

## INFORMATION NOTE

### Consumer protection in the United Kingdom and Singapore

#### 1. Background

1.1 At its meeting held on 25 October 2010, the Panel on Economic Development requested the Research Division to provide information on selected places where consumers are protected by cooling-off arrangements and consumer protection laws in addition to sector-specific regulatory measures. As such, the purpose of this information note is to discuss the consumer protection regimes in the United Kingdom ("the UK") and Singapore. The UK has implemented a generic consumer law since 2008 in an effort to improve its consumer protection regime dominated by a variety of product- and sector-specific legislation. Meanwhile, Singapore's consumer protection regime also features the presence of generic consumer legislation supplemented by industry specific requirements/standards to safeguard fair and transparent markets.

#### 2. The United Kingdom

##### Development of consumer protection legislation

2.1 The inception of the consumer protection regime in the UK primarily featured the use of contract law to empower purchasers of defective goods to bring a claim for breach of an express or implied term in the contract. As such, the first ever consumer protection law – the *Sale of Goods Act 1893* – was a codification of common law principles applying to contracts for the sale of goods. The *Act* provided for the inclusion into any contracts for sale of goods of certain implied terms (e.g. fitness for purpose and "merchantable" quality), and the breach of which would give rise to a number of remedies depending on the gravity of the situation.

2.2 There was a growth in consumer activism in the UK in the late 1960s. Henceforth, during the 1970s and early 1980s, the UK Parliament strengthened the contractual rights of purchases of goods and services with enactment of more interventionist consumer protection laws. These included:

- (a) the *Consumer Credit Act 1974* to regulate consumer credit and consumer hire agreements;
- (b) the *Unfair Contract Terms Act 1977* to limit the use of exclusion clauses in contracts;
- (c) the *Sale of Goods Act 1979* to consolidate the *Sale of Goods Act 1893* and its subsequent legislation, as well as providing for certain implied statutory rights in consumer contracts (e.g. traders should sell goods as described and of satisfactory quality); and
- (d) the *Supply of Goods and Services Act 1982* to require traders to provide services of a proper standard of workmanship.

2.3 Large-scale privatization and deregulation of markets began in the 1980s. At that time, the ruling Conservative Party generally viewed competition as the best consumer protection and did not favour extensive consumer policy. While there were developments on consumer law under the Conservative government (1979-1997), they were generally stimulated by the need to give effect to directives issued by the European Parliament. For example, the *Consumer Protection Act 1987* was enacted to comply with a European directive requiring Member States to introduce a system whereby manufacturers could be held liable to consumers for injury, loss or damage suffered as a result of supplying a defective product, whether or not they were negligent. In the past, those customers had to prove a manufacturer negligent before they could successfully sue for damages.

2.4 The return of the Labour government in 1997 saw a renewed interest in the role of consumer policy as a response to the trend of globalization. The Labour Party viewed efficient regulation and consumer empowerment (i.e. markets with demanding consumers) at home as a means to make the UK industries more competitive internationally. It also made use of "international benchmarking" to identify the strengths and weaknesses of the UK's consumer protection regime, with a view to creating a regulatory regime that will be among the world's best.

2.5 In 2003, the UK government conducted a detailed comparative study of the consumer policy regimes in various European Union (EU) Member States and Organization for Economic Co-operation and Development (OECD) countries. The study found that a general duty to trade fairly was useful and that the UK was lagging behind this commonly adopted best practice in its legal framework for consumer protection due to its lack of a related provision. Accordingly, on 26 May 2008, the UK implemented a generic consumer law – the *Consumer Protection from Unfair Trading Regulations 2008* (CPRs) – to introduce a general duty not to trade unfairly into its consumer protection regime<sup>1</sup>.

### Regulatory framework for consumer protection

2.6 In the UK, the responsibility for consumer policy rests with the Department for Business, Innovation and Skills (BIS). BIS, created on 5 June 2009, is entrusted with responsibilities for consumer policy, productivity, enterprise, business relations, business law, competition, employment regulation, further and higher education, and science. On consumer policy, BIS helps draft many of the UK laws, regulations and guidelines to protect consumers and businesses from unscrupulous practices.

2.7 Consumer protection legislation is enforced by the Office of Fair Trading (OFT), Trading Standards Services and some other bodies designated by the Secretary of State.

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<sup>1</sup> CPRs implemented the *Unfair Commercial Practices Directive* signed by the European Parliament in 2005. The purpose of the Directive is to harmonize the regime for the regulation of unfair commercial practices in EU Member States. The Directive also aims at clarifying consumers' rights and facilitating cross-border trade by establishing common EU-wide rules against aggressive or misleading business-to-consumer marketing.

### *Office of Fair Trading*

2.8 OFT is a non-ministerial government department set up under the *Fair Trading Act 1973*. It became a corporate body in April 2003 with a Chairman and a Board. As the UK's integrated consumer and competition authority, OFT has powers to:

- (a) enforce consumer protection laws in partnership with the local authorities, i.e. Trading Standards Services;
- (b) encourage businesses to comply with competition and consumer laws and improve their trading practices through self-regulation;
- (c) act decisively to stop hardcore or flagrant offenders;
- (d) study markets and recommend actions where required;
- (e) empower consumers with the knowledge and skills to make informed choices; and
- (f) manage Consumer Direct (an OFT-funded telephone and online service offering information and advice on consumer issues).

### *Trading Standards Services*

2.9 Trading Standards Services are established, run and financed by the local authorities to enforce a wide range of consumer legislation on areas such as fair trading, food safety, trade descriptions, and weights and measures. As the local law enforcement body, Trading Standards Services investigate complaints about doubtful trading practices and check the quality of goods and services and, if necessary, enforce legislation through prosecution against violations of the consumer protection laws. Meanwhile, Trading Standards Services also give legal advice to businesses in order to ensure their compliance with the consumer protection laws. They also work in partnership with Consumer Direct to provide advice to consumers.

*Enforcers designated by the Secretary of State*

2.10 Under Part 8 of the *Enterprise Act 2002*, OFT, Trading Standards Services and designated enforcers can seek enforcement orders (similar to injunctions) in the civil courts against a trader who is in breach of a consumer protection law. A designated enforcer is any person or body (whether or not incorporated) which the Secretary of State designates under Section 213 of the *Enterprise Act 2002* to be granted enforcement power, having identified that the person or body has the protection of the collective interests of consumers as one of its purposes<sup>2</sup>. At present, the designated enforcers include a consumers' association (named "*Which?*") and sectoral regulators (including the Financial Services Authority, the Office of Rail Regulation, the Office of Communication, the Civil Aviation Authority and the Director General of Gas for Northern Ireland).

Legislative framework for consumer protection

2.11 In the UK, the legislative framework for consumer protection has developed over many years in response to different stimuli. During the late 2000s, there were a number of initiatives introduced to overhaul the consumer protection regime that had been criticized for being complicated, inflexible<sup>3</sup> and over-reliance on a variety of product- or sector-specific legislation<sup>4</sup>. The major initiative was the implementation of CPRs in May 2008, which introduced for the first time into the UK law a general duty on all businesses not to trade unfairly with consumers. CPRs also help simplify the UK legislative framework with the replacement of provisions in 23 different consumer protection laws with more general, overarching requirements in relation to commercial practices towards or involving consumers. CPRs currently serve as an important piece of legislation safeguarding consumers against unscrupulous trade practices in the UK.

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<sup>2</sup> See Section 213(2) of the *Enterprise Act 2002*.

<sup>3</sup> See Department of Trade and Industry (2003) and Practical Law Company (2007).

<sup>4</sup> See Department for Business, Enterprise and Regulatory Reform (2008a).

*Consumer Protection from Unfair Trading Regulations 2008*

2.12 CPRs apply to any act, omission and other conduct by businesses directly connected to the promotion, sale or supply of a product to or from consumers. They do not apply to private sales between individuals, such as buying from newspaper classified advertisements and online auction platforms. CPRs use "product" to refer to goods and services in a wide sense, including immovable property, rights and obligations. There are three layers of protection within CPRs, namely:

- (a) a general prohibition against unfair commercial practices;
- (b) specific provisions against misleading actions/omissions and aggressive practices; and
- (c) a list of 31 commercial practices which are banned outright.

*General prohibition*

2.13 CPRs contain a general prohibition on unfair commercial practices. A commercial practice is unfair if:

- (a) it is contrary to the requirements of professional diligence (which is defined as the standard of skill and care which a trader may reasonably be expected to exercise towards consumers, given honest market practice and good faith in the trader's field of activity); and
- (b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to a product or service.

*Misleading actions*

2.14 CPRs specify three types of misleading actions which may lead to false information or may deceive (or may be likely to deceive) the average consumer:

- (a) misleading information generally;
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- (b) marketing a product that creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor; and
- (c) failing to honour firm and verifiable commitment made in a code of conduct.

2.15 The prohibitions against misleading actions aim to ensure that consumers get from traders, in a clear and timely fashion, the information they need to make informed decisions relating to products.

#### *Misleading omissions*

2.16 CPRs prohibit misleading omissions, i.e. commercial practices that fail to disclose material information or provide material information in a manner which is unclear, unintelligible, ambiguous or untimely, and which cause or would be likely to cause the average consumer to take a different decision. In the context of an offer to a consumer to purchase a product or service, material information will include information on the main characteristics of the product/service, the identity of the trader, the price inclusive of tax, the existence of any cancellation rights, the address of the trader and, where appropriate, additional delivery charges.

#### *Aggressive practices*

2.17 A commercial practice will be aggressive if it involves the use of harassment, coercion or undue influence. In determining whether a particular practice is aggressive, the practice must be considered in its factual context, taking into account all of its features and circumstances. A non-exhaustive list of factors is provided by CPRs and includes, for example, the use of threatening or abusive language, a disproportionate non-contractual barrier to stop the consumer exercising a right (e.g. to switch providers) or threatening to take legal action where it would not be possible to do so.

### *Specifically banned commercial practices*

2.18 Schedule 1 to CPRs contains a list of 31 commercial practices which are always considered unfair and are, therefore, prohibited in all circumstances. A trader carrying out any one of these 31 commercial practices will be considered to have breached CPRs, whether or not the violation has any effect on the average consumer.

2.19 The specifically banned commercial practices include (a) bait advertising, (b) falsely claiming to be a signatory to a code of conduct, (c) falsely claiming that a product is able to cure illnesses, (d) falsely stating that a product will be available for a very limited time to persuade the consumer to make an immediate decision, (e) making persistent and unwanted solicitations by telephone, fax, email or other remote media, (f) refusing to leave a consumer's home when asked to do so, (g) claiming to offer a prize promotion without awarding the prizes described or an equivalent benefit, and (h) operating or promoting a pyramid scheme.

### Cooling-off arrangements

2.20 The UK consumer protection regime features the use of cooling-off arrangements to (a) protect individuals from high-pressure selling tactics and/or (b) allow a consumer the opportunity to have access to more information concerning the proposed purchase. The cooling-off arrangement applies to the following situations:

### *Distance selling*

2.21 Distance selling contracts are those which are concluded exclusively by "means of distance communication". They cover a variety of sales method such as catalogue sales, telemarketing, television shopping, and the Internet or electronic sales. The *Consumer Protection (Distance Selling) Regulations 2000* provide for a cooling-off period that a consumer can cancel the purchase order no later than seven working days after receipt of goods. In the case of services, the cooling-off period terminates seven working days after the contract was concluded.

### *Doorstep selling*

2.22 In the UK, doorstep selling takes place in two ways: (a) solicited visit where the consumer initiates the visit by the salesperson, and (b) unsolicited visit where the salesperson makes a cold call. Until recently, only contracts made in the consumer's home or place of work as a result of an unsolicited visit were entitled to a seven-day cooling-off period. In October 2008, *the Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008* came into effect to extend the coverage of the cooling-off arrangements to solicited visits. The new regulations prescribe a seven-day cooling-off period for all contracts over £35 (HK\$438), irrespective of whether the contracts are made through unsolicited or solicited visits.

### *Timeshare agreements*

2.23 Under *the Timeshare Act 1992*, there is a 14-day cancellation period in relation to timeshare contracts and a prohibition on deposits within the cancellation period. According to the *Act*, timeshare is defined as buying the right to spend a set period in a holiday property each year for three years or longer.

### *Consumer credit agreements*

2.24 In a couple of limited circumstances, a customer will have a cooling-off period after signing a consumer credit agreement. When a customer signs the agreement away from the creditor's normal business premises (e.g. at the customer's home or place of work), he or she has a five-day cooling-off period beginning from the receipt of the second copy of the agreement (containing the cancellation form). Alternatively, when the consumer credit agreement is made at a distance (e.g. online, by phone or by post), the customer is entitled to a 14-day cooling-off period.

### *Financial products or services*

2.25 Financial products, including credit, insurance, personal pensions and investment, sold by distance means are subject to a 14-day cooling-off period. The same cooling-off period applies to situations where the consumer buys the financial product from an intermediary or a broker, even if the contract is discussed and signed face to face.

### *Extended warranties*

2.26 Consumers can cancel the extended warranty within 45 days of buying it and get a full refund where no claims have been made. They could still get a pro-rata refund if they want to cancel the extended warranty after 45 days, even if a claim has been made.

## **3. Singapore**

### Development of consumer protection legislation

3.1 Singapore has established a consumer protection regime modelled on that of the UK, particularly in relation to the use of contract law to provide the initial base for consumer protection in the country<sup>5</sup>. The *Sale of Goods Act* (Cap. 393), which governs the sale and purchase of goods in Singapore, is essentially the UK *Sale of Goods Act 1979* that was made applicable to Singapore. The *Act* sets out consumer protection provisions requiring sellers to take on board obligations as to description, quality and title of the goods sold<sup>6</sup>.

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<sup>5</sup> Singapore and the UK share the same common law heritage. English law was imported into Singapore through the colonisation of the latter in the 19<sup>th</sup> century. Singapore law developed in a similar manner to English law, subject to exceptions to reflect the different ethnic and religious identity of Singapore. Since the passing of the *Application of the English Law Act* (Cap. 7A) in 1993, English statutes have no longer been automatically followed in Singapore. See Donohoe (1999).

<sup>6</sup> For example, where goods are being sold by description, there will be an implied term that those goods will correspond to the description provided by the seller to the buyer.

3.2 The *Unfair Contract Terms Act* (Cap. 396) is another consumer protection legislation that is largely similar to its UK equivalent (the *Unfair Contract Terms Act 1977*). The *Act* stipulates the guidelines for the admissibility of liability exemption clauses into the contract of sale of good. For example, it is not possible for the seller to exclude or restrict liability in negligence for personal injury or death. For other cases, the *Act* either invalidates an exemption clause, or limits the efficacy of such terms by imposing a requirement of reasonableness.

3.3 Singapore's consumer protection regime entered into a new era in November 2003 with the passage of the *Consumer Protection (Fair Trading) Act* (CPFTA) after years of lobbying by the Consumers Association of Singapore (CASE)<sup>7</sup>. CPFTA provided, for the first time, the legislative framework to allow consumers aggrieved by unfair trade practices to have recourse to civil remedies before the courts. It also prescribed a cooling-off period for some consumer contracts. CPFTA covered the supply of all goods and services to consumers except (a) the sale and purchase of real estates, (b) employment contracts, and (c) financial transactions or services regulated by specific legislation<sup>8</sup>.

3.4 Following the default of several structured notes in the midst of the global financial crisis, the Singaporean Government stepped up the safeguards for consumer protection in the late 2000s. Such measures included, among other things, the amendment of CPFTA in 2009 whereby consumer protection is extended to financial products and services<sup>9</sup> and customers could seek civil remedies under the amended CPFTA for unfair practices by financial institutions. It also covers aspects of unconscionable conduct (such as exerting undue pressure or undue influence on a consumer) that are not covered by the legislation administered by the Monetary Authority of Singapore (MAS).

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<sup>7</sup> According to CASE, the push for CPFTA began with the observable increase in the number of errant traders and unethical business practices over the years. As a consumers' organisation, CASE came across numerous cases where consumers sought its help when they fell victim to unscrupulous business tactics. These included high-pressure selling tactics and aggressive door-to-door sales. See Consumers Association of Singapore (Undated).

<sup>8</sup> According to Chandran (2004), "[t]he reason why such financial services are excluded is that such services are already regulated by other statutes or codes of practice and it may result in confusion and increase the cost of compliance if yet another set of obligations is introduced."

<sup>9</sup> For example, financial products and services regulated under the following Acts have been brought under CPFTA: (a) the *Banking Act*, (b) the *Finance Companies Act*, (c) the *Financial Advisers Act*, (d) the *Insurance Act*, (e) Section 28 of the *Monetary Authority of Singapore Act*, (f) the *Money-changing and Remittance Businesses Act*, (g) the *Securities and Futures Act*, (h) the *Commodity Trading Act* and (i) the *Moneylenders Act*.

### Regulatory framework for consumer protection

3.5 In Singapore, the responsibility for consumer policy rests primarily with the Ministry for Trade and Industry. The Ministry, evolved from the former Development Division of the Ministry of Finance in March 1979, is tasked with the formulation and implementation of policies related to the trade and industry of Singapore. On consumer policy, the Minister for Trade and Industry is empowered to issue regulations on consumer protection if he or she sees it to be necessary or expedient.

3.6 CASE and the Singapore Tourism Board are appointed pursuant to Section 8(10) of CPFTA as the "specified bodies" responsible for overseeing unfair trading practices in Singapore. Where the "specified bodies" are of the view that a supplier is engaging, has engaged or is likely to engage in an unfair practice, they may restrain the supplier by seeking a declaration or an injunction from the courts. The District Court or the High Court is empowered, upon the application of a specified body, to:

- (a) make a declaration that the practice engaged in or about to be engaged in by the supplier is an unfair practice; and
- (b) grant an injunction restraining the supplier from engaging in the unfair practice.

3.7 Before filing an action for a declaration or injunction against a supplier, the specified body must obtain the endorsement of the Injunctions Proposal Review Panel that will determine whether there is a public interest to be safeguarded through the declaration or injunction<sup>10</sup>.

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<sup>10</sup> According to Section 10(1) of CPFTA, the Minister for Trade and Industry may, by notification in the Gazette, appoint an Injunction Proposals Review Panel consisting of (a) a Chairman, (b) a Deputy Chairman who shall be a public officer or an officer of any statutory board, and (c) at least one other member.

3.8 Alternatively, under Section 8(1) of CPFTA, a specified body may invite a supplier to enter into a voluntary compliance agreement where there are reasonable grounds for believing that the supplier has engaged, is engaging or is likely to engage in an unfair practice. The voluntary compliance agreement would include an undertaking that the supplier would not engage in a certain unfair practice. It could also include a provision specifying all or any of the following undertaking by the supplier to:

- (a) compensate any consumer who has suffered loss or damage as a result of an unfair practice;
- (b) reimburse the specified body for any costs or expenses incurred by it; or
- (c) publicize the voluntary compliance agreement.

3.9 There is no compulsion for a supplier to enter into the voluntary compliance agreement. The supplier may decide to enter into the agreement or allow the Injunctions Proposal Review Panel and the court to decide on the declaration or injunction application. If the supplier enters into a voluntary compliance agreement but breaches it, the specified body may then seek an injunction order from the court.

#### Legislative framework for consumer protection

3.10 Singapore's consumer protection regime is characterized by the presence of generic consumer laws supplemented by industry specific requirements/standards. The fundamental governing legislation for protection of consumers against unfair trade practices is found in the *Sale of Goods Act*, the *Unfair Contract Terms Act* and CPFTA.

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*Consumer Protection (Fair Trading) Act*

3.11 CPFTA provides consumers with safeguards against unfair practices and gives them the right to take appropriate action, including court action to seek redress. The court action may commence in a Small Claims Tribunal or the Subordinate Courts (a Magistrate's Court or the District Court) against a supplier.

3.12 Under CPFTA, it would constitute unfair practices for a supplier to:

- (a) do or say anything that might reasonably cause a consumer to be deceived or misled;
- (b) fail to do or say anything and as a result a consumer might reasonably be deceived or misled;
- (c) make a false claim;
- (d) take advantage of a consumer where the supplier knows or should reasonably know that the consumer is not in a position to protect his or her own interests; or
- (e) take advantage of a consumer where the supplier 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.

3.13 In addition, CPFTA prescribes a list of 20 specific unfair practices (Schedule 2) that would constitute an unfair practice. Each of these types of practices would clearly fall within the general description of what amounts to an unfair practice set out above. These specific unfair practices include:

- (a) telling a customer that a particular product or service has certain quality, grade or method of manufacture that it does not in fact have;
- (b) representing that goods are new or unused if they are not;

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- (c) including in an agreement terms or conditions that are harsh, oppressive or excessively one-sided;
  - (d) bait advertising;
  - (e) offering gifts, prizes or other free items in connection with the supply of goods or services if the supplier knows that these items will not be provided; and
  - (f) using small print to conceal a material fact from the customer or mislead a consumer as to a material fact, in connection with the supply of goods and services.

### Cooling-off arrangements

3.14 The *Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations 2009* provide that a regulated contract (i.e. a direct sales contract<sup>11</sup>, timeshare contract<sup>12</sup> or timeshare-related contract<sup>13</sup>) may not be enforced against a consumer any time earlier than five days (excluding Saturdays, Sundays and public holidays) after:

- (a) the day on which the contract is entered into; or
- (b) the day on which the consumer information notice<sup>14</sup> containing certain prescribed details about the consumer's rights is brought to the attention of the consumer (if later than the contract date).

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<sup>11</sup> Direct sales take place where a supplier makes an unsolicited visit to a customer's place of residence or place of business, or to the place of residence of another person. A transaction is also considered a direct sale if the product or service sold by a supplier during a solicited visit is different from what has been requested by the consumer.

<sup>12</sup> "Timeshare contract" means a contract which confers or purports to confer on an individual "timeshare rights" that are exercisable during a period of not less than three years. For "timeshare rights", it means rights to use timeshare accommodation for a specified or ascertainable period.

<sup>13</sup> "Timeshare-related contract" means a contract to assist a consumer to dispose of his or her timeshare rights conferred under a timeshare contract.

<sup>14</sup> A consumer information notice is a document provided by the supplier which contains the following details: (a) the name of supplier, (b) supplier's reference number, code or other details to enable the transaction to be identified, and (c) designated person(s) to whom notice of cancellation should be given, including at least one name and at least one address or facsimile number.

3.15 During the cooling-off period, a consumer has the right to cancel the regulated contract. Suppliers are required to provide refunds within 60 days after the consumer has given notice of cancellation of the contract.

3.16 However, the five-day cooling-off period would not apply to any contract for the supply of financial products or services regulated under MAS-administered legislation which has provided a longer cancellation period. For example, the five-day cancellation period would not apply to:

- (a) collective investment schemes (i.e. unit trusts), since consumers have seven days from the date of signing the purchase agreement to cancel their contracts; and
- (b) life insurance policies and accident and health insurance policies, since consumers have 14 days from the date of receipt of the policy to terminate the policy.

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