspect and check the operation of any computer and any associated apparatus or material which he has reasonable cause to suspect are or have been used in connection with that information or data;
- (b) may require the person whom the Assistant Controller has reasonable cause to suspect is using or to have used the computer in connection with that information or data;
- (c) may require the person whom the Assistant Controller has reasonable cause to suspect that the computer is used or has been used, on behalf of the person, in connection with that information or data; or
- (d) may require the person having charge of, or is otherwise concerned with, the operation of the computer, apparatus or material,

to provide him with such reasonable assistance as he may require for the purposes of this section.

(3) The Assistant Controller may make copies of or take extracts from the recorded information, or computerized or digitalized data, if he deems it necessary.

(4) For the purposes of this section, “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of recorded information, or computerized or digitalized data.”.

Deletion of section 128

9. The principal Act is amended by deleting section 128.

Deletion of section 129

10. The principal Act is amended by deleting section 129.

Deletion of section 130

11. The principal Act is amended by deleting section 130.

Amendment of section 131

12. Section 131 of the principal Act is amended—

(a) in subsection (5), by inserting after the words “shall refer the matter to” the words “the Controller who may direct that such goods, thing, book, document, record or other article be released or forfeited, or may direct the Assistant Controller to refer the matter to”; and

(b) in subsection (7), by substituting for the word “Magistrate” the word “Controller”.

New sections 134A and 134B

13. The principal Act is amended by inserting after section 134 the following sections:

“Evidence of agent provocateur is admissible

134A. (1) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

(2) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, and that the agent provocateur is an Assistant Controller, any statement, whether oral or in writing, made to the agent provocateur by any person who subsequently is charged with an offence under this Act shall be admissible as evidence at his trial.

Presumption and examination with regards to sample

134B. (1) Where any goods which are the subject matter of an offence under this Act are found in two or more packages or receptacles of the same description, it shall be presumed until the contrary is proved that all the packages or receptacles contain goods of the same nature, quantity and quality.

(2) Where packages or receptacles containing goods which contravene the provisions of this Act or are otherwise liable to seizure have been seized, it shall be sufficient only to open and examine one per centum or not less than five samples, whichever is the lesser, of the contents of each package or receptacle seized.

(3) The court shall presume that the remaining samples contained in the packages or receptacles are of the same nature as those samples examined.”.

New section 135A

14. The principal Act is amended by inserting after section 135 the following section:

“Tipping-off

135A. (1) Any person who—

- (a) knows or has reason to suspect that an Assistant Controller is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act or any subsidiary legislation made under this Act, and discloses to any other person any information or other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) knows or has reason to suspect that a disclosure has been made to an Assistant Controller under this Act and discloses to any other person any information or other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

commits an offence.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

- (a) to the advocate and solicitor’s client or the client’s representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or
- (b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

(a) he did not know or suspect that the disclosure made under paragraph (1)(b) was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

(5) An Assistant Controller or other person does not commit an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of this Act.”.

Substitution of section 136

15. The principal Act is amended by substituting for section 136 the following section:

“Destruction, concealment, mutilation and alteration of records, etc.

136. Any person who—

(a) destroys, conceals, mutilates or alters; or

(b) sends or attempts to send, or conspires with, any other person to remove from his premises or send out of Malaysia,

any book, record, document, thing or matter kept or maintained with intent to defraud the Assistant Controller or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the Assistant Controller under this Act commits an offence.”.

Amendment of section 137

16. Paragraph 137(1)(a) of the principal Act is amended by inserting after the word “false” the words “or misleading”.

Substitution of section 138

17. The principal Act is amended by substituting for section 138 the following section:

“Obstruction, etc.

138. Any person who—

- (a) refuses any Assistant Controller access to any premises which the Assistant Controller is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act;
- (b) assaults, obstructs, hinders or delays any Assistant Controller in effecting any entry which the Assistant Controller is entitled to effect under this Act or in the execution of any duty imposed or power conferred by this Act; or
- (c) refuses to give any Assistant Controller any information relating to an offence or a suspected offence under this Act or any other information which may reasonably be required of him and which he has in his knowledge or power to give,

commits an offence.”.

Amendment of section 139

18. Section 139 of the principal Act is amended—

- (a) in subsection (1), by inserting after the words “Any person who” the words “discloses or”;
- (b) in subsection (2)—
 - (i) by deleting the words “the disclosure is made”;
 - (ii) in paragraph (a), by inserting before the words “for or in connection with” the words “the disclosure is made”;

- (iii) in paragraph (b), by inserting before the words “for the purpose of” the words “the disclosure is made”;
 - (iv) in paragraph (c), by inserting before the words “for the purpose of” the words “the disclosure is made”;
 - (v) by inserting after paragraph (c) the following paragraphs:
 - “(ca) the disclosure is made with the consent of the person from whom the information or document was obtained;
 - (cb) the disclosure is made in circumstances where the information provided is framed in such a manner that the source of the information could not be ascertained;
 - (cc) the information is already in the public domain;”;
 - (vi) in paragraph (d), by inserting before the words “to any consultant” the words “the disclosure is made”; and
 - (vii) in paragraph (e), by inserting before the words “for or in connection with” the words “the disclosure is made”; and
- (c) by inserting after subsection (2) the following subsection:
- “(3) For the purposes of this section, “confidential information” means any trade, business or industrial information that belongs to any person, and that has economic value and is not generally available to or known by others.”.

Amendment of section 146

19. Paragraph 146(3)(b) of the principal Act is amended by substituting for the words “shall be released immediately” the words “may be released as directed by the Controller”.

Amendment of section 150

20. Section 150 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) Any subsidiary legislation made under this Act may provide for any act or omission in contravention of the subsidiary legislation to be an offence and may provide for penalties of a fine not exceeding one hundred thousand ringgit or of imprisonment for a term not exceeding three years, or both, and for a second or subsequent offence, of a fine not exceeding two hundred and fifty thousand ringgit or of imprisonment for a term not exceeding six years, or both.”.

Savings

21. All credit sale agreements entered into before the coming into operation of this Act shall, on the coming into operation of this Act, be dealt with as if this Act had never come into operation.

EXPLANATORY STATEMENT

This Bill seeks to amend the Consumer Protection Act 1999 (“Act 599”). The main purposes of the amendment are to protect the interest of consumers who purchase goods through credit sale transactions and to reduce the household debt which is contributed by credit sale transactions. This amendment also seeks to strengthen the enforcement powers under Act 599.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.
3. *Clause 2* seeks to amend section 3 of Act 599 by deleting the definition of “credit instrument”.
4. *Clause 3* seeks to introduce a new Part IIIB into Act 599 which deals with credit sale transactions.

The proposed section 24K seeks to provide for the application and non-application of the proposed Part IIIB.

The proposed section 24L seeks to provide for the definitions of “total outstanding amount payable”, “goods”, “terms charges”, “credit facility”, “credit facility provider”, “dealer”, “seller”, “credit sale agreement”, “statutory rebate” and “credit sale transaction” used in the proposed Part IIIB.

The proposed section 24M seeks to provide that a credit sale agreement may only be made in respect of any goods or class of goods as prescribed by the Minister.

The proposed section 24N seeks to provide for the preconditions of a credit sale agreement. Among others, the proposed section 24N requires, before a credit sale agreement is entered into between a purchaser and a credit facility provider, a written statement relating to the summary of financial obligation of the prospective purchaser and a written statement relating to the consent of the credit facility provider to provide credit facility to the prospective purchaser to be served personally on the prospective purchaser.

The proposed section 24N also provides for a cooling-off period of ten working days before a credit sale agreement may be entered. Notwithstanding the cooling-off period, the prospective purchaser may elect to enter into a credit sale agreement after three working days from the date of service of the written statement relating to the consent of the credit facility provider. The cooling-off period of ten and three working days will give the prospective purchaser a reasonable time to consider the purchase of the goods. A credit sale agreement entered into in contravention of these preconditions shall be void and any credit facility provider who enters into a credit sale agreement in contravention of these preconditions commits an offence under Act 599.

The proposed section 24o seeks to require a credit sale agreement to be made in writing and either in the national language or English language. A credit sale agreement which contravenes these requirements shall be void. Contravention of these requirements also constitutes an offence under Act 599.

The proposed section 24P seeks to require a credit sale agreement to contain certain information which shall include the number of monthly instalments to be paid, rights and obligations of the purchaser and credit facility provider, terms charges, total amount payable, *etc.* A credit sale agreement which contravenes this provision shall be void and contravention of this requirement constitutes an offence under Act 599.

The proposed section 24Q seeks to provide that the ownership in the purchased goods shall pass to the purchaser upon the signing of the credit sale agreement.

The proposed section 24R seeks to provide for the rights and obligations of a purchaser under a credit sale agreement. Among others, the purchaser is entitled to an implied guarantee that he shall have and enjoy quiet possession of the purchased goods and the purchaser has the obligation to inform the credit facility provider in writing where the purchased goods are kept or used, or if the goods are not in his possession, to whom he has delivered the goods or the circumstances under which he has lost possession of the goods.

The proposed section 24S seeks to provide for the rights and obligations of a credit facility provider under a credit sale agreement. Among others, the credit facility provider is entitled to cause the purchased goods to be insured in the name of the purchaser against any risk that the credit facility provider thinks fit and to collect any booking fee or deposit from the purchaser. The credit

facility provider has the obligation, among others, to supply to the purchaser, within the period of twenty-one days from the date of receipt by the credit facility provider a request in writing from the purchaser, a statement which contains certain particulars including the total amount paid by the purchaser, the amount which is to become payable under the agreement and the amount derived from the term charges on overdue instalments. Failure to discharge the obligations under the proposed section 24s constitutes an offence under Act 599.

The proposed section 24t seeks to require that the rate of the terms charges in respect of any goods or class of goods under a credit sale agreement as calculated in accordance with the prescribed formula shall not exceed the rate as prescribed by the Minister. Failure to comply with this provision constitutes an offence under Act 599. The proposed section 24t also seeks to provide that if a credit sale agreement is entered into in contravention of the requirement, the purchaser may elect to treat the agreement as void or to have the excess amount reduced from the total amount of the terms charges payable if such terms charges exceed the prescribe rate. The proposed section 24t also provides for the procedures to be followed after the purchaser makes the election.

The proposed section 24u seeks to limit the period of payment of instalments which shall not exceed the period as prescribed by the Minister, and to limit the rate of late payment charges which shall not exceed the rate as prescribed by the Minister. Failure to comply with these provisions constitutes an offence under Act 599.

The proposed section 24v seeks to deal with default in payment of instalments by a purchaser. Upon receipt of a notice from a credit facility provider that a purchaser has defaulted in payment of two consecutive instalments, the purchaser may within twenty-one days elect to pay the overdue instalment and the late payment charges to the credit facility provider, to make an early settlement, or to terminate the credit facility agreement and surrender the purchased goods to the credit facility provider.

The proposed section 24w seeks to allow the purchaser, at any time or upon making the election to terminate a credit sale agreement, to surrender the purchased goods to the credit facility provider. For the purpose of surrendering the purchased goods, the proposed section 24w also provides for the procedures to be followed by the purchaser and the credit facility provider.

The proposed section 24x seeks to restrict a credit facility provider from disclosing or circulating the personal data of a purchaser obtained under a credit sale transaction to a third party unless the purchaser has been informed of the purpose of such disclosure or circulation and a written consent of the purchaser has been obtained.

The proposed section 24y seeks to prohibit a credit facility provider from repossessing the purchased goods from a purchaser at any time, whether upon default of payment of instalments or otherwise.

The proposed section 24z seeks to provide that any contravention against the proposed section 24x or 24y constitutes an offence.

The proposed section 24AA seeks to empower the Minister to make regulations in respect of credit sale transactions and credit sale agreements.

5. *Clause 4* seeks to amend section 123 of Act 599 to provide that an Assistant Controller investigating any commission of an offence under Act 599 may exercise all or any of the powers in relation to police investigation in seizable cases provided by the Criminal Procedure Code.

6. *Clause 5* seeks to introduce a new section 123A into Act 599 to provide for the power of an Assistant Controller to conduct an investigation on any person who has committed or is committing any offence upon receiving a complaint from a person.

7. *Clause 6* seeks to introduce new sections 124A, 124B, 124C, 124D and 124E into Act 599.

The proposed section 124A seeks to empower the Assistant Controller to direct any person to provide any information or document, or to appear before the Assistant Controller, if he has reason to believe that such information or document is relevant to the performance of the Assistant Controller's powers and functions under Act 599. Any refusal or failure to comply with such direction made by the Assistant Controller constitutes an offence.

The proposed section 124B seeks to empower an Assistant Controller to take and retain possession of any document obtained under Act 599.

The proposed section 124C seeks to empower an Assistant Controller to direct any person to allow the Assistant Controller to have access to his books, records, documents, things or matters for the purposes of carrying out any of the Assistant Controller's functions or powers under Act 599. Non-compliance with such direction constitutes an offence.

The proposed section 124D seeks to empower an Assistant Controller to enter any premises, other than premises used only for dwelling, to inspect or verify any goods or document, to take samples of goods or record, or to make copies or take extracts from any book, document, record or other article, found in that premises.

The proposed section 124E seeks to empower an Assistant Controller to make an arrest without warrant for any person whom he reasonably believes has committed or is attempting to commit an offence under section 14, 16, 20 or 23. However, the Assistant Controller making the arrest shall without unnecessary delay make over the person so arrested to the nearest police officer or police station.

8. *Clause 7* seeks to amend section 125 of Act 599 to empower an Assistant Controller, for the purpose of investigating into an offence, to search any person who is in or on the premises, and seize or take possession of, and place in safe custody all things other than the necessary clothing found upon the person. The things for which there is reason to believe are the instruments or evidence of the offence may be detained until an order is made by the court for its disposal.

9. *Clause 8* seeks to introduce new sections 126A and 126B into Act 599.

The proposed section 126A seeks to provide that a search warrant issued under Act 599 shall be valid and enforceable notwithstanding any defect, mistake or omission therein or in the application for such warrant, and any book, record, document, goods or thing seized under such warrant shall be admissible in evidence in any proceedings under Act 599.

The proposed section 126B seeks to require access to be given to an Assistant Controller to any recorded information, or computerized or digitalized data, whether stored in a computer or otherwise, while exercising his powers under section 125 or 126 of Act 599.

10. *Clauses 9 and 10* seek to delete sections 128 and 129 of Act 599, respectively. The deleted section 128 has been redrafted and renumbered as the proposed section 124A (*clause 6*) to strengthen the powers of an Assistant Controller in gathering information relating to the offences under Act 599. Section 129 of Act 599 is deleted because the power to examine orally any person supposedly to be acquainted with the facts and circumstances of the case can be exercised by the Assistant Controller in accordance with the proposed subsection 123(2) (*clause 4*) which is in line with section 112 of the Criminal Procedure Code.

11. *Clause 11* seeks to delete section 130 of Act 599 to remove the provision on admissibility in evidence of any statement made by any person to an Assistant Controller at any time whether before or after the person is charged and whether in the course of an investigation under Act 599 or not and whether or not wholly or partly in answer to questions. This deletion is in line with section 113 of the Criminal Procedure Code which provides that no statement made by any person to a police officer in the course of a police investigation shall be used in evidence.

12. *Clause 12* seeks to amend section 131 of Act 599. *Subclause 12(a)* seeks to amend subsection 131(5) of Act 599 to require an Assistant Controller to refer the claim by any person, that he is the owner of the goods or other things seized, to the Controller who may direct that such goods or other things be released or forfeited, or may direct the Assistant Controller to refer the matter to a Magistrate for a decision. *Subclause 12(b)* seeks to amend subsection 131(7) of Act 599 to require the disposal of the goods or other things forfeited to be disposed of in accordance with the direction of the Controller.

13. *Clause 13* seeks to introduce new sections 134A and 134B into Act 599.

The proposed section 134A seeks to deal with the admissibility of evidence given by an agent provocateur in court.

The proposed section 134B seeks to provide that if any goods which are the subject matter of an offence under Act 599 are found in two or more packages or receptacles of the same description, it shall be presumed until the contrary is proved that all the packages or receptacles contain goods of the same nature, quantity and quality, and it shall be sufficient only to open and examine one per centum or not less than five samples, whichever is the lesser, of the contents of each package or receptacle seized.

14. *Clause 14* seeks to introduce a new section 135A into Act 599 to provide for the offence of tipping-off. In this regard, any person who discloses to any other person any information or other matter which is likely to prejudice any investigation or proposed investigation of any offence under Act 599 commits an offence. This is to ensure that raids done by Assistant Controllers are effective and no leakage of information regarding a prospective raid.

15. *Clause 15* seeks to amend section 136 of Act 599 to deal with the offence regarding the destruction, concealment, mutilation and alteration of records, *etc.*, with intent to defraud the Assistant Controller or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the Assistant Controller under Act 599.

16. *Clause 16* seeks to amend paragraph 137(1)(a) of Act 599 to make it an offence for any person to submit misleading information in any application, report or other document under Act 599.

17. *Clause 17* seeks to amend section 138 of Act 599 to make it an offence for any person to refuse an Assistant Controller access to any premises, to assault, obstruct, hinder or delay the entry by the Assistant Controller into such premises, or to refuse to give an Assistant Controller any information relating to an offence under Act 599.

18. *Clause 18* seeks to amend section 139 of Act 599. *Subclause 18(a)* seeks to amend subsection 139(1) of Act 599 to make it an offence for any person to disclose any confidential information obtained by virtue of the provisions of Act 599. *Paragraph 18(b)(v)* seeks to introduce new paragraphs 139(2)(ca), (cb) and (cc) into Act 599. With this amendment, disclosure of confidential information may be made if the disclosure is made with the consent of the person from whom the information was obtained or the disclosure is made in circumstances where the information provided is framed in such a manner that the source of the information could not be ascertained. Disclosure of confidential information may also be made if the information is already in the public domain.

19. *Clause 19* seeks to amend paragraph 146(3)(b) of Act 599 to provide that where an offence has been compounded, any goods, thing, book, document, record or other article seized in connection with such offence may be released as directed by the Controller.

20. *Clause 20* seeks to introduce a new subsection 150(3) into Act 599 to enable any subsidiary legislation made under Act 599 to provide for offences and penalties of a fine not exceeding one hundred thousand ringgit or an imprisonment for a term not exceeding three years, or both, and for a second or subsequent offence, of a fine not exceeding two hundred and fifty thousand ringgit or an imprisonment for a term not exceeding six years, or both.

21. *Clause 21* seeks to provide for savings provision relating to existing credit sale agreements.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.