

Consumer Protection (Fair Trading) (Amendment) Bill

Bill No. 10/2008.

Read the first time on 21st July 2008.

A BILL

intituled

An Act to amend the Consumer Protection (Fair Trading) Act (Chapter 52A of the 2004 Revised Edition) and to make a related amendment to the Small Claims Tribunals Act (Chapter 308 of the 1998 Revised Edition).

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) (Amendment) Act 2008 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 2

2. Section 2 of the Consumer Protection (Fair Trading) Act (referred to in this Act as the principal Act) is amended —

(a) by inserting, immediately after the definition of “consumer transaction” in subsection (1), the following definitions:

10 ““financial product” includes any arrangement, transaction or contract regulated, or supplied by any person regulated, under —

(a) any written law administered by the Monetary Authority of Singapore;

15 (b) the Commodity Trading Act (Cap. 48A); or

(c) such other written law as the Minister may by order prescribe;

“financial services” includes any services regulated, or supplied by any person regulated, under —

20 (a) any written law administered by the Monetary Authority of Singapore;

(b) the Commodity Trading Act; or

(c) such other written law as the Minister may by order prescribe;”;

25 (b) by deleting sub-paragraph (ii) of paragraph (a) of the definition of “goods” in subsection (1) and substituting the following sub-paragraph:

“(ii) financial products and credit, including credit extended solely on the security of land;”;

30 (c) by inserting, immediately after the definition of “material fact” in subsection (1), the following definitions:

““motor vehicle” has the same meaning as in section 2 of the Road Traffic Act (Cap. 276);

“motor vehicle dealer” means a supplier of motor vehicles;

“motor vehicle sale contract” means a contract between a consumer and a motor vehicle dealer for the sale of a motor vehicle to the consumer;”;

- 5 (d) by inserting the word “and” at the end of paragraph (c) of the definition of “services” in subsection (1), and by inserting immediately thereafter the following paragraph:

“(d) financial services;”;

- 10 (e) by inserting, immediately after the definition of “specified body” in subsection (1), the following definition:

15 ““specified dispute resolution scheme” means, in respect of disputes arising in relation to any consumer transaction, any dispute resolution scheme specified for the purposes of section 7(10) by regulations made under section 20(2)(k) in respect of disputes arising in relation to a class of consumer transactions to which that consumer transaction belongs;”;

- 20 (f) by inserting, immediately after the words “agent of the person” in the last line of the definition of “supplier” in subsection (1), the words “, and the word “supply”, with its grammatical variations and cognate expressions, shall have corresponding meanings”;

- (g) by inserting, immediately after the definition of “time share contract” in subsection (1), the following definition:

25 ““time share related contract” means a contract to assist a consumer to dispose of his time share rights conferred under a time share contract;” and

- (h) by inserting, immediately after subsection (2), the following subsection:

30 “(3) For the purposes of the definitions of “financial product” and “financial services” in subsection (1), a reference to a person regulated under a written law shall include a person exempted from being licensed, approved or regulated under that written law.”.

Amendment of section 6

3. Section 6 of the principal Act is amended —

(a) by deleting “\$20,000” in subsection (6) and substituting “\$30,000”; and

5 (b) by inserting, immediately after subsection (6), the following subsections:

“*(7)* Any party to an action in a court under subsection (1) may, at any time, apply to that court to stay the proceedings so far as the proceedings relate to an unfair practice in respect of which an application has been made under section 9 against the same supplier.

10 (8) The court to which an application under subsection (7) has been made may, if the court is satisfied that the determination in respect of the application under section 9 will be material to the action under subsection (1), make an order, upon such terms as the court thinks fit, staying the proceedings so far as the proceedings relate to that unfair practice.

15 (9) Where no party to the proceedings has taken any further step in the proceedings for a period of 2 or more years after an order staying the proceedings has been made, the court may, on its own motion, make an order discontinuing the proceedings without prejudice to the right of any of the parties to apply for the discontinued proceedings to be reinstated.”.

Amendment of section 7

25 **4.** Section 7 of the principal Act is amended —

(a) by deleting subsections (1) and (2) and substituting the following subsections:

30 “(1) Notwithstanding section 5(1) of the Small Claims Tribunals Act (Cap. 308), a Small Claims Tribunal shall have jurisdiction to hear and determine —

(a) any action under section 6(1) insofar as the action relates to an unfair practice involving a relevant contract;

- (b) any action under section 8(6), (7) or (8) insofar as the action relates to an undertaking in respect of an unfair practice involving a relevant contract;
- 5 (c) any action under any regulations made under section 11 insofar as the action relates to a relevant contract, a time share contract or a time share related contract;
- (d) any action under any provisions specified under section 20(2)(j), insofar as the action relates to a relevant contract; or
- 10 (e) any action insofar as it relates to a deposit paid in relation to or in contemplation of a motor vehicle sale contract.

(2) In subsection (1), “relevant contract” means a contract referred to in section 5(1)(a) (contract for the sale of goods or the provision of services) or (c) (contract for the lease of residential premises that does not exceed 2 years) of the Small Claims Tribunals Act (Cap. 308), and does not include a hire-purchase agreement or sale of immovable property.

(2A) For the avoidance of doubt, subsections (2) to (5) of section 5 of the Small Claims Tribunals Act shall apply, with the necessary modifications, to a Small Claims Tribunal exercising the jurisdiction conferred by subsection (1).”; and

(b) by inserting, immediately after subsection (9), the following subsection:

25 “(10) For the purposes of subsection (9)(b), if any specified dispute resolution scheme was available to the consumer in respect of the dispute, the court shall consider whether the consumer had sought to resolve the dispute through such a scheme.”.

30 **Amendment of section 12**

5. Section 12 of the principal Act is amended —

- (a) by deleting the words “one year” in the 2nd line of subsection (1) and substituting the words “2 years”; and
- (b) by deleting subsection (3) and substituting the following subsection:

“(3) No action under section 9 shall be commenced later than 2 years —

(a) from the date of the occurrence of the last material event on which the action is based; or

5 (b) where the specified body alleges in the action that the supplier has engaged in an unfair practice in respect of any consumer, from the earliest date on which that consumer had knowledge that the supplier had engaged in the alleged unfair practice, as provided in
10 subsection (1)(b),

whichever occurs later.”.

New section 18A

6. The principal Act is amended by inserting, immediately after section 18, the following section:

15 **“Burden of proof**

18A.—(1) If, in any proceedings taken in any court between a consumer and a supplier in relation to a consumer transaction, any dispute arises as to whether the supplier has complied with any specified requirement of this Act or the regulations made thereunder,
20 the burden of proving that the supplier has so complied shall be on the supplier.

(2) The Minister may, by regulations, specify the requirements of this Act or the regulations made thereunder to which subsection (1) shall apply.

25 (3) This section shall not affect any other rule of law that places a burden of proof on the supplier.”.

Amendment of section 20

7. Section 20(2) of the principal Act is amended —

30 (a) by deleting paragraph (h) and substituting the following paragraph:

“(h) prescribing the rights and obligations of parties in relation to a consumer transaction involving any practice regulated under this Act or any regulations

made thereunder, including the right to sue for the purpose of enforcing such rights or obligations in circumstances specified therein;” and

(b) by deleting the full-stop at the end of paragraph (i) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

“(j) specifying, for the purposes of section 7(1)(d), actions under provisions in any regulations made under this section;

(k) specifying dispute resolution schemes for the purposes of section 7(10); and

(l) modifying the application of section 6(2), in relation to any class of supplier or any class of goods or services or transactions, where multiple actions involving the same unfair practice are commenced under section 6(1) by the same consumer.”.

Amendment of First Schedule

8. Paragraph 2 of the First Schedule to the principal Act is amended —

(a) by deleting sub-paragraphs (a) to (g) and (j);

(b) by deleting sub-paragraph (h); and

(c) by deleting sub-paragraph (i).

Related amendment to Small Claims Tribunals Act

9. Section 5 of the Small Claims Tribunals Act (Cap. 308) is amended by inserting, immediately after subsection (5), the following subsection:

“(6) For the purposes of this section, a contract to buy or sell foreign currency notes made with a person holding a valid money-changer’s licence under the Money-changing and Remittance Businesses Act (Cap. 187) is deemed to be a contract for the provision of services.”.

Transitional and savings provisions

10.—(1) The principal Act shall continue to apply as if this Act had not been enacted —

- (a) in relation to an action under section 6 of the principal Act, if the unfair practice occurred before the relevant date;
- (b) in relation to an action under section 8(6), (7) or (8) of the principal Act, if the voluntary compliance agreement was entered before the relevant date; or
- (c) in relation to an action under section 9 of the principal Act if —
- (i) where the specified body alleges in the action that the supplier has engaged in any unfair practice in respect of any consumer, that unfair practice occurred before the relevant date; or
- (ii) in any other case, any of the material events on which the action is based occurred before the relevant date.
- (2) In subsection (1), “relevant date” —
- (a) in relation to an action in respect of an unfair practice involving any transaction or activity regulated under any written law administered by the Monetary Authority of Singapore or under the Commodity Trading Act (Cap. 48A), means the date of commencement of section 8(a);
- (b) in relation to an action in respect of an unfair practice involving any transaction or activity regulated under the Moneylenders Act (Cap. 188), means the date of commencement of section 8(b);
- (c) in relation to an action in respect of an unfair practice involving any transaction or activity regulated under the Pawnbrokers Act (Cap. 222), means the date of commencement of section 8(c); and
- (d) in any other case, means the date of commencement of this Act.
- (3) In relation to an action under any regulations made under the principal Act, this Act shall have effect in accordance with such provisions as may be prescribed under subsection (4).
- (4) The Minister may, by regulations, prescribe such further transitional and savings provisions as he may consider necessary or expedient within a period of 2 years after the date of commencement of section 8(a), (b) or (c), whichever is the latest.
-

EXPLANATORY STATEMENT

This Bill seeks to amend the Consumer Protection (Fair Trading) Act (Cap. 52A) primarily —

- (a) to extend the application of the Act to certain financial products and financial services which are currently excluded;
- (b) to increase the prescribed limit of claims under section 6 from \$20,000 to \$30,000;
- (c) to extend the jurisdiction of the Small Claims Tribunals to hear and determine certain actions under the Act;
- (d) to extend the limitation period for actions under sections 6 and 9 from one year to 2 years; and
- (e) to place on the supplier the burden of proving that the supplier has complied with certain requirements of the Act or the regulations made thereunder (to be specified in regulations).

The Bill also makes a related amendment to the Small Claims Tribunals Act (Cap. 308).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to insert 7 new definitions of “financial product”, “financial services”, “motor vehicle”, “motor vehicle dealer”, “motor vehicle sale contract”, “specified dispute resolution scheme” and “time share related contract” and to make amendments to certain other definitions which are consequential on the extension of the Act to certain financial products and financial services effected by the amendments made by clause 8.

Clause 3 amends section 6(6) to increase the prescribed limit of claims under that section from \$20,000 to \$30,000. New subsections (7), (8) and (9) are inserted to give the court powers in certain circumstances to stay proceedings in an action under section 6 (Consumer’s right to sue for unfair practice) pending the determination of an action under section 9 (Declaration or injunction) and subsequently to discontinue those proceedings of its own motion.

Clause 4 amends section 7 by deleting subsections (1) and (2) and substituting subsections (1), (2) and (2A) to extend the jurisdiction of the Small Claims Tribunals to hear and determine actions to include actions under regulations made under section 11 (Right to cancel certain contracts within cancellation period) relating to time share contracts and time share related contracts and actions under other provisions specified under section 20(2)(j), and actions insofar as they relate to a deposit paid in relation to or in contemplation of a motor vehicle sale contract. Subsection (2) reflects the change made by the Small Claims Tribunals (Amendment) Act 2005 (Act 43 of 2005) which extended the jurisdiction of the Small Claims Tribunals to include any claim relating to a dispute arising from any contract for the lease of residential premises that does not exceed 2 years. Subsection (2A) clarifies that section 5(2) to (5) of the Small Claims Tribunals Act applies to Small Claims Tribunals exercising the jurisdiction conferred by section 7(1).

The clause also inserts new section 7(10) to require a court to consider whether a consumer had sought to resolve a dispute through a specified dispute resolution scheme if such a scheme was available to the consumer. It is envisaged that the Financial Industry Disputes Resolution Centre Limited (FIDReC) will be prescribed as a specified dispute resolution scheme for disputes relating to certain financial products and services regulated under written laws administered by the Monetary Authority of Singapore.

Clause 5 amends section 12 to extend the limitation period for actions under sections 6 and 9 from one year to 2 years. Provision is also made to allow the limitation period for actions under section 9 to commence from the earliest date when the consumer, in respect of whom the alleged unfair practice was engaged in by the supplier, had knowledge that the supplier had engaged in that unfair practice.

Clause 6 inserts a new section 18A to place on the supplier the burden of proving that the supplier has complied with certain requirements of the Act or the regulations made thereunder (to be specified in regulations).

Clause 7 amends section 20(2) to give the Minister power to make regulations —

- (a) to specify actions under provisions in any regulations made under the section for the purposes of section 7(1)(d) (new paragraph (j)) and dispute resolution schemes for the purposes of section 7(10) (new paragraph (k)); and
- (b) to modify the application of section 6(2) (relating to the prescribed limit in an action to sue for an unfair practice) where there are multiple actions commenced by the same consumer for the same unfair practice (new paragraph (l)).

For the purposes of new paragraph (l), actions will be taken to involve the same unfair practice if the unfair practice complained of in each action is based on substantially the same facts.

Paragraph (h) is also amended to allow for the power to prescribe the rights and obligations of parties in relation to a consumer transaction involving any practice regulated under the Act or any regulations made thereunder.

Clause 8 amends the First Schedule by deleting references to the written laws specified in paragraph 2. Transactions and activities regulated under these written laws are currently excluded from the meaning of “consumer transaction” and the Act therefore does not apply to them. Their deletion from the First Schedule will extend the application of the Act to such transactions and activities. It is envisaged that the principal Act will be extended to include transactions and activities regulated under written law administered by the Monetary Authority of Singapore and under the Commodity Trading Act (clause 8(a)) with the commencement of this Act, followed by the Moneylenders Act (clause 8(b)) and the Pawnbrokers Act (clause 8(c)) on 1st January 2009 and 1st January 2010, respectively.

Clause 9 makes a related amendment to section 5 of the Small Claims Tribunals Act (Cap. 308) by inserting a new subsection (6). This amendment deems a contract to buy or sell foreign currency notes made with a licensed money-changer to be a contract for the provision of services for the purposes of that section and thereby clarifies that a

Small Claims Tribunal has jurisdiction to hear and determine a claim relating to a dispute arising from such a contract.

Clause 10 provides for transitional and savings provisions relating to the enactment of the Bill.

EXPENDITURE OF PUBLIC MONEY

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