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Consumer Protection (Fair Trading) Bill

Bill No. 24/2003.

Read the first time on 16th October 2003.

THE CONSUMER PROTECTION (FAIR TRADING) ACT 2003

(No. of 2003)

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A BILL

i n t i t u l e d

An Act to protect consumers against unfair practices and for matters connected therewith.

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) Act 2003 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

“Chairman” means the Chairman of the Injunction Proposals Review Panel appointed under section 10;

“consumer” means an individual who, otherwise than exclusively in the course of business —

(a) receives or has the right to receive goods or services from a supplier; or

(b) has a legal obligation to pay a supplier for goods or services that have been or are to be supplied to another individual;

“consumer transaction” means —

(a) the supply of goods or services by a supplier to a consumer as a result of a purchase, lease, gift, contest or other arrangement; or

(b) an agreement between a supplier and a consumer, as a result of a purchase, lease, gift, contest or other arrangement, in which the supplier is to supply goods or services to the consumer or to another consumer specified in the agreement,

but does not include any transaction specified in the First Schedule;

“flat” means a horizontal stratum of any building or part thereof, whether the stratum or part is on one or more levels or is partially or wholly below the surface of the ground;

“goods” means —

(a) any personal property, whether tangible or intangible, and includes —

(i) chattels that are attached or intended to be attached to real property on or after delivery; and

(ii) credit, including credit extended solely on the security of land;

(b) any residential property; or

(c) a voucher;

5 “hire-purchase agreement” has the same meaning as in the Hire-Purchase Act (Cap.125);

“material fact” means any information that a supplier knows or ought reasonably to know would affect the decision of a consumer to enter into a consumer transaction;

10 “Panel” means the Injunction Proposals Review Panel appointed under section 10;

“residential property” means any house, flat or other premises which is permitted to be used pursuant to any written law as a dwelling-house and any such house, flat or other premises which is in the
15 course of being constructed;

“services” includes —

(a) a service offered or provided that involves the addition to or maintenance, repair or alteration of goods or any residential property;

20 (b) a membership in any club or organisation if the club or organisation is a business formed to make a profit for its owners;

(c) the right to use time share accommodation under a time share contract;

25 “Small Claims Tribunal” means a Small Claims Tribunal constituted under section 4 of the Subordinate Courts Act (Cap. 321);

“specified body” means any person or body appointed under section 8(10);

30 “supplier” means a person who, in the course of the person’s business —

(a) provides goods or services to consumers;

(b) manufactures, assembles or produces goods;

- (c) promotes the use or purchase of goods or services; or
- (d) receives or is entitled to receive money or other consideration as a result of the provision of goods or services to consumers, and includes any employee or agent of the person;

5 “time share accommodation” means any living accommodation, in Singapore or elsewhere, used or intended to be used (wholly or partly) for leisure purposes by a class of persons all of whom have rights to use, or participate in arrangements under which they may use, that accommodation or accommodation within a pool of
10 accommodation to which that accommodation belongs;

“time share contract” means a contract which confers or purports to confer on an individual time share rights that are exercisable during a period of not less than 3 years;

15 “time share rights” means rights to use time share accommodation for a specified or ascertainable period, but does not include rights under a contract of employment or an insurance policy;

“unfair practice” means an unfair practice within the meaning of section 4;

20 “voucher” means any document that purports to give the holder of the document the right to obtain goods or a service or the right to obtain goods or a service at a discounted or reduced price.

(2) An individual who holds himself out as acting exclusively in the course of business shall be treated as acting exclusively in the course of business for the purpose of the definition of “consumer” in subsection (1).

25 **Application of Act**

3. This Act shall not apply unless —

- (a) the supplier or consumer is resident in Singapore; or
- (b) the offer or acceptance relating to the consumer transaction is made in or is sent from Singapore.

30 **Meaning of unfair practice**

4. It is an unfair practice for a supplier, in relation to a consumer transaction —

- (a) to do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- (b) to make a false claim;
- (c) to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer —
 - (i) is not in a position to protect his own interests; or
 - (ii) is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction; or
- (d) without limiting the generality of paragraphs (a) to (c), to do anything specified in the Second Schedule.

Circumstances surrounding unfair practice

5.—(1) An unfair practice may occur before, during or after a consumer transaction.

- (2) An unfair practice may consist of a single act or omission.

(3) In determining whether or not a person has engaged in an unfair practice —

- (a) the reasonableness of the actions of that person in those circumstances is to be considered; and
- (b) an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred in the course of —
 - (i) the employee's employment with the person; or
 - (ii) the agent exercising the powers or performing the duties on behalf of the person within the scope of the agent's actual or apparent authority.

Consumer's right to sue for unfair practice

6.—(1) A consumer who has entered a consumer transaction involving an unfair practice may commence an action in a court of competent jurisdiction against the supplier.

(2) The right to commence an action under subsection (1) shall not apply where —

(a) the amount of the claim exceeds the prescribed limit; or

5 (b) there is no claim for money, and the remedy or relief sought in the action is in respect of a subject-matter the value of which exceeds the prescribed limit.

10 (3) For the purposes of subsection (2)(a), where the amount claimed consists of a balance not exceeding the prescribed limit after set-off of any amount claimed or recoverable by the supplier from the consumer, being a set-off admitted by the consumer in the particulars of his claim, the amount of the claim shall not be taken to exceed the prescribed limit.

(4) For the purposes of subsection (2)(b), where the subject-matter in an action is a residential property, its value shall be —

15 (a) the annual value of the immovable property appearing in the Valuation List prepared under section 10 of the Property Tax Act (Cap.254);

(b) the annual rent, or twelve times the monthly rent, payable by the tenant in respect of the immovable property (if this value is lower than the value in paragraph (a)); or

20 (c) if the annual value, annual rent or monthly rent cannot be ascertained, one-tenth of the last transacted price.

(5) Where the amount of a claim in an action under subsection (1) exceeds the prescribed limit, the consumer may abandon the excess and thereafter —

25 (a) the amount of the claim shall be deemed to be within the prescribed limit;

(b) the consumer shall not recover in that action an amount exceeding the prescribed limit; and

30 (c) an order of the court in relation to that action shall be in full discharge of all demands in respect of that cause of action.

(6) The prescribed limit referred to in this section shall be \$20,000 or such other amount as the Minister may, by order in the *Gazette*, prescribe.

Jurisdiction and powers of courts

7.—(1) Subject to the provisions of the Small Claims Tribunals Act (Cap. 308), a Small Claims Tribunal shall have jurisdiction to hear and determine any action under —

- 5 (a) section 6(1) insofar as the action relates to an unfair practice involving a contract for the sale of goods or for the provision of services within the meaning of the Small Claims Tribunals Act (referred to in this subsection as a relevant contract);
- 10 (b) section 8(6), (7) or (8) insofar as the action relates to an undertaking in respect of an unfair practice involving a relevant contract; or
- (c) any regulations made under section 11 insofar as the action relates to a relevant contract.

15 (2) For the avoidance of doubt, subsection (1) shall not confer any jurisdiction on a Small Claims Tribunal to hear and determine any action relating to a hire-purchase agreement, a time share contract or rental or sale of immovable property.

20 (3) For the purposes of determining whether an action under section 6(1) exceeds the District Court limit or the Magistrate's Court limit within the meaning of the Subordinate Courts Act (Cap. 321), such an action shall be deemed to be a claim founded on contract.

 (4) Without prejudice to any other powers of the court to grant relief, a court (other than a Small Claims Tribunal) may in any proceedings where the court finds that a supplier has engaged in an unfair practice —

- 25 (a) order restitution of any money, property or other consideration given or furnished by the consumer;
- (b) award the consumer damages in the amount of any loss or damage suffered by the consumer as a result of the unfair practice;
- 30 (c) make an order of specific performance against the supplier;
- (d) make an order directing the supplier to repair goods or provide parts for goods; or

- (e) make an order varying the contract between the supplier and the consumer.

(5) For the avoidance of doubt, in an action under section 6(1) before a Small Claims Tribunal, the Tribunal may make orders pursuant to the provisions of the Small Claims Tribunals Act (Cap. 308).

(6) Notwithstanding subsections (4) and (5), the court shall not grant any relief in respect of any goods or services intended for business use in an action under section 6(1).

(7) For the purposes of subsection (6), the court may apportion the use of goods and services between business use and non-business use as the court considers just and equitable in the circumstances of the case (notwithstanding that the goods or services are indivisible) and grant relief only in respect of the portion of goods and services so attributed with non-business use.

(8) For the purposes of subsections (6) and (7) and section 17, goods or services intended for business use shall include —

- (a) goods or services (as the case may be) that the consumer intends to re-sell in the course of his business; and
 - (b) 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,
- and “business use” and “non-business use” shall be construed accordingly.

(9) Where the court finds that an unfair practice has occurred, the court shall, in making an order in an action under section 6(1), have regard to whether or not the consumer made a reasonable effort to —

- (a) minimise any loss or damage resulting from the unfair practice; and
- (b) resolve the dispute with the supplier before commencing the action.

Voluntary compliance agreement

8.—(1) Where there are reasonable grounds for believing that a supplier has engaged, is engaging or is likely to engage in an unfair practice, a

specified body may invite the supplier to enter into a voluntary compliance agreement.

(2) The voluntary compliance agreement shall —

(a) be in writing; and

5 (b) include an undertaking that the supplier will not engage in the unfair practice.

(3) Subject to subsection (5), the specified body may (with the agreement of the supplier) include in a voluntary compliance agreement all or any of the following undertakings by the supplier:

10 (a) to compensate any consumer who has suffered loss or damage as a result of an unfair practice;

(b) to reimburse any specified body for any costs or expenses incurred by it;

(c) to publicise the voluntary compliance agreement,

15 in such manner or upon such terms as specified in the undertakings.

(4) Subject to subsection (5), the specified body may (after entering into a voluntary compliance agreement and with the agreement of the supplier) —

20 (a) vary the terms of any undertaking included in the voluntary compliance agreement; or

(b) include, in the voluntary compliance agreement, additional undertakings referred to in subsection (3).

25 (5) No undertaking referred to in subsection (3)(a) shall be included in a voluntary compliance agreement or varied after its inclusion, except at the request of the consumer to whom the undertaking relates.

(6) Where a supplier fails to comply with any undertaking referred to in subsection (3)(a), the consumer may recover the compensation specified in the undertaking as a civil debt due to the consumer.

30 (7) Where a supplier fails to comply with any undertaking referred to in subsection (3)(b), the specified body may recover the reimbursement specified in the undertaking as a civil debt due to the specified body.

(8) Where a supplier fails to comply with an undertaking under subsection (3)(c), the specified body may publicise the voluntary compliance agreement in accordance with the undertaking and recover the costs and expenses so incurred from the supplier as a civil debt due to the specified body.

(9) Unless otherwise provided in the voluntary compliance agreement, recovery of compensation or reimbursement (as the case may be) under a voluntary compliance agreement or under subsection (6), (7) or (8) shall bar all further actions to recover any loss, damage, costs or expenses to which the undertaking so enforced relates.

(10) The Minister may, by notification in the *Gazette*, appoint any person or body as a specified body for the purposes of this Act.

Declaration or injunction

9.—(1) Where a supplier has engaged, is engaging or is likely to engage in an unfair practice, the District Court or High Court may, on the application of a specified body —

(a) make a declaration that the practice engaged in or about to be engaged in by the supplier is an unfair practice;

(b) grant an injunction restraining the supplier from engaging in the unfair practice; and

(c) if the Court grants relief under paragraph (a) or (b), make a further order requiring the supplier to advertise to the public in a manner that will ensure prompt and reasonable communication to consumers, on any terms or conditions the Court considers reasonable and just, particulars of any declaration or injunction granted against the supplier under paragraph (a) or (b).

(2) Where an application is made to the District Court or High Court for the grant of a declaration or an injunction under subsection (1), the power of the Court to grant the declaration or injunction may be exercised —

(a) if the Court is satisfied that the supplier has engaged in the unfair practice, whether or not it appears to the Court that the supplier intends to engage again, or to continue to engage, in the unfair practice; or

(b) if it appears to the Court that, in the event that a declaration or an injunction is not granted, it is likely that the supplier will engage in the unfair practice, whether or not the supplier has previously engaged in the unfair practice and whether or not there is any likelihood of irreparable harm to any consumer or class of consumers if the supplier engages in the unfair practice.

(3) Where an application is made to the District Court or High Court for an injunction under subsection (1), the Court may (pending determination of the application) grant an interim injunction restraining the supplier from engaging in the unfair practice, if the Court is of the opinion that it is desirable to do so —

(a) whether or not it appears to the Court that the supplier intends to engage again, or to continue to engage, in the unfair practice; or

(b) whether or not the supplier has previously engaged in the unfair practice and whether or not there is any likelihood of irreparable harm to any consumer or class of consumers if the supplier engages in the unfair practice.

(4) A specified body shall not, except with the endorsement of the Panel under section 10(5)(b), make an application for a declaration or an injunction under subsection (1).

(5) In any legal proceedings, a certificate purporting to be under the hand of the Chairman stating that the Panel has, pursuant to section 10(5)(b), endorsed a proposal by a specified body to make an application for a declaration or an injunction against a supplier under this section shall be admissible as prima facie evidence of those facts.

(6) If a practice of the supplier has been declared or permanently enjoined by the District Court or High Court as being an unfair practice under this section, the order shall be, in any other civil proceedings involving the supplier except an appeal from the order, conclusive proof that the practice in question is an unfair practice.

(7) Where a specified body makes an application to the District Court or High Court for the grant of a declaration or an injunction under subsection (1) or for an interim injunction under subsection (3), the Court may order the specified body to furnish security for costs in any amount that the Court considers proper.

Injunction Proposals Review Panel

10.—(1) The Minister may, by notification in the *Gazette*, appoint an Injunction Proposals Review Panel consisting of —

- (a) a Chairman;
- 5 (b) a Deputy Chairman who shall be a public officer or an officer of any statutory board; and
- (c) at least one other member.

(2) The members of the Panel shall hold office for such period as may be determined by the Minister and shall, on ceasing to be a member, be
10 eligible for reappointment.

(3) The Minister may, at any time, revoke the appointment of any member of the Panel without assigning any reason.

(4) A member of the Panel may resign his office at any time by giving notice in writing to the Minister.

15 (5) The Panel shall have the power to do anything necessary, incidental or conducive for the purpose of discharging its functions under this Act and, in particular, may —

- (a) consider any proposal by a specified body to apply for a declaration or an injunction against a supplier under section 9
20 referred to the Panel by the Chairman; and
- (b) if the Panel is satisfied that it is in the public interest, endorse the proposal referred to in paragraph (a).

(6) The constitution and the proceedings of the Panel shall be governed by the provisions in the Third Schedule.

25 (7) No act or thing done by or under the authority of the Panel shall be invalid in consequence of any defect that is subsequently discovered in the appointment or qualification of the members or any of them.

(8) Subject to subsection (9), except insofar as may be necessary for the purposes of giving effect to any decision of the Panel, confidentiality shall
30 be maintained in all proceedings conducted by the Panel.

(9) The Chairman shall, as soon as practicable after the end of each calendar year, submit to the Minister an annual report on the activities of the Panel.

5 (10) No action or proceedings shall lie against the Panel or any member thereof for any act or thing done under this Act unless it is proved to the court that the act or thing was done in bad faith or with malice.

Right to cancel certain contracts within cancellation period

10 **11.**—(1) The Minister may make regulations prescribing that a consumer who, in relation to a consumer transaction, has entered into a contract falling within any class of contracts specified in the regulations may cancel the contract within a cancellation period specified in the regulations.

(2) For the purposes of this section, the Minister may make regulations prescribing —

- 15 (a) the manner in which notices of cancellation may be properly given;
- (b) any notice that the supplier must give to the consumer and the manner in which such notice may be properly given;
- 20 (c) the rights and obligations of parties to a contract cancelled pursuant to regulations made under this section, or any other contract entered into for the purposes of the cancelled contract, including the amount or value of any deposit, security, goods or compensation recoverable in an action arising from the cancellation; and
- 25 (d) the effect of cancellation pursuant to regulations made under this section on any rights the parties to the contract may otherwise have.

Limitation period

30 **12.**—(1) No action under section 6 shall be commenced later than one year from —

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

(b) the earliest date on which the consumer had knowledge that the supplier had engaged in the unfair practice to which the action relates, including —

- 5 (i) in the case of an unfair practice referred to in section 4(a) or (b) or involving any representation, act or omission that is false, deceptive or misleading, knowledge that the representation, act or omission is false, deceptive or misleading; and
- 10 (ii) in the case of an unfair practice referred to in section 4(c) or involving taking advantage of the consumer, knowledge that the supplier had taken advantage of him,

whichever occurs later.

(2) No action under section 8(6), (7) or (8) shall be commenced later than one year from the date of the failure to comply with the undertaking sought to be enforced.

(3) No action under section 9 shall be commenced later than one year from the date of the occurrence of the last material event on which the action is based.

(4) No action under any regulations made under section 11 shall be commenced later than one year from the date of the cancellation of the contract.

(5) Knowledge that any representation, act or omission did or did not, as a matter of law, involve an unfair practice is irrelevant for the purposes of subsection (1)(b).

25 (6) For the purposes of subsection (1)(b), a consumer's knowledge includes knowledge which he might reasonably have been expected to acquire from facts —

- (a) observable or ascertainable by him; or
- 30 (b) ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek.

(7) A consumer shall not be taken by virtue of subsection (6) to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

(8) The Limitation Act (Cap. 163) shall apply (with the necessary modifications, including the modifications set out in the Fourth Schedule) to actions referred to in this section as if such actions were actions for which a period of limitation is prescribed in Part II of the Limitation Act.

5 **No contracting out**

13.—(1) The provisions of this Act shall prevail notwithstanding any agreement to the contrary and any term contained in a contract is void, if and to the extent that it is inconsistent with the provisions of this Act.

10 (2) Any waiver or release given of any right, benefit or protection conferred under this Act shall be void.

(3) Subsections (1) and (2) shall not apply to any release made by a person in settlement of a dispute.

Rights transferred

15 **14.** Where, other than in the course of business, an individual, as heir or assignee of a consumer, receives goods or services, that individual has the same rights as the consumer to seek and obtain redress from the supplier under this Act.

Preservation of other rights or remedies

20 **15.**—(1) Subject to subsection (2), nothing in this Act shall restrict, limit or derogate from any right or remedy that a consumer may have apart from this Act.

(2) Subsection (1) shall have effect subject to any provision to the contrary in any regulations made under section 11 or 20.

Exemption from liability for publishers

25 **16.** A person who, on behalf of a supplier, prints, publishes, distributes, broadcasts or telecasts an advertisement in good faith and in the ordinary course of his business shall not be liable under this Act in respect of any statement, representation or omission in that advertisement.

Parol evidence rule abolished

30 **17.**—(1) Notwithstanding sections 93 and 94 of the Evidence Act (Cap.97), parol or extrinsic evidence establishing the existence of an

express warranty is admissible in any action relating to a consumer transaction between a consumer and a supplier even though it adds to, varies or contradicts a written contract.

5 (2) Subsection (1) shall not be applicable to establish the existence of any express warranty in respect of goods or services intended for business use.

Interpretation of documents

18. If a consumer and a supplier enter into a consumer transaction and —

- 10 (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier; and
- (b) a provision of the document is ambiguous,
- the provision must be interpreted against the supplier.

Amendment of Schedules

15 **19.** The Minister may, by order published in the *Gazette*, amend the Schedules.

Regulations

20.—(1) The Minister may make such regulations as may be necessary or expedient for the purposes of this Act.

20 (2) Without prejudice to the generality of subsection (1), the Minister may make regulations —

- (a) exempting any class of supplier or any class of goods or services or transactions from the application of this Act or any provision of this Act, and imposing conditions for that exemption;
- 25 (b) modifying the application of any provision of this Act to any class of supplier or any class of goods or services or transactions;
- (c) controlling or prohibiting any practice in relation to any consumer transaction;
- 30 (d) prescribing information or notices that must be provided to consumers by suppliers with respect to any consumer transaction;

- (e) prescribing the form or terms of contracts to be used in any consumer transaction and any information to be contained therein;
- 5 (f) requiring suppliers to maintain books, accounts (including trust accounts) or records in relation to any consumer transactions, and prescribing the form and mode of keeping such books, accounts and records;
- 10 (g) prescribing or adopting, with or without modification, codes, standards or rules governing the conduct of suppliers engaged in any consumer transaction;
- (h) prescribing the rights and obligations of parties who have entered a consumer transaction in the event of failure to comply with any provision of this Act or the regulations made thereunder, including the right to sue for such failure; and
- 15 (i) specifying limitation periods for any action under this Act or any regulations made thereunder.

FIRST SCHEDULE

Section 2

EXCLUDED TRANSACTIONS

- 20 1. The term “consumer transaction” does not include any of the following transactions:
 - (a) acquisition of an estate or interest in any immovable property (but not including any lease of residential property granted in consideration of rent or any time share contract);
 - 25 (b) (for the avoidance of doubt) service provided under a contract of employment; or
 - (c) any transaction or activity that is regulated under any written law specified in paragraph 2.
- 2. The following Acts are specified for the purposes of paragraph 1(c):
 - 30 (a) Banking Act (Cap. 19);
 - (b) Commodity Trading Act (Cap. 48A);
 - (c) Finance Companies Act (Cap. 108);

- (d) Financial Advisers Act (Cap. 110);
- (e) Insurance Act (Cap. 142);
- (f) section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (g) Money-changing and Remittance Businesses Act (Cap. 187);
- 5 (h) Moneylenders Act (Cap. 188);
- (i) Pawnbrokers Act (Cap. 222);
- (j) Securities and Futures Act (Cap. 289).

SECOND SCHEDULE

Section 4(d)

10

SPECIFIC UNFAIR PRACTICES

1. Representing that goods or services have sponsorship, approval, performance characteristics, accessories, ingredients, components, qualities, uses or benefits that they do not have.
2. Representing that goods or services are of a particular standard, quality, grade, style, model, origin or method of manufacture if they are not.
- 15 3. Representing that goods are new or unused if they are not or if they have deteriorated or been altered, reconditioned or reclaimed.
4. Representing that goods have been used to an extent different from the fact or that they have a particular history or use if the supplier knows it is not so.
- 20 5. Representing that goods or services are available or are available for a particular reason, for a particular price, in particular quantities or at a particular time if the supplier knows or can reasonably be expected to know it is not so, unless the representation clearly states any limitation.
- 25 6. Representing that a service, part, repair or replacement is needed or desirable if that is not so, or that a service has been provided, a part has been installed, a repair has been made or a replacement has been provided, if that is not so.
7. Representing that a price benefit or advantage exists respecting goods or services where the price benefit or advantage does not exist.
- 30 8. Charging a price for goods or services that is substantially higher than an estimate provided to the consumer, except where the consumer has expressly agreed to the higher price in advance.
9. Representing that a transaction involving goods and services involves or does not involve rights, remedies or obligations where that representation is deceptive or misleading.

10. Representing that a person has or does not have the authority to negotiate the final terms of an agreement involving goods or services if the representation is different from the fact.

11. Taking advantage of a consumer by including in an agreement terms or conditions that are harsh, oppressive or excessively one-sided so as to be unconscionable.

12. Taking advantage of a consumer by exerting undue pressure or undue influence on the consumer to enter into a transaction involving goods or services.

13. Representing in relation to a voucher that another supplier will provide goods or services at a discounted or reduced price if the supplier making the representation knows or ought to know that the other supplier will not do so.

14. Making a representation that appears in an objective form such as an editorial, documentary or scientific report when the representation is primarily made to sell goods or services, unless the representation states that it is an advertisement or a promotion.

15. Representing that a particular person has offered or agreed to acquire goods and services whether or not at a stated price if he has not.

16. Representing the availability of facilities for repair of goods or of spare parts for goods if that is not the case.

17. Offering gifts, prizes or other free items in connection with the supply of goods or services if the supplier knows or ought to know that the items will not be provided or provided as offered.

18. Representing that goods or services are available at a discounted price for a stated period of time if the supplier knows or ought to know that the goods and services will continue to be so available for a substantially longer period.

19. Representing that goods or services are available at a discounted price for a particular reason that is different from the fact.

20. Using small print to conceal a material fact from the consumer or to mislead a consumer as to a material fact, in connection with the supply of goods or services.

THIRD SCHEDULE

Section 10(6)

CONSTITUTION AND PROCEEDINGS OF INJUNCTION PROPOSALS REVIEW PANEL

1. Subject to any direction under paragraph 7, all the members of the Panel shall be present to constitute a quorum for a meeting of the Panel and any decision in writing

signed by all the members of the Panel shall be as valid and effectual as if it had been made or reached at a meeting of the Panel where all its members were present.

2. The Panel may meet for the purposes of its inquiry, adjourn or otherwise regulate the conduct of its inquiry as the members think fit.

5 3. The Chairman may at any time summon a meeting of the Panel.

4. All members of the Panel shall vote on any question arising at the meeting (subject to any direction under paragraph 7) and such question shall be determined by a majority of votes.

10 5. The supplier to whom the proposal under consideration by the Panel relates shall not have the right to be heard by the Panel, whether in person or by counsel, unless the Panel in its absolute discretion otherwise allows.

6. A member of the Panel shall declare to the Minister, or any other person authorised by the Minister, the nature and extent of all conflicts of interest or potential conflicts of interest, if any, with his duties or interests as a member of the Panel arising from —

- (a) his holding of any office;
- (b) his interest in any contract;
- (c) his possession or ownership of any property;
- (d) any direct or indirect relationship with a supplier or consumer affected by a proposal referred to in section 10(5)(a); or
- (e) his connection or association with any trade or consumer body.

7. Where the Minister, or any other person authorised by the Minister, is satisfied that a member of the Panel is unable to carry out his duties properly and effectively because of any conflict of interest or potential conflict of interest referred to in paragraph 6, the Minister may replace that member or direct that member to abstain from taking part in any proceedings relating to any matter affected by his conflict of interest or potential conflict of interest.

8. In the event that the Chairman is unable, by reason of illness, leave of absence or any other cause, to exercise any of the functions of his office, the Deputy Chairman shall exercise those functions.

FOURTH SCHEDULE

Section 12(8)

MODIFICATIONS TO PROVISIONS OF LIMITATION ACT

1. In the case of an action under section 6, subsection (1) of section 24 of the Limitation Act (Cap. 163) shall be replaced by the following subsection:

5 “(1) If, on the date from which the period of limitation begins to run, the person to whom an action under section 6 of the Consumer Protection (Fair Trading) Act 2003 accrued was under a disability, the action may be brought at any time before the expiration of one year from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired.”.

2. In the case of an action under section 8(6), subsection (1) of section 24 of the Limitation Act (Cap. 163) shall be replaced by the following subsection:

10 “(1) If, on the date from which the period of limitation begins to run, the person to whom an action under section 8(6) of the Consumer Protection (Fair Trading) Act 2003 accrued was under a disability, the action may be brought at any time before the expiration of one year from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired.”.

15 3. In the case of an action under any regulations made under section 11, subsection (1) of section 24 of the Limitation Act shall be replaced by the following subsection:

20 “(1) If, on the date from which the period of limitation begins to run, the person to whom an action under any regulations made under section 11 of the Consumer Protection (Fair Trading) Act 2003 accrued was under a disability, the action may be brought at any time before the expiration of one year from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired.”.

4. Sections 24A, 24B and 24C of the Limitation Act shall not apply to actions under this Act.

EXPLANATORY STATEMENT

This Bill seeks to protect consumers from unfair practices by giving to a consumer who has entered into a consumer transaction involving an unfair practice the right to bring an action in a court to obtain relief, and allowing a consumer to cancel certain contracts within a cancellation period.

Additionally, a specified body appointed under the Bill will have power to enter into a voluntary compliance agreement with suppliers and, with the endorsement of the Injunction Proposals Review Panel, to apply for a declaration or an injunction against suppliers.

Finally, this Bill also abrogates the parol evidence rule and reiterates the *contra proferentum* rule in relation to consumer transactions.

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

The term “consumer transaction” is defined to exclude any transaction specified in the First Schedule, namely —

- (a) acquisition of an estate or interest in any immovable property (but not including any lease of residential property granted in consideration of rent or any time share contract);
- (b) service provided under a contract of employment; or
- (c) any transaction or activity already regulated under the Commodity Trading Act (Cap. 48A), the Moneylenders Act (Cap. 188), the Pawnbrokers Act (Cap.222), and certain Acts under the purview of the Monetary Authority of Singapore.

The term “consumer” is defined as an individual who, otherwise than exclusively in the course of business, receives or has the right to receive goods or services from a supplier or has a legal obligation to pay a supplier for goods or services that have been or are to be supplied to another individual. An example of the latter case is where an individual purchases a gift for delivery to another.

This definition also means that an individual is a consumer even though he obtains goods or services for dual purposes. For example, a sole proprietor who buys a car for use in his business, as well as for his personal use, will be treated as a consumer under the Bill. He can therefore commence an action for an unfair practice under clause 6, but the court may grant him relief only to the extent that the goods are intended for non-business use (clause 7(7)).

Sub-clause (2) clarifies that if an individual holds out that he is acting exclusively in the course of business, he will be treated as if that were the fact for the purposes of the definition of the term “consumer”.

The term “supplier” is defined to include retailers, manufacturers, promoters and distributors, as well as their employees or agents. Clause 5(3)(b) deems an employee’s conduct in the course of his employment, and an agent’s conduct within the scope of his actual or apparent authority, also to be the conduct of his employer or principal respectively. Publishers enjoy an exemption from liability in respect of any statement, representation or omission in an advertisement printed, published, distributed, broadcast or telecast on behalf of a supplier in good faith and in the publisher’s ordinary course of business (clause 16).

The term “goods” is defined to mean any personal property whether tangible or intangible (and expressly includes chattels that are attached or intended to be attached to real property on or after delivery, and credit), residential property or a voucher.

The term “services” is defined to include, amongst other things, membership in a club formed to make profit for its owners and the right to use time share accommodation under a time share contract.

Various terms relating to time share contracts are also defined.

Clause 3 provides that the Bill shall apply where the supplier or consumer is resident in Singapore or the offer or acceptance is made in or is sent from Singapore. Only one of these requirements needs to be satisfied for the Bill to apply. To satisfy the residence requirement, the supplier or consumer must have more than a transient presence in Singapore. The provisions on the place of despatch of an electronic record in the Electronic Transactions Act (Cap.88) apply to offers and acceptances in the form of electronic records.

Clause 4 defines an unfair practice for the purposes of the Bill. It is an unfair practice in a consumer transaction to —

- (a) do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- (b) make a false claim;
- (c) take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer —
 - (i) is not in a position to protect his own interests; or
 - (ii) is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction.

In addition, a number of specific unfair practices covered by the Bill are listed in the Second Schedule.

Clause 5 provides that an unfair practice may occur before, during or after a consumer transaction, and may consist of a single act or omission. In determining whether a person has engaged in an unfair practice, the reasonableness of the actions of that person in those circumstances must be considered (sub-clause (3)(a)) and an employee's conduct in the course of his employment, and an agent's conduct within the scope of his actual or apparent authority, are deemed also to be the conduct of his employer or principal respectively (sub-clause (3)(b)).

Clause 6 gives a consumer who has entered a consumer transaction involving an unfair practice a right to commence an action in court against the supplier.

There is a \$20,000 cap on the value of the claim (sub-clauses (2) and (6)). If there is no claim for money, then the value of the subject-matter of the action must not exceed \$20,000. The consumer may abandon the excess in order to bring his claim within the cap (sub-clause (5)).

Clause 7(1) confers jurisdiction on the Small Claims Tribunal to hear and determine certain actions under the Bill. This jurisdiction of the Small Claims Tribunal is subject to the provisions of the Small Claims Tribunals Act (Cap. 308) and applies only insofar as the action relates to a contract for the sale of goods or for the provision of services within the meaning of the Small Claims Tribunals Act. In particular, sub-clause (2) provides, for the avoidance of doubt, that clause 7(1) does not confer jurisdiction to hear and determine any action relating to a hire-purchase agreement, a time share contract or rental or sale of immovable property. The powers of the Small Claims

Tribunal to make orders is governed by the Small Claims Tribunals Act (Cap. 308) (sub-clause (5)).

Clause 7(4) sets out various remedies that the court (other than a Small Claims Tribunal) may grant to the consumer if it finds that a supplier has engaged in an unfair practice. The grant of such orders or awards would be subject to any applicable rules of law.

Clause 7(6) provides that the court shall not grant any relief in an action under clause 6(1) in respect of goods and services intended for business use (defined in sub-clause (8)).

Clause 7(7) enables the court to apportion the use of the goods and services (notwithstanding that they are indivisible) and grant relief only in respect of the portion attributed with non-business use. For example, if a consumer bought a car for business and personal use, the court may attribute 60% of the use of the car to business use and 40% to non-business use. The court may then grant the consumer 40% of the damages assessed as compensation for loss as a result of the unfair practice.

Clause 7(9) requires the court, in making an order in an action under clause 6(1), to have regard to whether the consumer made a reasonable effort to mitigate his loss or damage and to resolve the dispute with the supplier before commencing the action.

Clause 8 empowers any specified body (to be appointed by notification in the *Gazette* by the Minister) to invite a supplier to enter into a voluntary compliance agreement (VCA) where it has reasonable grounds for believing that the supplier has engaged in, is engaging in or is likely to engage in an unfair practice. Under a VCA, a supplier will undertake not to engage in the specified unfair practice or practices. The supplier may also agree to include undertakings to compensate consumers, to reimburse the specified body for costs or expenses, or to publicise the VCA. Undertakings may be varied or added by agreement between the specified body and the supplier. In the case of an undertaking to compensate a consumer, the undertaking may only be included or varied at the request of the consumer.

In the event of failure to comply with undertakings to pay compensation to the consumer, the consumer may recover the agreed compensation as a civil debt instead of having to commence an action for unfair practice. Similarly, the specified body can recover reimbursement and costs and expenses in the event of failure to comply with the respective undertakings.

Clause 8(9) bars further actions to recover any loss, damage, costs or expenses relating to an undertaking that has been enforced under a VCA or under sub-clause (6), (7) or (8), unless otherwise provided in the VCA. For example, a consumer who has received compensation for an unfair practice under an undertaking in a VCA cannot recover further compensation in respect of the same loss or damage by commencing an action under clause 6 or based on any other cause of action he may have, such as breach of contract or misrepresentation. If the consumer wishes to reserve his rights to such further compensation, he must do so by providing in the VCA.

Clause 9 provides for a District Court or the High Court, on the application of a specified body, to grant a declaration or an injunction against a supplier who has engaged, is engaging or is likely to engage in an unfair practice. If the Court decides to grant a declaration or an injunction, it may also make an order for the supplier to advertise the particulars of the declaration or injunction. If the Court has made a declaration or an injunction in respect of an unfair practice against a supplier, that will be conclusive proof in any other civil proceedings involving the supplier that the practice in question is an unfair practice. For example, in a subsequent action by a consumer against the same supplier in respect of that unfair practice, the consumer need not prove again to the Court that that practice is an unfair practice. A specified body may apply for a declaration or an injunction under this clause only with the endorsement of the Injunction Proposals Review Panel (clause 9(4)).

Clause 10 provides for the appointment of an Injunction Proposals Review Panel. The Panel will have the function of endorsing any proposal by a specified body to make an application for a declaration or an injunction against a supplier under clause 9 referred to it by the Chairman, if the Panel is satisfied that it is in the public interest to do so.

Clause 11 empowers the Minister to make regulations to enable consumers to cancel certain contracts within a cancellation period specified in the regulations.

Clause 12 provides limitation periods for actions under the Bill. Generally there is a one year limitation period for actions under the Bill. However, different starting dates have been specified as appropriate to each action. In the case of actions under clause 6 (actions for unfair practice), the starting date may be postponed till the earliest date when the consumer might reasonably have knowledge that the supplier had engaged in the unfair practice. Sub-clauses (5), (6) and (7) clarify what constitutes knowledge for these purposes.

The Limitation Act (Cap.163), except sections 24A, 24B and 24C (relating to latent damage), applies to actions under the Bill and regulations made under section 11. Modifications to adapt section 24 (on disability) to actions under the Limitation Act and the regulations have been specified in the Fourth Schedule.

Clause 13 prevents persons from contracting out of the provisions of the Bill. They can however still grant a release in settlement of a dispute.

Clause 14 provides that an individual who receives goods or services, other than in the course of business, as the heir or assignee of a consumer has the same rights as the consumer to seek and obtain redress from the supplier under the Bill.

Clause 15 preserves any other right or remedy that a consumer may have apart from the Bill. For example, a consumer may seek to sue a supplier for misrepresentation or breach of contract instead of or in the alternative to an action for unfair practice. It does not however allow a consumer to be compensated more than once for the same loss or damage. This provision is subject to any provision to the contrary in regulations made under the Bill.

Clause 16 has been explained in relation to the definition of “supplier” in clause 2.

Clause 17 makes parol or extrinsic evidence establishing the existence of an express warranty admissible in any action relating to a consumer transaction. However, the provision does not apply where it is sought to admit evidence to establish the existence of an express warranty in respect of goods or services intended for business use. Clause 7(8) is applicable in interpreting the meaning of goods and services intended for business use for the purposes of this clause.

Clause 18 reiterates, in the context of consumer transactions, the common law rule that an ambiguity in a document will be interpreted against the party that provided the document.

Clause 19 empowers the Minister to amend the Schedules by order published in the *Gazette*.

Clause 20 empowers the Minister to make regulations for the purposes of the Bill and for the purposes specified in sub-clause (2).

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.

TABLE OF DERIVATIONS

<i>Consumer Protection (Fair Trading) Bill</i>		<i>Derivations</i>			
<i>Clause Heading</i>	<i>Clause</i>	<i>Saskatchewan Consumer Protection Act (C-30.1)</i>	<i>Alberta Fair Trading Act (C. F-2)</i>	<i>Australian Trade Practices Act 1974</i>	<i>Others</i>
Interpretation “consumer”	2	—	Definition of “consumer” – s.1(1)	—	Modified c.f. Unfair Contract Terms Act (Cap.396) –s.12.
“consumer transaction”		—	Definition of “consumer transaction” – s.1(1)	—	Modified. See First Schedule
“flat”		—	—	—	Definition of “flat” in Central Provident Fund Act (Cap.36) and Housing and Development Act (Cap.129) – s.2(1)
“goods”		—	Definition of “goods” – s.1(1)	—	Modified from the definition of “personal property” in British Columbia Trade Practices Act RSBC 1996 (C.457) – s.1
“material fact”		—	s.6(1)	—	—
“residential property”		—	—	—	Definition of “residential property” in Central Provident Fund (Residential Property Scheme) Regulations – regulation 2

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“supplier”		s.3(g)	s.1(1)	—	Modified
“time share accommodation”, “time share contract”, “time share rights”		—	—	—	Adapted from UK Timeshare Act 1992
“voucher”		—	Definition of “voucher” – s.1(1)	—	—
Application of Act	3	—	s.5	—	Modified
Meaning of unfair practice	4	s.5	s.6(2)(a) and (b) and (4)	—	—
Circumstances surrounding unfair practice	5	s.8	s.166	—	—
Consumer’s right to sue for unfair practice	6(1)	c.f. s.14	—	—	Adapted from British Columbia Trade Practices Act RSBC 1996 (C.457) – s.22
	6(2)	—	—	—	Adapted from Subordinate Courts Act (Cap.321) – s.20(1)
	6(3)	—	—	—	Adapted from Subordinate Courts Act (Cap.321) – s.20(2)
	6(4)	—	—	—	Modified from Subordinate Courts Act (Cap.321) – s.25

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	6(5)	—	—	—	Subordinate Courts Act (Cap.321) – s.22; Small Claims Tribunals Act (Cap.308) – s.9
	6(6)	—	—	—	New
Jurisdiction and powers of courts	7(1)	—	—	—	New c.f. Small Claims Tribunals Act (Cap.308) – s.5
	7(4)	s.16(1)	—	—	—
	7(5) – (7)	—	—	—	New
	7(8)	—	—	Adapted from the definition of “consumer” – s.4B(1)(a)	—
	7(9)	s.16(3)	—	—	—
Voluntary compliance agreement	8	s.17(3)	—	—	Modified

<i>Consumer Protection (Fair Trading) Bill</i>		<i>Derivations</i>			
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Declaration or injunction	9	—	—	—	Adapted from Securities and Futures Act (Cap.289) – s.326; Hazardous Waste (Control of Export, Import and Transit) Act (Cap.122A) – s.28; Victoria (Australia) Fair Trading Act 1999 (No.16 of 1999) – s.150
Injunction Proposals Review Panel	10	—	—	—	New
Right to cancel certain contracts within cancellation period	11	—	—	—	New
Limitation period	12	Term “last material event” – s.30	—	—	—
	12(5) – (7)	—	—	—	Limitation Act (Cap.163) – s.24A(5) – (7)
No contracting out	13	s.32	—	—	Modified
Rights transferred	14	s.33	—	—	—
Preservation of other rights or remedies	15	s.34	—	—	Modified

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<i>Clause Heading</i>	<i>Clause</i>	<i>Saskatchewan Consumer Protection Act (C-30.1)</i>	<i>Alberta Fair Trading Act (C. F-2)</i>	<i>Australian Trade Practices Act 1974</i>	<i>Others</i>
Exemption from liability for publishers	16	s.35	—	—	Modified
Parol evidence rule abolished	17	s.37	—	—	Modified c.f. British Columbia Trade Practices Act RSBC 1996 (C.457) – s.29
Interpretation of documents	18	—	s.4	—	New
Amendment of Schedules	19	—	—	—	New
Regulations	20	—	—	—	New
Second Schedule	Para 1	s.6(a)	s.6(4)(c)	s.53(c)	—
	Para 2	s.6(c)	s.6(4)(e)	s.53(a), (aa), (eb)	—
	Para 3	s.6(d)	s.6(4)(g)	s.53(b)	—
	Para 4	s.6(e)	s.6(4)(f), (h)	—	—
	Para 5	s.6(g)	s.6(4)(i) “reason”, (m) “quantity”, (n) “stated period”	—	—
	Para 6	s.6(h)	s.6(4)(p)	s.53(f)	—
	Para 7	s.6(i)	s.6(4)(o)	s.53(e)	—
	Para 8	s.6(j)	s.6(2)(e), (4)(u)	s.53(e)	—
	Para 9	s.6(k)	s.6(3)(d)	—	—
	Para 10	s.6(m)	s.6(4)(r)	—	—
	Para 11	s.6(q)	s.6(3)(c)	s.53(f)	—
	Para 12	s.6(s)	s.6(3)(c)	s.60	—
	Para 13	—	s.6(4)(1)	—	—
	Para 14	—	s.6(4)(z)	—	—
	Para 15	—	—	s.53(bb)	—

<i>Consumer Protection (Fair Trading) Bill</i>		<i>Derivations</i>			
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	Para 16	—	—	s.53(ea)	—
	Para 17	—	—	s.54	—
	Para 18	—	—	—	New. Targets “last day sales” c.f. paragraph 5
	Para 19	—	—	—	New. Targets “closing down sales” c.f. paragraph 5
	Para 20	—	—	—	New. Targets “small print”

