

## LEGISLATION UPDATE

### CONSUMER PROTECTION (FAIR TRADING) (AMENDMENT) BILL

#### **Ambit of the CPFT Act extended to consumers of financial products and services**

The Consumer Protection (Fair Trading) (Amendment) Bill (the “**Bill**”) has been introduced in Parliament. The Bill seeks to amend the Consumer Protection (Fair Trading) Act (the “**CPFT Act**”) and to make a related amendment to the Small Claims Tribunal Act (the “**SCT Act**”).

This article examines and summarises some of the key changes proposed by the Bill.

#### **Financial products and services included as “consumer transactions”**

##### *Definitions*

The Bill proposes to extend the application of the CPFT Act to cover certain financial products and services.

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

- any written law administered by the Monetary Authority of Singapore (the “**MAS**”) (this includes the Banking Act, the Insurance Act, the Securities and Futures Act, the Financial Advisers Act and several other statutes);
- the Commodity Trading Act; or
- any other law prescribed by the Minister for Trade and Industry.

A “financial service” includes any services regulated, or supplied by any person regulated, under the abovementioned three categories.

References to persons regulated under the relevant laws include persons who are exempted from licensing, approval or regulation under those laws.

##### *Effect of amendments*

These proposed changes widen the ambit of the CPFT Act to include transactions and agreements pursuant to which financial products and services are supplied and received. Persons who obtain or who are obliged to pay for such products and services are treated as “consumers” and receive protection under the CPFT Act.

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Accordingly, an individual who enters into a contract for such financial products and services may be able to sue the supplier of the financial products and services for unfair practices. “Suppliers” are not restricted to persons who are regulated under the relevant written laws, but include persons who are exempt from regulation, approval or licensing.

#### *Additional observations*

It is clear that the proposed amendments will have an impact on the marketing, delivery and provision of retail financial products and services in Singapore. Providers of such financial products and services will have to ensure that their marketing and sales practices do not constitute “unfair practices” under the CPFT Act. Such parties should examine their transactions for compliance with the CPFT Act.

In particular, the following points may be noted:

- Only customers who obtain financial products and services “*otherwise than exclusively in the course of business*” will be considered “consumers” under the CPFT Act. Hence, individuals obtaining financial products and services solely for their businesses will be excluded from the ambit of the CPFT Act.
- If the financial products or services were intended for business use, the court will not grant any relief. The reference to “*goods or services intended for business use*” under the CPFT Act includes “*goods or services (as the case may be) that the consumer intends to re-sell in the course of his business, and goods that the consumer intends to use up or transform, in the course of his business, in a process of production or manufacturing or in repairing or treating other goods or fixtures*”.
- Monetary claims have to fall within a prescribed limit of S\$30,000 (increased from the existing limit of S\$20,000). Alternatively, if the remedy or relief sought is not monetary in nature, the value of the subject matter cannot exceed S\$30,000. Claims involving amounts greater than S\$30,000 will not be subject to the provisions of the CPFT Act.
- When financial institutions supervised by the MAS deal with accredited investors in transactions regulated by the Securities and Futures Act, the Financial Advisers Act and certain other written laws administered by the MAS, they are exempted from complying with certain provisions of those laws. It is, however, noted that the mere fact that a party is an accredited investor does not necessarily exclude the application of the CPFT Act, because the accredited investor may still be considered a “consumer” under the CPFT Act.

#### **Other amendments**

##### *Specified dispute resolution scheme*

The Bill proposes to enact a new Section 7(10) which requires the court, before making an order in respect of an action on unfair practices, to consider whether the consumer has made a reasonable effort to resolve the dispute with the supplier using any specified dispute resolution scheme identified in the relevant regulations under the CPFT Act.

According to the Explanatory Statement of the Bill, it is envisaged that the Financial Industry Disputes Resolution Centre Limited (“**FIDReC**”) will be prescribed as the specified dispute resolution scheme for certain financial products and services administered by the MAS. It is therefore likely that consumers of such financial products and services will be expected to refer these disputes to FIDReC before turning to the courts for relief.

#### *Extension of jurisdiction of the Small Claims Tribunal*

The Small Claims Tribunal currently has the jurisdiction in respect of certain actions under the CPFT Act relating to unfair practices and consumers’ right to cancel certain contracts within certain prescribed cancellation periods. The Bill proposes to widen the Small Claims Tribunal’s existing jurisdiction to include:

- (a) actions concerning rights to cancel time share contracts and time share related contracts within certain cancellation periods;
- (b) actions pursuant to regulations issued under the CPFT Act; and
- (c) actions relating to deposits paid in respect of motor vehicle sale contracts.

The Bill also contains a related amendment to the SCT Act which clarifies that the Small Courts Tribunal will have jurisdiction over disputes arising from the purchase or sale of foreign currency notes with a licensed money-changer.

#### *Limitation period for actions under the CPFT Act*

The limitation period for actions relating to unfair practices under Sections 6 and 9 of the CPFT Act will be extended from the current 1 year to 2 years.

Provision is also made to allow the limitation period for actions under Section 9 (applications for declarations or injunctions) to run 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.

#### *Burden of proof*

The Bill introduces a new Section 18A which stipulates that, in an action against a supplier for unfair practices, the supplier shoulders the burden of proof to show that he has complied with the provisions of the CPFT Act or any relevant regulation issued pursuant to it.

This new section complements the CPFT Act’s existing Section 17 (which permits extrinsic evidence of an express warranty in a contract to be adduced in court) and Section 18 (which requires ambiguities in documents drawn up by the supplier to be construed against him). As consumer contracts are, in the normal case, usually drafted by the supplier, these provisions give the consumer a certain degree of leverage in the interpretation of such contracts.

## References

Please click on this link to access [the Consumer Protection \(Fair Trading\) \(Amendment\) Bill](#).

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