
CONSUMER PROTECTION (FAIR TRADING) BILL

INDUSTRY CONSULTATION PAPER

29 January 2003

1 INTRODUCTION

1.1 In response to suggestions by the Consumers Association of Singapore ('CASE') and Members of Parliament for a need for consumer protection legislation, the then Senior Minister of State for Trade and Industry, Mr Peter Chen, proposed in Parliament on 8 March 2001 that a task force co-led by CASE and the Ministry of Trade and Industry ('MTI') study the feasibility of a Fair Trading Act for Singapore.

1.2 The Task Force was formed in March 2001, and comprised members from the government promotion and regulatory agencies, the private sector and business associations. MTI has accepted substantially the recommendations made by the Task Force and prepared a draft Consumer Protection (Fair Trading) Bill ('draft Bill').

1.3 The draft Bill seeks to protect consumers who lack the expertise or financial resources to guard themselves against unfair trade practices, and empower consumers who encounter unfair practice to obtain civil remedy themselves without having to rely on or wait for the government's protection. This approach of self-reliance will encourage greater consumer responsibility and pro-activity.

1.4 MTI conducted a public consultation on the draft Bill from 18 October to 15 November 2002. The draft Bill was intended to apply to financial services but not financial investments. Following feedback received during the public consultation from CASE and other members of the public, it is now contemplated that the protection under the draft Bill be extended to consumer transactions involving both financial services and financial investments.

1.5 The Monetary Authority of Singapore invites comment from the industry with regard to the application of the draft Bill to financial investments and services, as well as consequent modifications proposed to certain provisions of the draft Bill. The draft Bill issued by MTI for public consultation is attached at Appendix A. Please provide your responses to the questions posed, as well as any views or suggestions that you may have on other areas of the draft Bill by **3 March 2003**. Written comments may be submitted to:

Market Conduct Policy Division,
Market and Business Conduct Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building, Singapore 079117

Email: cpfta@mas.gov.sg

Fax: 6225-9766

1.6 Please note that all submissions may be made public unless confidentiality is specifically requested for whole or part of the submission.

2. FRAMEWORK OF THE DRAFT BILL

UNFAIR PRACTICES

2.1 The draft Bill provides that it is an unfair practice for a supplier, in a consumer transaction or proposed consumer transaction to:

- (a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- (b) make a false claim; and
- (c) take advantage of a consumer if the supplier knows or should reasonably be expected to know that the consumer -
 - (i) is not in a position to protect his or her own interests; or
 - (ii) is not reasonably able to understand the character, nature, language or effect of the transaction or proposed transaction or any matter related to the transaction.

2.2 In addition, a number of specific unfair practices are listed in the Second Schedule to the Bill and these cover (a) false or misleading advertising; (b) false or misleading representation about prices; and (c) undesirable sales tactics. For example, items 11 and 12 of the Second Schedule deal specifically with certain aspects of unconscionable conduct, namely undue pressure or influence, and the imposition of harsh, oppressive or excessively one-sided terms in an agreement.

2.3 Most of the representations that could constitute an unfair practice are generally spoken as opposed to being in written form. Under the general rule of evidence, a court will only consider terms set out in the written contract. It will disregard terms that are not in the written contract, such as spoken representations. However, section 14 allows spoken representations to be considered by the court, even if it contradicts the written contract.

REMEDIES FOR UNFAIR PRACTICE

2.4 The draft Bill provides 2 key remedies to the consumer:

- (a) A consumer who has suffered loss as a result of an unfair practice by a supplier has a right to commence an action in a court to sue the supplier. Where the court finds that a supplier has engaged in unfair practice, it has the power to, amongst other things, make an order of specific performance against the supplier.
- (b) A consumer has a right to cancel certain contracts within a prescribed cancellation period. In this regard, the draft Consumer Protection (Fair Trading) (Cancellation

of Contracts) Regulations provide that a consumer may cancel a door-to-door sales contract or time share contract within three days after the day on which the contract is entered into.

2.5 Proceedings under the Act (namely, a claim for loss suffered as a result of an unfair practice under section 6 of the Bill) cannot be commenced later than 2 years from the date of occurrence of the last material event on which the proceedings are based.

3. APPLICATION OF THE DRAFT BILL

3.1 The draft Bill applies to consumer transactions or proposed consumer transactions involving goods and services, as defined in s 2, and applies (a) where the consumer or supplier is a resident of Singapore or (b) where the offer or acceptance is made in or is sent from Singapore.

3.2 The draft Bill does not apply to transactions where the value of the goods and services exceeds \$20,000. The intent of the draft Bill is to protect consumers who lack the expertise or financial resources to protect themselves. Consumers of high-priced goods and services are in less need of the protection offered by the draft Bill. They tend to have more financial resources, and are able to get legal advice before entering into the transaction, as well as pursue different ranges of legal remedies to enforce their rights. Further, by making it easier to bring civil claims against suppliers of goods and services, the draft Bill imposes costs on businesses. Such costs should be limited to situations where it is truly necessary for consumer protection.

FINANCIAL INVESTMENTS AND SERVICES

3.3 During the public consultation conducted by MTI from 18 October to 15 November 2002, transactions involving financial investments regulated by specific legislation within the regulatory framework administered by MAS were excluded from the draft Bill. Following feedback, MAS is considering applying the draft Bill to consumer transactions involving financial investments and services. In determining what constitutes financial investments and services, a distinction is made between the two, as the provision of financial services may or may not result in the making of financial investments. A financial investment means the purchase of an investment product, policy or any other product of a financial nature. In this regard, MAS has proposed definitions for the terms “financial investment” and “financial service” as one of the modifications to the draft Bill.

3.4 Investors should be afforded the same measure of protection as other consumers against unethical sale tactics that are misleading or overly aggressive. While the policy towards investor protection has been caveat emptor (or buyer beware), certain investors may not have the expertise or the bargaining power to negotiate a fair transaction or contract.

3.5 The draft Bill is an important piece of consumer protection legislation that will complement existing legislation administered by MAS. For example, the Securities and Futures Act 2001 ('SFA') and Financial Advisers Act 2001 ('FAA') seek to achieve investor protection and regulate market conduct through a disclosure-based regulatory framework, and the Insurance Act (Cap 142) ('IA') seeks to safeguard policyholders' interests. While some particularly offensive practices, such as misleading information in prospectuses, may be prohibited under the MAS-administered legislation, other types of unconscionable conduct, for example, exerting undue pressure or undue influence on an investor, are not covered by existing legislation providing civil remedies.

3.6 Given the above, there is therefore scope for the promotion of a fairer and more equitable marketplace in the financial services industry.

3.7 The draft Bill complements and builds on recent consumer protection initiatives in the banking industry, including the Association of Banks in Singapore's ('ABS') Code of Consumer Banking Practice and its Consumer Mediation Unit, and in the insurance industry, the General Insurance Code of Practice and Insurance Dispute Resolution Organisation.

QUESTIONS:

- Q1** Should the draft Bill, in a form modified as proposed in paragraph 5, apply to consumer transactions involving financial investments and services?
- Q2** Is the proposed threshold of \$20,000 appropriate for consumer transactions involving financial investments and services? If not, what would be a meaningful threshold value?
- Q3** What are other types of unfair practices in relation to consumer transactions involving financial investments and services that should be prohibited?

4 RATIONALE FOR MODIFYING THE DRAFT BILL

4.1 As the draft Bill is intended to also apply to transactions involving consumer goods and services, it will be necessary to modify the application of certain provisions so that the draft Bill will be applicable to consumer transactions involving financial investments and services.

4.2 In addition, the SFA, FAA and IA currently provide for certain consumer protection measures by prohibiting misconduct by market intermediaries, financial

advisers and insurance agents¹ and making available remedies to aggrieved investors². To ensure that these investor protection provisions are consistent with those under the draft Bill, MAS is also proposing to exclude transactions involving financial investments and services from certain provisions of the draft Bill.

5 PROPOSED MODIFICATIONS TO DRAFT BILL

5.1 DEFINITIONS OF “FINANCIAL INVESTMENT” AND “FINANCIAL SERVICE”

5.1.1 As certain modifications to the draft Bill refer to the terms “financial investment” and “financial service”, it will be necessary to define these terms in the draft Bill. For this purpose, MAS proposes the following definitions:

“financial investment” means any investment product, policy or any other product of a financial nature offered or supplied by a person licensed, approved, registered or otherwise regulated by the Authority under any written law;

“financial service” means any service of a financial nature offered or supplied by a person licensed, approved, registered or otherwise regulated by the Authority under any written law;

“investment product” has the same meaning as in section 2 of the Financial Advisers Act (Cap. 110);

“policy” has the same meaning as in the First Schedule of the Insurance Act (Cap. 142);

5.1.2 Under the definitions of “financial investment” and “financial service”, a person licensed, approved, registered or otherwise regulated by the Authority under any written law includes the following:

- (a) any bank licensed under the Banking Act (Cap. 19);
- (b) any finance company licensed under the Finance Companies Act (Cap. 108);
- (c) any merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (d) any person licensed to conduct money-changing business, or any person licensed to conduct remittance business, under the Money-changing and Remittance Businesses Act (Cap. 187);

¹ For examples, specific market conduct obligations are imposed on financial advisers through notices issued by MAS, and these include the notice on information to clients and product information disclosure and notice on recommendations on investment products.

² For example, investors may obtain refund of monies paid for the subscription or purchase of securities if they had applied for or purchased these securities based on a deficient prospectus or profile statement.

- (e) any registered or foreign insurer carrying on insurance business under a foreign insurer scheme under the Insurance Act (Cap. 142);
- (f) any insurance intermediary registered, licensed, approved or otherwise so entitled to act under the Insurance Act (Cap. 142);
- (g) any licensed financial adviser under the Financial Advisers Act (Cap. 110);
- (h) any holder of a capital markets services licence under the Securities and Futures Act (Cap. 289);
- (i) any bank or other financial institution issuing credit or charge cards;
- (j) a person who is exempted under any of the laws referred to in subparagraphs (a) to (h) from being licensed, approved, registered or otherwise regulated;
- (k) any other person whose conduct of business is regulated by the Authority under any of the laws referred to in subparagraphs (a) to (h); and
- (l) any salesperson, representative, employee, representative or agent of a person referred to in subparagraphs (a) to (k).

QUESTION:

Q4 Do you agree with the proposed definitions for “financial investment” and “financial service”, “investment product” and “policy”?

5.2 DEFINITION OF “CONSUMER”

5.2.1 The definition of “consumer” in section 2 of the draft Bill excludes an individual who intends to sell the goods after receiving them. This in effect will exclude from the application of the draft Bill investors who purchase shares, debentures and units in a collective investment scheme (‘CIS’) (collectively known as ‘securities’), as the intention of such investors is to sell the securities eventually.

5.2.2 As the intent is to apply the draft Bill to a purchase of securities, MAS proposes to clarify this intent through modifying the definition of “consumer”, such that investors holding securities, as with other consumers of financial investments and services, will be protected under the draft Bill against unfair practices.

QUESTION:

Q5 Do you agree that the definition of “consumer” should be modified to take into account the intent of investors to sell their securities eventually?

5.3 SECTION 7 – POWERS OF COURT

5.3.1 Section 7(1) of the draft Bill provides that the court has powers, where it finds that a supplier has engaged in an unfair practice, to:

- (a) order restitution of any money, property or other consideration given or furnished by the consumer;
- (b) award the consumer damages in the amount of any loss suffered because of the unfair practice;
- (c) make an order of specific performance against the supplier;
- (d) make an order directing the supplier to repair goods or provide parts for goods; or
- (e) make an order varying the contract between the supplier and the consumer.

5.3.2 MAS proposes that sections 7(1) (a), (c), (d) and (e) of the draft Bill be made not applicable to consumer transactions involving financial investments and services. This means the court will be empowered to only award the consumer damages of any loss suffered because of an unfair practice in relation to transactions involving financial investments and services.

5.3.3 The need to limit the powers of the court as proposed is particularly relevant for the capital markets, as allowing a range of judicial recourse available to investors has to be counterbalanced against the wider interests of systemic stability and finality of capital market transactions (especially on the trades done on the Exchange)³. For example, the grant of an order of specific performance against the supplier or an order varying a contract between the supplier and investor may give rise to uncertainty and, in serious cases, have potential systemic implications, especially if it relates to the trading of securities on the Exchange.

QUESTIONS:

Q6 Do you agree whether the powers of the court under section 7(1) should be limited to the award of damages only, bearing in mind the need for systemic stability and finality of transactions?

Q7 Are there any concerns arising from the application of the factors that the court would consider under section 7(2) to an award of damages in section 7(1)(b) for transactions involving financial investments and services?

³ The importance of ensuring the finality of transactions and giving of priority to systemic stability is illustrated through section 69 of the SFA, which provides an exception to the laws of insolvency where a participant of a clearing house defaults on its obligations. By giving primacy to the default rules of the clearing house over the rules of insolvency, the SFA ensures that the insolvency of a member will not disrupt the clearing and settlement of trades already executed.

5.4 FIRST SCHEDULE – EXCLUDED TRANSACTIONS

5.4.1 One of the excluded transactions under the First Schedule to the draft Bill is transactions the value of which exceeds \$20,000. The “transaction value” may not be clear in the context of insurance contracts, as there can be a number of bases – premiums, sum assured or claims. In this regard, MAS proposes to use premiums as the basis for calculating the transaction value.

5.4.2 To provide clarity in the draft Bill, MAS proposes to include a separate provision in the First Schedule stating the following:

- (a) Life insurance – In the case of regular premium policies, the amount of annual premiums paid will be taken as the transaction value. As for single premium policies, the value transaction value will be the amount of single premiums paid (any top-ups will be viewed as a separate transaction); and
- (b) General insurance – The amount of annual gross premium paid will be taken as the transaction value.

QUESTIONS:

Q8 Do you agree with the proposed basis for calculating the transaction value in relation to insurance contracts?

Q9 Are there any other financial investments and services for which a clarification of the basis for calculating the transaction value will be necessary?

5.5 SECOND SCHEDULE – SPECIFIC UNFAIR PRACTICES

5.5.1 MAS proposes to include the words “*or where limitations are stated*” to the end of paragraph 8 of the Second Schedule. The modified para 8 will be applicable to only consumer transactions involving insurance contracts⁴:

“Charging a price for goods or services that is substantially higher than an estimate provided to the consumer, except where the consumer has expressly agreed to the higher price in advance *or where limitations are stated*”

5.5.2 The purpose of this modification takes into consideration a long-standing industry practice relating to insurance contracts. In the case of health and life insurance policies, the estimate of a premium shown is usually based on a healthy life. If a person has medical problems, the premium payable will be higher than the estimate originally

⁴ The original paragraph 8 of the Second Schedule will continue to apply to transactions involving goods and services.

provided. As long as there are limitations stated with respect to the estimates given to policyholders, it should not be considered as an unfair practice.

QUESTION:

Q10 Are there any other modifications to be made to the Second Schedule of the draft Bill to take into account characteristics unique to transactions involving financial investments and services?

5.6 CONSUMER PROTECTION (FAIR TRADING) (CANCELLATION OF CONTRACTS) REGULATIONS

5.6.1 As prescribed under the draft Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations ('draft Regulations') (Appendix B) issued by MTI for public consultation, the right to cancel contracts under section 8 of the draft Bill applies to direct sales contracts and time share contracts. In particular, the draft Regulations provide that a consumer may cancel such contracts within three days, excluding Saturday, Sunday and public holidays, after the day on which the contract is entered into. This provides consumer protection for transactions where there are often complaints of high-pressure tactics.

5.6.2 Under the draft Regulations, upon cancellation of a contract, the contract will cease to be enforceable and the consumer has a right to recover any sum of money paid to the supplier under or in contemplation of the contract. This remedy may not be appropriate, for example, in capital markets transactions. The possibility of an investor having the right to invalidate a settled trade may give rise to uncertainty and, in serious cases, pose systemic risks in the trading of securities on the Exchange.

5.6.3 Furthermore, the right to cancel contracts is already available to general insurance policyholders who purchase personal lines products, life insurance policyholders as well as investors of CIS. In particular, the Insurance Regulations and Insurance (Investment-linked Life Insurance Policies) Regulations provide for a policyholder to be given 14 days from the day of receipt of his policy contract to reconsider his purchase decision. The policyholder will be entitled to a refund of premium less any underwriting expenses incurred by the insurer if he chose to cancel the policy contract. Similarly, a 14-day 'free look' period for new annual personal lines products was introduced under a General Insurance Code of Practice effective 1 Jan 2003. Such cancellations can be made without incurring a penalty. Investors of CIS are given a cancellation period of 7 days under the SFA.

5.6.4 In view of the wider interests of systemic stability and finality of capital market transactions (especially on the trades done on the Exchange) and the availability of a similar remedy for insurance contracts and investments in CIS, it would be appropriate

for the right to cancel contracts under the draft Bill be made non-applicable to contracts involving financial investments and services.

5.6.5 Therefore, MAS proposes to exclude contracts involving financial investments and services from the application of the draft Regulations by excluding such contracts from the scope of the definitions of “direct sales contract” and “time share contract” in the draft Regulations.

QUESTION:

Q11 Do you agree with the proposal to exclude transactions involving financial investments and services from the application of the draft Regulations?

Consumer Protection (Fair Trading) Bill

Bill No. 00/2002

Read the first time on 2002.

CONSUMER PROTECTION (FAIR TRADING) ACT 2002

(No. of 2002)

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement
 2. Interpretation
 3. Application
 4. Meaning of unfair practice
 5. Circumstances surrounding unfair practice
 6. Right to sue for loss
 7. Powers of court
 8. Right to cancel certain contracts within cancellation period
 9. Limitation period
 10. No contracting out
 11. Rights transferred
 12. Preservation of other remedies
 13. Exemption from liability for advertisers
 14. Parol evidence rule abolished
 15. Interpretation of documents
 16. Regulations
- First Schedule — Excluded Transactions
Second Schedule — Specific Unfair Practices
-

A BILL

intituled

An Act to protect consumers against unfair practices and for matters connected therewith.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Consumer Protection (Fair Trading) Act 2002 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“consumer” means an individual who —

- (a) receives or has the right to receive goods or services from a supplier as a result of a purchase, lease, gift, contest or other arrangement, but does not include an individual who intends to sell the goods after receiving them;

- (b) has a legal obligation to compensate a supplier for goods that have been or are to be supplied to another individual and the other individual does not intend to sell the goods after receiving them; or
- (c) has a legal obligation to compensate a supplier for services that have been or are to be supplied to another individual;

“consumer transaction” means —

- (a) the supply of goods or services by a supplier to a consumer as a result of a purchase, lease, gift, contest or other arrangement; or
- (b) an agreement between a supplier and a consumer, as a result of a purchase, lease, gift, contest or other arrangement, in which the supplier is to supply goods or services to the consumer or to another consumer specified in the agreement;

“flat” means a horizontal stratum of any building or part thereof, whether the stratum or part is on one or more levels or is partially or wholly below the surface of the ground;

“goods” means —

- (a) any personal property that is used or ordinarily used primarily for personal, family or household purposes;
- (b) a voucher; or
- (c) residential property;

“material fact” means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction;

“residential property” means any house, flat or other premises which is permitted to be used pursuant to any written law as a dwelling-house and any such house, flat or other premises which is in the course of being constructed;

“services” means any service offered or provided primarily for personal, family or household purposes, including —

- (a) a service offered or provided that involves the addition to or maintenance, repair or alteration of goods or any residential property;
- (b) a membership in any club or organisation if the club or organisation is a business formed to make a profit for its owners; and
- (c) the right to use property under a time share contract;

“supplier” means a person who, in the course of the person’s business —

- (a) provides goods or services to consumers;
- (b) manufactures, assembles or produces goods;
- (c) promotes the use or purchase of goods or services; or

(d) receives or is entitled to receive money or other consideration as a result of the provision of goods or services to consumers, and includes any salesperson, employee, representative or agent of the person;

“time share contract” means a contract in which an individual acquires the right to use any type of real or personal property that can be used as accommodation, whether or not it is located in Singapore —

(a) for a period of time of less than one year during an interval specified in the contract; and

(b) as part of a plan that provides for the use of the property to circulate among persons participating in the plan;

“unfair practice” means an unfair practice within the meaning of section 4;

“voucher” means any document that purports to give the holder of the document the right to obtain goods or a service or the right to obtain goods or a service at a discounted or reduced price.

Application

3.—(1) This Act applies to any consumer transaction or proposed consumer transaction involving goods or services other than a transaction or proposed transaction or type or kind of transaction or proposed transaction specified in the First Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the First Schedule.

(3) This Act applies to any consumer transaction or proposed consumer transaction —

(a) in which the supplier or consumer is a resident of Singapore; or

(b) in which the offer or acceptance is made in or is sent from Singapore.

Meaning of unfair practice

4.—(1) It is an unfair practice for a supplier, in a consumer transaction or proposed consumer transaction involving goods or services, to —

(a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;

(b) make a false claim;

(c) take advantage of a consumer if the person knows or should reasonably be expected to know that the consumer —

(i) is not in a position to protect his or her own interests; or

(ii) is not reasonably able to understand the character, nature, language or effect of the transaction or proposed transaction or any matter related to the transaction; or

(d) without limiting the generality of paragraphs (a) to (c), do anything specified in the Second Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the Second Schedule.

Circumstances surrounding unfair practice

5.—(1) An unfair practice may occur —

(a) before, during or after a transaction involving goods or services; or

(b) whether or not a transaction involving goods or services takes place.

(2) An unfair practice may consist of a single act or omission.

(3) In determining whether or not a person has engaged in an unfair practice, the reasonableness of the actions of that person in those circumstances is to be considered.

Right to sue for loss

6.—(1) A consumer who has suffered a loss as a result of an unfair practice may commence an action in a court of competent jurisdiction against a supplier.

(2) A claim under subsection (1) shall —

(a) for the purposes of the Subordinate Courts Act (Cap.321) be deemed to be a claim founded on contract; and

(b) for the purposes of the Small Claims Tribunals Act (Cap.308) be deemed to be moneys payable under a contract for the provision of goods or services, as the case may be.

Powers of court

7.—(1) Without prejudice to any other powers of the court to grant relief, the court may in any proceedings where the court finds that a supplier has engaged in an unfair practice —

(a) order restitution of any money, property or other consideration given or furnished by the consumer;

(b) award the consumer damages in the amount of any loss suffered because of the unfair practice;

(c) make an order of specific performance against the supplier;

(d) make an order directing the supplier to repair goods or provide parts for goods; or

(e) make an order varying the contract between the supplier and the consumer.

(2) Where the court finds that an unfair practice has occurred, the court shall, in making an order under this section, have regard to whether or not the consumer made a reasonable effort —

- (a) to minimise any loss resulting from the unfair practice; and
- (b) to resolve the dispute with the supplier before commencing the action.

Right to cancel certain contracts within cancellation period

8.—(1) Where a consumer —

- (a) has entered into a contract to which this section applies; and
- (b) within the prescribed cancellation period the consumer gives notice of cancellation to the supplier, or any other person previously notified by the supplier to the consumer as a person to whom notice may be given,

the contract shall be treated as if it had not been made.

(2) For the purposes of this section, the Minister may make regulations prescribing —

- (a) the types of contracts to which this section applies;
- (b) the cancellation period for a contract to which this section applies;
- (c) the manner in which notices of cancellation may be properly given;
- (d) any notices that the supplier must give to the consumer and the manner in which such notices may be properly given; and
- (e) the effect of the cancellation on any related contract.

Limitation period

9.—(1) Subject to subsection (2), no proceedings under this Act shall be commenced later than 2 years from the date of the occurrence of the last material event on which the proceedings are based.

(2) No proceedings arising from a cancellation of a contract pursuant to section 8 shall be commenced later than 2 years from the date of cancellation of the contract.

No contracting out

10.—(1) The provisions of this Act shall prevail notwithstanding any agreement to the contrary and any term contained in a contract is void, if and to the extent that it is inconsistent with the provisions of this Act.

(2) Any waiver or release given of any right, benefit or protection conferred under this Act shall be void.

(3) Subsections (1) and (2) do not apply to any release made by a person in settlement of a dispute.

Rights transferred

11. Where, other than in the course of business, an individual, as heir or assignee of a consumer, receives goods or services, that individual has the same rights as the consumer to seek and obtain redress from the supplier under this Act.

Preservation of other remedies

12. Nothing in this Act restricts, limits or derogates from any right or remedy that a consumer may have apart from this Act.

Exemption from liability for advertisers

13. A person who, on behalf of a supplier, prints, publishes, distributes, broadcasts or telecasts an advertisement in good faith and in his ordinary course of business shall not be liable under this Act in respect of any statement, representation or omission in that advertisement.

Parol evidence rule abolished

14. Notwithstanding sections 93 and 94 of the Evidence Act (Cap.97), parol or extrinsic evidence establishing the existence of an express warranty is admissible in any action between a consumer and a supplier even though it adds to, varies or contradicts a written contract.

Interpretation of documents

15. If a consumer and a supplier enter into a consumer transaction and —

- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier; and
- (b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier.

Regulations

16.—(1) The Minister may make such regulations as may be necessary or expedient for the purposes of this Act.

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

- (a) exempting any class of supplier of goods or services or any class of goods or services or transactions involving goods or services from the application of this Act or any provision of this Act and imposing conditions for that exemption;
- (b) prescribing information that must be part of a representation made by a supplier or class of suppliers with respect to any transaction or class of transactions involving goods or services; and
- (c) prescribing anything that may be prescribed under this Act.

FIRST SCHEDULE

Section 3(1)

EXCLUDED TRANSACTIONS

This Act does not apply to any of the following transactions or proposed transactions:

- (a) acquisition of estate or interest in any residential property (but not including any lease granted in consideration of rent);
- (b) financial investments;
- (c) transactions and proposed transactions property (but not including any lease granted in consideration of rent) —
 - (i) the value of which exceeds \$20,000; or
 - (ii) where the amount of the compensation referred to in paragraphs (b) and (c) of the definition of “consumer” in section 2 exceeds \$20,000;
- (d) in the case of any lease granted in consideration of rent, where the annual rent payable by the consumer exceeds \$20,000 (referred to as the “annual rent limit”) or the monthly rent payable by the consumer exceeds one-twelfth of the annual rent limit.

SECOND SCHEDULE

Section 4(1)(d)

SPECIFIC UNFAIR PRACTICES

1. Representing that goods or services have sponsorship, approval, performance characteristics, accessories, ingredients, components, qualities, uses or benefits that they do not have.
2. Representing that goods or services are of a particular standard, quality, grade, style, model, origin or method of manufacture if they are not.
3. Representing that goods are new or unused if they are not or if they have deteriorated or been altered, reconditioned or reclaimed.
4. Representing that goods have been used to an extent different from the fact or that they have a particular history or use if the supplier knows it is not so.
5. Representing that goods or services are available or are available for a particular reason, for a particular price, in particular quantities or at a particular time if the supplier knows or can reasonably be expected to know it is not so, unless the representation clearly states any limitations.
6. Representing that a service, part, repair or replacement is needed or desirable if that is not so, or that a service has been provided, a part has been installed, a repair has been made or a replacement has been provided, if that is not so.
7. Representing that a price benefit or advantage exists respecting goods or services where a price benefit or advantage does not exist.
8. Charging a price for goods or services that is substantially higher than an estimate provided to the consumer, except where the consumer has expressly agreed to the higher price in advance.

9. Representing that a transaction involving goods and services involves or does not involve rights, remedies or obligations where that representation is deceptive or misleading.

10. Representing that a person has or does not have the authority to negotiate the final terms of a transaction involving goods or services if the representation is different from the fact.

11. Taking advantage of a consumer by including in a consumer agreement terms or conditions that are harsh, oppressive or excessively one-sided.

12. Taking advantage of a consumer by exerting undue pressure or undue influence on the consumer to enter into a transaction involving goods or services.

13. Representing in relation to a voucher that another supplier will provide goods or services at a discounted or reduced price if the supplier making the representation knows or ought to know that the other supplier will not do so.

14. Making a representation that appears in an objective form such as an editorial, documentary or scientific report when the representation is primarily made to sell goods or services, unless the representation states that it is an advertisement or promotion

15. Representing that a particular person has offered or agreed to acquire goods and services whether or not at a stated price if they have not.

16. Representing the availability of facilities for repair of goods or of spare parts for goods if that is not the case.

17. Offering gifts, prizes or other free items in connection with the supply of goods or services if the supplier knows or ought to know that the items will not be provided or provided as offered.

18. Representing that goods or services are available at a discounted price for a stated period of time if the supplier knows or ought to know that the goods and services will continue to be so available for a substantially longer period.

19. Representing that goods or services are available at a discounted price for a particular reason that is different from the fact.

20. Using small print to conceal a material fact from the consumer or to mislead a consumer as to a material fact, in connection with the supply of goods or services.

EXPLANATORY STATEMENT

EXPENDITURE OF PUBLIC MONEY

No. S000 -

CONSUMER PROTECTION (FAIR TRADING) ACT 2002
(ACT OF 2002)

CONSUMER PROTECTION (FAIR TRADING)
(CANCELLATION OF CONTRACTS) REGULATIONS 2002

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement
2. Definitions
3. Right to cancel contract
4. Recovery of money paid by consumer
5. Return of goods by consumer on cancellation of direct sales contract
6. No imposition of additional duty or liability on consumer

In exercise of the powers conferred by sections 8 and 16 of the Consumer Protection (Fair Trading) Act 2002, the Minister for Trade and Industry hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations 2002 and shall come into operation on .

Definitions

2. In these Regulations, unless the context otherwise requires —

“contract” means a direct sales contract or time share contract;

“direct sales contract” means a contract for the supply by a supplier of goods or services to a consumer which is made —

(a) during an unsolicited visit by a supplier to —

- (i) the place of residence of the consumer;
- (ii) the place of residence of another person; or
- (iii) the place of business of the consumer;

(b) during a visit referred to in paragraph (a) at the express request of the consumer where the goods or services to which the contract relates are other than those for which the consumer requested the visit of the supplier, provided that when the visit was requested the consumer did not know, or could not reasonably have known, that the supply of

those other goods or services formed part of the business activities of the supplier; or

- (c) after an offer was made by the consumer in respect of the supply by the supplier of the goods or services in the circumstances referred to in paragraph (a) or (b) ;

“time share contract” means a contract in which an individual acquires the right to use any type of real or personal property that can be used as accommodation, whether or not it is located in Singapore —

- (a) for a period of time of less than one year during an interval specified in the contract; and
- (b) as part of a plan that provides for the use of the property to circulate among persons participating in the plan;

“unsolicited visit” means a visit by a supplier, whether or not he is the supplier who supplies the goods or services, which does not take place at the express request of the consumer and includes a visit which takes place after a supplier telephones the consumer (otherwise than at his express request) indicating expressly or by implication that he is willing to visit the consumer.

Right to cancel contract

3.—(1) Where a consumer has entered into a contract, the consumer may give notice of cancellation of the contract to the supplier or any person designated by the supplier as one to whom notice of cancellation may be given (referred to in this regulation as a designated person) at any time within 3 days, not including Saturday, Sunday and public holidays, after the day on which the contract is entered into (referred to in this regulation as the cancellation period), and the contract may not be enforced against the consumer during the cancellation period.

(2) If in a case falling within paragraph (1) the consumer affirms the contract at any time after the expiry of the cancellation period, paragraph (1) shall not prevent the contract from being enforced against the consumer and he may not at any time after his affirmation give notice of cancellation of the contract to the supplier or designated person.

(3) The giving of a notice of cancellation of the contract, within the cancellation period, by the consumer to the supplier or designated person shall have the effect of cancelling the contract and the contract shall be treated as if it had not been made.

(4) A notice of cancellation shall be given —

- (a) by delivering it to the supplier or designated person personally;
- (b) by leaving it at, or by sending it by pre-paid post to, an address provided by the supplier; or

(c) by sending it by facsimile transmission to a facsimile number provided by the supplier.

(5) Where the supplier has not notified the consumer of the facsimile number or address to which the notice of cancellation shall be sent, the notice may be given by leaving it or sending it by post to —

(a) the usual or last known address of the place of business of the supplier or designated person; or

(b) in the case of a body corporate, to its registered office or principal office in Singapore.

(6) A notice of cancellation sent by post by a consumer shall be deemed to have been given at the time of posting, whether or not it is actually received.

Recovery of money paid by consumer

4. Where a contract is cancelled under regulation 3 —

(a) the contract shall cease to be enforceable;

(b) any sum which the consumer has paid under or in contemplation of the contract to the supplier, or to any person who is the agent of the supplier for the purpose of receiving that sum, shall be recoverable from the supplier by the consumer;

(c) the consumer or any person on his behalf shall have a lien on any goods in the possession of the consumer or any person on his behalf for any sum payable to the consumer under paragraph (b);

(d) any security which the consumer has provided in relation to the contract shall be treated as not having had effect and any property lodged with the supplier solely for the purposes of the security as so provided shall be returned by him;

(e) no sum may be recovered by or on behalf of the supplier from the trader in respect of the contract; and

(f) any related contracts shall not be enforceable against the consumer.

Return of goods by consumer on cancellation of direct sales contract

5.—(1) Subject to paragraph (2), a consumer who has before cancelling a direct sales contract under regulation 3 acquired possession of any goods by virtue of the direct sales contract shall be under a duty, subject to any lien, on the cancellation to restore the goods to the supplier in accordance with this regulation, and for the time being to retain possession of the goods and take reasonable care of them.

(2) The consumer shall not be under a duty to restore —

(a) perishable goods;

(b) goods which by their nature are consumed by use and which, before the cancellation, were so consumed;

- (c) goods supplied to meet an emergency; or
- (d) goods which, before the cancellation, had become incorporated in any land or thing not comprised in the contract.

(3) In the event that paragraph (2) applies, the consumer shall be under a duty to pay in accordance with the direct sales contract for the supply of the goods and for the provision of any services in connection with the supply of the goods before the cancellation.

(4) The consumer shall be discharged from any duty to retain possession of the goods or restore them to the supplier at the time he delivers the goods to the supplier or to a person specified in the direct sales contract for such purposes.

(5) Where any security has been provided in relation to the contract, the duty imposed on the consumer to restore goods by this regulation shall not be enforceable before the supplier has discharged any duty imposed on him under regulation 4(d).

No imposition of additional duty or liability on consumer

6.—(1) The supplier shall not by a term in a contract impose, directly or indirectly, any additional duty or liability on the consumer in relation to the duties imposed by these Regulations.

(2) A term in a contract is void to the extent that it is inconsistent with paragraph (1).