

Legal Update

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An Overview Of The Consumer Protection (Fair Trading) Act 2004

Introduction

The Consumer Protection (Fair Trading) Act ('Act') came into force on 1 March 2004. The Act was passed with the aim of protecting consumers from unfair practices by giving consumers who have entered into a transaction involving an unfair practice, the right to bring an action in court to obtain relief. Under certain circumstances, consumers will also be allowed to cancel certain contracts. However, an act of unfair trading does not amount to a criminal offence.

The Act will in general apply to all those involved in the supply of a commodity (whether goods or services) to individuals who are receiving it either entirely or partially for their personal use. In other words, it will not apply to transactions between businesses.

It should be noted, however, that not all transactions involving the supply of goods or services for individual's personal use are covered.

This Update sets out the transactions that are covered by the Act, reviews the obligations and liabilities

imposed by the Act and considers the practical measures that may be taken in view of these.

Transactions Covered By The Act

Subject to certain restrictions and exemptions, the Act covers the supply of all goods and services to consumers where either the supplier or consumer is resident in Singapore or where the offer or acceptance relating to the transaction is made or sent from Singapore.

Under the Act, goods include not only the usual items such as electrical appliances, clothes, furniture but also items such as software, leases of residential property and gift vouchers.

With respect to services, a wide variety of services are covered under the Act. In this respect, the Act does not limit the definition of services but states that 'services' include:

- repair or maintenance services in respect of goods or residential property;
- membership in a club or organisation; and

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- the right to use time share accommodation under a time share contract (defined as a contract which confers or purports to confer on an individual time share rights that are exercisable during a period of not less than three years).

The above services have been set out in the Act only to make it clear that they are to be considered as 'services' for the purposes of the Act. However, by the use of the word 'includes' in the Act, other services would also fall be covered such as educational or travel services.

It is important to note that it is not necessary under the Act that the consumer must have actually bought the goods or services. This is because the Act will also apply to situations where the goods or services are supplied under gift, lease, contest or other arrangement, including a hire-purchase transaction.

However, the goods or services must have been supplied for the personal use of the consumer, or at least a combination of business and personal use. This is discussed further under the heading 'Meaning of consumer for the purposes of the Act'.

Transactions Not Covered By The Act

Certain transactions are specifically exempted in that

they are not covered by the Act. These are:

- the sale and purchase of real estate (however, leases of residential property will continue to be covered by the Act);
- employment contracts;
- transaction or activity that is regulated by specified legislation such as the Banking Act, the Commodity Trading Act, the Finance Companies Act, the Financial Advisers Act, the Insurance Act, the Money-changing and Remittance Businesses Act, the Moneylenders Act, the Pawnbrokers Act and the Securities and Futures Act.

Meaning Of Consumer For The Purposes Of The Act

A consumer is, firstly, an individual. Thus the Act does not cover the supply of goods or services to companies, firms or other corporate bodies.

Secondly, the consumer must have received the goods or services otherwise than exclusively in the course of business. This means that the Act essentially covers the supply of goods or services for personal use. So, an individual who buys a computer for both his business and for his own personal use is still entitled to the protection of the Act. However, this will affect the amount that he is entitled to recover if any unfair trading has occurred since he will only be able to claim for that portion attributable to his personal use.

It is essentially a question of fact whether a consumer is acting in the course of business. However, a supplier is entitled to rely on any representations made by the individual. Thus if the consumer tells the supplier that he is acting wholly in the course of business, then he will be treated as such for the purposes of the Act. In other words, he would lose his right to protection under the Act.

Thirdly, a consumer does not have to be someone who is himself being supplied with the goods. For example, he may be someone who is buying the goods for another as a present.

Meaning Of Supplier For The Purposes Of The Act

A supplier is not limited to those who supply goods or services directly to consumers. Under the Act, a supplier is essentially anyone who, in the course of his business:

- provides goods or services to consumers (for example, retailers);
- manufactures, assembles or produces goods;
- promotes the use or purchase of goods or services (for example, distributors but not including advertisers); or
- receives or is entitled to receive money or other consideration as a result of the provision of goods or services to consumers.

It would also include any of his employees or agents.

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Scope Of Unfair Practice Under The Act

It is an unfair practice for a supplier to:

- do or say anything that might reasonably cause a consumer to be deceived or misled;
- fail to do or say anything and as a result a consumer might reasonably be deceived or misled;
- makes a false claim;
- take advantage of a consumer where he knows or should reasonably know that the consumer is not in a position to protect his own interests; or
- take advantage of a consumer where he knows or should reasonably know that the consumer is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction.

In addition, the Act sets out a detailed list of 20 types of acts that would constitute an unfair practice. Each of these types of acts would clearly fall within the general description of what amounts to an unfair practice set out above. These specific instances of unfair practice include telling a customer that a particular product has certain qualities that it does not in fact have; representing that the goods are new or unused if they are not and including in an agreement terms or conditions that are harsh, oppressive or excessively one-sided.

However, it should be noted that less obvious practices might well amount to unfair practices as well. For example, advertising a gold-plated ring under a label reading 'gold rings' may well amount to an unfair practice, especially if the salesman fails to correct the consumer's obvious misunderstanding during the course of the sale.

Where representations have been made orally, the Act will allow such representations to be considered by the court even where they contradict a written contract.

The behaviour of sales staff play an important role not merely in terms of whether they misrepresent the qualities or virtues of a service or product, but also in the tactics that they use on a customer. Hence, sales staff who try to pressure a customer into making a purchase could well be guilty of unfair practices.

More general practices are also included within the ambit of the Act. These include:

- the use of non-genuine sales for a limited period such as 'closing down' sales that are not in fact such;
- using apparently scientific studies to advertise a product where in fact these 'studies' are advertising in nature (unless it is made clear that it is in fact only an advertisement);
- advertising a product as coming with a free gift but not making it clear that the free

gift is only available if, for example, more than 5 items of the product are purchased; and

- using small print to conceal a material fact from the consumer or to mislead the consumer.

Unfair practice is not limited to those prior to the sale as the Act makes it clear that unfair practices may also occur during or after a sale has been concluded. The most notable example of such an unfair practice would be where a supplier denies that a salesman had the authority to enter into certain terms with the customer if in fact he had that authority.

Standard For Determining Whether A Practice Is Unfair

The question of whether an unfair practice had occurred would be looked at objectively. Thus for example, as long as a claim made in relation to a product was false, an unfair practice would have been committed even if the salesman making the claim believed it to be true. Thus suppliers must ensure that their sales staffs have been sufficiently trained to know what they can or cannot say about a product or service lest liability be incurred under the Act.

Apart from the complaint of making a false claim, the general test that the court would adopt in determining whether or not a trader has engaged in an unfair practice,

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is that of 'reasonableness'. In this respect, the following are some of the questions that would be relevant. Were the actions of the trader reasonable? Was it reasonable for the consumer to claim that he was deceived or misled? Did the supplier reasonably know that the consumer was not in a position to protect his own interest or was not reasonably able to understand the character, nature, language or effect of the transaction?

The Remedies Available To A Consumer

A consumer who has been the subject of an unfair practice may commence an action in either the Courts or lodge a claim with the Small Claims Tribunal, save that certain claims cannot be brought before the Tribunal. In his action, he may claim either for monetary compensation or for some other form of relief.

Examples of other forms of relief include requiring the supplier to repair the goods or provide spare parts for the goods, or varying the terms of the contract between the supplier and the consumer or ask for specific performance.

For certain contracts, namely direct sales contracts and time share contracts, a consumer may cancel the contract provided that this is done within three days (excluding Saturdays, Sundays and public holidays) after the day the

contract is entered into. Consumers would need to give a notice of cancellation in the prescribed manner.

Direct sales take place when a supplier makes an unsolicited visit to a consumer's place of residence or place of business, or to the place of residence of another person. An example of this would be door-to-door sales.

While a supplier does not have to tell a consumer that he has a right to cancel the contract, the Act provides the certain incentives for the supplier to do this.

Essentially, the three-day period that a consumer has to cancel a contract essentially starts to run from the day that a prescribed consumer information notice is brought to the attention of the consumer.

Accordingly, if a supplier fails to do this, he would not be entitled to refuse a consumer's cancellation of the contract if this takes place more than three days after the transaction, but within three days after the consumer found out that he could cancel the contract.

It should be noted that in granting remedies to the consumer, the court would consider whether the consumer tried to resolve the dispute with the trader first before commencing action and whether he minimised any loss or damage resulting from the unfair practice.

Cap On Amount Of Claim That Can Be Filed In Court

A consumer can only bring a claim for up to S\$20,000. If the amount claimed is more than this amount, the consumer will have to abandon the excess if he wishes to continue to bring his claim.

Time Limit For Bring Claims Under The Act

A consumer has a one-year time limit to bring a claim. This time limit starts to run from:

- the date of the last material event on which the action is based; or
- the earliest date on which the consumer knew that the supplier had engaged in an unfair practice.

Regulatory Bodies Overseeing Unfair Trading Practices

The bodies that will have charge over unfair trading practices will be the Consumers Association of Singapore ('CASE') and the Singapore Tourism Board ('STB') ('collectively the regulatory bodies').

These regulatory bodies do not have the power to decide whether a supplier has engaged in an unfair practice or tell a supplier what to do. Where they are of the view that a supplier is engaging or has

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engaged in unfair practice, the regulatory bodies will have to bring an action in court and it will be for the court to determine whether the practice in question amounts to an unfair practice. The court can then order the supplier to refrain from engaging in the practice. It can also require the supplier to publicise the court order at its own expense.

The Act Cannot Be Excluded

It is important to note that the suppliers cannot contract out of the Act in respect of their transactions with consumers. Any such attempt will be void.

Conclusion

This single piece of legislation will undoubtedly create inroads into consumer rights in Singapore. It is advisable for businesses to adopt the following measures in order to avoid or minimise their liability under the Act:

- Educate and train staff so that they have a proper knowledge of the product that

they are selling as well as what are the acceptable sale tactics they can use.

- Provide the consumer with all relevant and material information so that the consumer can make an informed decision.
- Carefully review advertising or promotional tactics to ensure that they do not amount to unfair trading practices. In this regard, while the list of prohibited practices set out in the Act are useful, it should be noted that they are not exhaustive.
- Review contracts with consumers to ensure they are not onerous or one-sided. Where the contract contains such terms, it should be redrafted to be less onerous on the consumer. It is to be noted that under the Act, oral evidence of any representation or contract would be admissible to vary or even contradict the written agreement.
 - Formulate a plan that deals with customer complaints about infringements of the Act and

provide a dispute resolution process so that consumers can settle the disputes directly with the supplier instead of bringing a claim in court. Even if customers do not use the dispute resolution process, the existence of such a process would be a relevant factor in the supplier's favour when the court is weighing the remedies to grant to the consumer, should the unfair practice be established.

Although pro-consumer, its effect is really to weed out the unscrupulous traders from the honest ones and should be welcomed.

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