

# LEGAL UPDATE

A DREW &amp; NAPIER PUBLICATION

## LEGISLATION UPDATE

### CHANGES TO THE CONSUMER PROTECTION (FAIR TRADING) LEGISLATION

The Consumer Protection (Fair Trading) Act (the “**CPFT Act**”) and related subsidiary legislation are set to undergo several changes which will, among other things, extend their scope of protection to consumers of financial products and services. In this update, we highlight the key changes brought about by the following regulations issued pursuant to the CPFT Act:

- Consumer Protection (Fair Trading) (Regulated Financial Products and Services) Regulations 2009 (the “**RFPS Regulations**”);
- Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations 2009 (the “**CC Regulations**”); and
- Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations 2009.

The changes will take effect on **15 April 2009**.

#### Consumer Protection (Fair Trading) Act

The amendments to the CPFT Act will take effect subject to two exceptions -- transactions or activities regulated by the Moneylenders Act and the Pawnbrokers Act will, for the time being, continue to be excluded from the ambit of the CPFT Act. However, other transactions and activities which are presently excluded from the ambit of the CPFT Act, namely, those regulated under the Banking Act, Commodity Trading Act, Finance Companies Act, Securities and Futures Act, Financial Advisers Act, Insurance Act, section 28 of the Monetary Authority of Singapore Act and the Money-changing and Remittance Businesses Act, will come within the purview of the CPFT as of 15 April 2009.

Please click [here](#) for our previous overview of the changes to be brought about by the Consumer Protection (Fair Trading) (Amendment) Bill, which has been passed by Parliament without amendment.

#### Consumer Protection (Fair Trading) (Regulated Financial Products and Services) Regulations 2009

*Special considerations in determining whether “unfair practice” exists*

In respect of financial products and services regulated by the Monetary Authority of Singapore Act and the Commodity Trading Act, a court may,

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in considering the reasonableness of the supplier's actions, take into account the inherent risks of the financial products and services supplied, if all relevant information concerning such risks had been provided to the consumer in good faith.

In relation to insurance contracts, a supplier will not be taken to have engaged in unfair practice by reason only of the fact that the terms of the insurance contract clearly define or circumscribe the insured risk or the insurer's liability.

#### *Aggregation of multiple actions*

Under section 6(2) of the amended CPFT Act, a consumer has no right to commence an action under the CPFT Act if the claim amount exceeds S\$30,000. In this connection, Regulation 5 of the RFPS Regulations provides that, where an action involves an unfair practice relating to the supply of financial products and services regulated by the Monetary Authority of Singapore Act or under the Commodity Trading Act, the claim amount or the value of the subject matter must be determined based on the aggregate amounts of the claims or the aggregate values of the subject matters in all actions involving the same unfair practice and commenced between the same consumer and supplier.

Actions will be taken to "*involve the same unfair practice*" if the practice complained of in each action is established on substantially the same facts. The court may, however, exclude all or part of the claim amount or value of the subject matter in any individual action from being aggregated if it is satisfied that it is just to do so having regard to the circumstances.

#### *Specified dispute resolution scheme*

Under the amended CPFT Act, where the court finds that an unfair practice has occurred, it would, in making an order, have regard to whether or not the consumer had made a reasonable effort to resolve the dispute with the supplier by using any specified dispute resolution scheme identified in the relevant regulations.

In this connection, regulation 6 of the RFPS Regulations states, for the purposes of the CPFT Act, that the specified dispute resolution scheme would be that provided by the Financial Industry Disputes Resolution Centre Ltd ("**FIDReC**") in respect of disputes relating to MAS-regulated financial products or services supplied by a subscriber to that dispute resolution scheme.

A list of subscribers to FIDReC's dispute resolution scheme is available on their [website](#).

#### *Exclusion of sections 8 and 9 of the CPFT Act*

Section 8 of the CPFT Act allows a specified body to invite a supplier to enter into a voluntary compliance agreement by which the supplier may undertake, among other things, not to engage in an unfair practice or to compensate consumers. Section 9 allows the District Court or High Court, on the application of a specified body, to declare a practice an "*unfair practice*" and grant an injunction restraining the supplier from engaging in it. These sections will not apply to any unfair practice relating to MAS-regulated financial products or services. (Note: The Consumer Association of Singapore and the Singapore Tourism Board

have been appointed as “specified bodies” under the CPFT Act to look after the interests of Singaporean consumers and tourists respectively.)

### **Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations 2009**

The CC Regulations revoke and replace the existing Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations.

The CC Regulations provide that a regulated contract (ie. a direct sales contract, time share contract or time share related contract) may not be enforced against a consumer any time earlier than 5 days (excluding Saturdays, Sundays and public holidays) after: (i) the day on which the contract is entered into; or (ii) the day on which the consumer information notice containing certain prescribed details about the consumer’s rights is brought to the attention of the consumer (if later than the contract date). During this period of time, a consumer has the right to cancel the regulated contract. This is an extension of the current deadline, which is 3 days (excluding Saturdays, Sundays and public holidays).

Regulation 3(h), however, provides that the CC Regulations would not apply to any contract for the supply of financial products or services containing a right of cancellation exercisable within a specified period which is conferred by any MAS-administered written law or by directions issued by the MAS pursuant to sections 101 and 293 of the Securities and Futures Act, where the specified period expires later than 5 days (excluding Saturdays, Sundays and public holidays). The longer specified period would apply in such cases.

### **Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations 2009**

These Regulations deal with: (i) the provision of unsolicited goods or services; (ii) the supply of goods or services on a continuing basis; and (iii) the supply of goods or services on a free trial basis.

*Provision of unsolicited goods or services:* A consumer may use, deal with or dispose of such goods or services as if they were an unsolicited gift, unless he expressly acknowledges to the supplier that he intends to accept and pay for them.

*Supply of goods or services on a continuing basis:* If a consumer is supplied with goods or services on a continuing basis and there is a material change in the goods or services or in the supply of the goods or services, the goods or services will be deemed to be unsolicited goods or services from the time of the material change unless the consumer consents in writing to the material change.

*Supply of goods or services on a free trial basis:* If goods or services (whether or not unsolicited) are supplied to a consumer on a free trial basis, the supplier must give a reminder notice to the consumer to remind him when the free trial period ends. This reminder notice must be given within a specified time frame, and must present certain prescribed information in a clear and conspicuous manner. Such information would include the date on which the free trial period ends, and the address or telephone number of the supplier. If the supplier fails to do this, the consumer may, if he had paid for any goods or services supplied on a free

trial basis, demand a refund. The supplier is then subject to the same statutory regime as that for refunds for unsolicited goods (see paragraph below).

*Consumer's remedy:* A consumer who pays for unsolicited goods or services may demand in writing from a supplier a refund of any payment made if he did not expressly acknowledge to the supplier in writing his intention to accept and pay for the goods or services. A supplier must give a refund within 60 days after it receives a demand for one. A breach of this obligation will be actionable as a breach of statutory duty if the value of the claim does not exceed \$30,000.

## References

Please click on the links below to refer to the relevant legislation or subsidiary legislation:

1. [Consumer Protection \(Fair Trading\) \(Amendment\) Act 2009](#)
2. [Consumer Protection \(Fair Trading\) \(Regulated Financial Products and Services\) Regulations 2009](#)
3. [Consumer Protection \(Fair Trading\) \(Cancellation of Contracts\) Regulations 2009](#)
4. [Consumer Protection \(Fair Trading\) \(Opt-Out Practices\) Regulations 2009](#)

If you have any queries on this update, or wish to discuss how it may potentially affect you or your business, please feel free to contact Drew & Napier LLC (please refer to the Directors' Profiles on our [website](#)), or:

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