

**EXPLANATORY NOTE ON  
PROPOSED CONSUMER PROTECTION (FAIR TRADING)  
(REGULATED FINANCIAL PRODUCTS AND SERVICES) REGULATIONS**

**1 General**

1.1 These Regulations seek to implement the proposals of the CPFTA<sup>1</sup> Review Taskforce to include financial products and services under the CPFTA. The Regulations also modify the application of the CPFTA to financial products and services administered by Monetary Authority of Singapore<sup>2</sup> (MAS) and the International Enterprise Singapore Board (IE)<sup>3</sup> to address the following issues:

- (a) To take account of certain unique features of financial products and services in determining whether there is an unfair practice;
- (b) To clarify how the prescribed claim limit under the CPFTA applies in the case of multiple actions relating to such financial products or services;
- (c) To specify the dispute resolution scheme provided by the Financial Industry Disputes Resolution Centre Limited (FIDReC) as the dispute resolution scheme for cases involving suppliers of MAS-regulated financial products and services that are FIDReC members;
- (d) To exclude MAS-regulated financial institutions from the provisions of the CPFTA which empower CASE and Singapore Tourism Board (STB) to seek voluntary compliance agreements (VCAs), declarations and injunctions against suppliers.

1.2 It is also proposed that the Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations (Cancellation Regulations) be amended to ensure that consumers continue to enjoy the cancellation periods available under existing laws administered by MAS where they are longer than the 3 day cancellation period under the CPFTA.<sup>4</sup>

**2 Inclusion of financial products and services**

2.1 The First Schedule to the CPFTA currently excludes any transaction or activity that is regulated under the certain Acts from the meaning of the term “consumer transaction”, thus excluding the provisions of the CPFTA from applying to such transactions and activities. The proposed Regulations amend the First Schedule to the CPFTA so that transactions and activities regulated under the following Acts will no longer be so excluded: Banking Act (Cap.19), Commodity Trading Act (Cap.48A), Finance Companies Act

---

<sup>1</sup> Consumer Protection (Fair Trading) Act (Cap.52A).

<sup>2</sup> Established under the Monetary Authority of Singapore Act (Cap.186)

<sup>3</sup> Established under the International Enterprise Singapore Board Act (Cap.143B)

<sup>4</sup> See proposed Consumer Protection (Fair Trading) (Cancellation of Contracts) (Amendment) Regulations and related explanatory notes.

(Cap.108), Financial Advisers Act (Cap.110), Insurance Act (Cap.142), section 28 of the Monetary Authority of Singapore Act (Cap.186), Money-changing and Remittance Businesses Act (Cap.187) and Securities and Futures Act (Cap.289). These Acts, with the exception of the Commodity Trading Act which is administered by IE, are administered by the MAS.

2.2 The two Acts that will continue to be excluded from the CPFTA are the Moneylenders Act (Cap.188) and Pawnbrokers Act (Cap.222). These Acts govern specialised services with distinct features from the general transactions that the CPFTA covers. The Ministry of Law (MinLaw) has determined that these Acts already provide adequate protection for consumers using moneylender and pawnbroker services. If necessary, MinLaw will amend those Acts to address any unfair practices that may arise in relation to those services.

### **3 Unfair practices in relation to financial products and services**

3.1 As most financial investments carry a degree of risk and volatility (with the resultant gains or losses dependent on market price movements), a supplier of financial products and services should not be considered to have engaged in an unfair practice by reason only that the financial investment has not performed as expected. Regulation 4(1) therefore provides that the court may take into account the inherent risks of financial investments when considering the reasonableness of the supplier's actions for the purposes of section 5(3)(a) of the CPFTA.<sup>5</sup>

3.2 In relation to insurance contracts, regulation 4(2) provides that a supplier of an insurance contract should not be taken to have engaged in an unfair practice by reason only that the contract includes terms that clearly define or circumscribe the insured risk or the insurer's liability. Such terms are necessary in insurance contracts because the price of the insurance policy is determined by the scope of the insured risk and the insurer's liability.<sup>6</sup>

### **4 Multiple actions arising from the same unfair practice.**

4.1 Rule 5 provides that, where separate actions involving the same unfair practice in financial products or services are commenced, the amount of the claim for each of these actions should be aggregated for the purpose of applying the prescribed claim limit.<sup>7</sup> Actions will be taken to involve the same unfair practice if the unfair practice complained of is established based on substantially the same facts.<sup>8</sup>

---

<sup>5</sup> Section 5(3)(a) of the CPFTA requires that the reasonableness of the actions of the supplier be considered in determining whether the supplier has engaged in an unfair practice.

<sup>6</sup> The insurer charges a premium based on his assessment of the risk to be insured, the scope of his liability and other assumptions made in actuarial practices. In the case of a life policy, the estimate of the premium is usually based on a healthy life. If the insured has medical problems or participates in extreme sports for example, the premium payable may be higher than the estimate originally provided. The higher pricing reflects the increased scope of the insured risk and insurer's liability.

<sup>7</sup> Section 6(6) of the CPFTA prescribes a claim limit of \$20,000.

<sup>8</sup> As the civil process is an adversarial process, it will be incumbent on the defendant to raise the issue of multiple actions and make the appropriate application in court to strike out subsequent actions.

4.2 This proposal is made in consideration of the unique nature of financial services and transactions, as it is possible that a consumer may have entered into multiple transactions because of the same unfair practice. Multiple actions may arise where a consumer has suffered losses in making multiple share purchases over a period of time in reliance on a false claim made by his stockbroker. Similarly, a single trade order based on such a false claim may have been executed over a period of time or in smaller batches due to the size of the order. The following is an illustration of how the provision might operate:

A consumer (C) buys shares in Company A and Company B based on a false claim made by a supplier (S). C commences an action under section 6(1) of the Act on the basis of the false claim by S, claiming \$15,000 in damages in relation to his purchase of shares in Company A. C subsequently commences an action under section 6(1) of the Act on the basis of the same false claim by S, claiming \$10,000 in damages in relation to his purchase of shares in Company B. C cannot proceed on his second claim (unless he abandons the excess under section 6(5) of the Act) because the aggregate amount of the claims in both actions is \$25,000, which exceeds the prescribed limit under section 6(2).

4.3 The court, however, has the discretion to depart from this position if it is satisfied that it would be just to do so.<sup>9</sup> This will cater to the possibility that some actions may be discontinued without remedy or that the consumer had reached a settlement with the supplier.

## **5 Dispute resolution scheme for financial products and services**

5.1 Rule 6 specifies the FIDReC dispute resolution scheme as the dispute resolution scheme for cases involving suppliers of MAS-regulated financial products or services that are FIDReC members.<sup>10</sup>

5.2 The Small Claims Tribunal (SCT) currently handles most of the cases relating to unfair practices under the CPFSA. It would be more efficacious for FIDReC to hear cases involving MAS-regulated financial products or services, given its expertise in handling such cases.<sup>11</sup> While it will not be made mandatory for consumers to use FIDReC, if an action is brought in court, the court will consider, in making its order, whether a consumer had sought to resolve the case through FIDReC.<sup>12</sup> As suppliers providing stored value facilities, money-changing and remittance services do not fall under FIDReC's purview, the avenue of recourse for cases involving these financial products or services would be the SCT.

---

<sup>9</sup> Rule 5(3).

<sup>10</sup> New sections 7(10) and 20(2)(j) (inserted by clauses 3 and 5 of the proposed Bill) are the empowering provisions for this measure.

<sup>11</sup> FIDReC was established in 2005 as an independent and impartial institution specialising in the resolution of disputes between financial institutions and consumers.

<sup>12</sup> The consumer could possibly be penalised in costs or otherwise for refusing to use FIDReC.

## **6 Provisions on VCAs, declarations and injunctions**

6.1 Rule 7 excludes MAS-regulated financial institutions from the provisions of the CPFTA which empower CASE and STB to seek VCAs<sup>13</sup>, declarations<sup>14</sup> and injunctions<sup>15</sup> against suppliers. This is because MAS already monitors the financial services industry closely in its capacity as the regulator. Furthermore, MAS has regulatory and enforcement powers against financial institutions and their representatives if they breach the laws administered by MAS.

---

<sup>13</sup> Section 8.

<sup>14</sup> Section 9.

<sup>15</sup> See footnote 14.