

Frequently Asked Questions Lemon Law

Background

Q1: What does the new law provide for?

A1: More Clarity on Burden of Proof and Rights Period: Under the Lemon Law, if a defect is detected within 6 months, it is presumed that the defect existed at the time of sale or delivery and the lemon law provisions apply, unless the seller can prove otherwise, or if such a presumption is incompatible with the nature of the goods (for example, perishables and food are not expected to last beyond their normal shelf lives.) Beyond 6 months, consumers can still seek remedies but they will need to bear the burden of proving that the defect existed at the time of delivery.

Additional Remedies: Under the Lemon Law provisions, the consumer can demand the seller to repair, or replace the defective product. If the seller fails to repair or replace the goods within a reasonable time or without significant inconvenience to consumer, the consumer may ask for a reduction in price or return the product for a refund. The seller can offer an alternative remedy from the one demanded by the consumer if the cost of the remedy demanded is disproportionate in comparison.

Coverage of the Law

Q2: What does Lemon Law cover? Does it cover secondhand goods and sale/discounted items?

A2: The Lemon Law covers all consumer goods, except real property and rental/leased goods. Perishables and consumables are also covered but the presumption that defects reported within six months exists at the point of delivery will only apply up to the normal shelf-life of the perishable/consumable, if the shelf-life is less than six months.

The proposed lemon law applies to both new and secondhand goods, and vehicles, as protection is likely to be most needed for

such goods. This is also in line with Lemon Laws in overseas jurisdictions. However, the terms may apply differently since it would be reasonable to expect new goods to be in better condition than secondhand goods. The courts will take into account the age and price paid for a secondhand good when determining reasonableness of claim. For example, someone buying a 10-year-old car from a dealer could not reasonably expect it to be like a brand new car. However, he can expect it to perform in a manner that may be reasonably expected of a car of that mileage and model. If it does not do so, the consumer can seek remedies from the dealer.

Discounted products or sale items, with slight defects or limitations are not excluded from the law, but any defects or limitations of these goods should be pointed out to the consumer before the transaction, and the retailer would not be held liable for them.

Q3: Can secondhand goods, discounted products or “display sets” sold on the understanding that they had slight defects be excluded from Lemon Law, or be sold “As is” or “As seen”?

A3: The retailer cannot contract out his obligations under the law. Even under existing laws, retailers cannot deny the consumer his rights to remedies under the proposed law, for example by simply displaying a notice saying, “we do not give refunds under any circumstances” or that “an item has been sold as it is”. Any defects or limitations of the goods should be pointed out to the consumer before the transaction, and the retailer would not be held liable for those defects or limitations. In this case, retailers should be transparent at the point of sale, for example, through appropriate labelling and disclaimers. For clarity, the retailer may document such defects and limitations on the sales contract, invoice or packaging.

Q4: Are online transactions covered? Can action be taken against overseas online traders? What about gaming services and virtual goods?

A4: Online transactions are covered under the Lemon Law, as in other jurisdictions such as UK and EU.

The Lemon Law does not distinguish between local or foreign online traders. Generally, Singapore law applies if the contract stipulates it as the governing law of the contract or if the contract is concluded in Singapore. However, it may not be possible to enforce the judgment against the overseas trader if he has no presence in Singapore.

The proposed Lemon Law does not cover services (i.e. game services) as the remedies under the lemon law regime are tailored for goods, and are generally inappropriate for services. For example, it is impossible to return a service which has already been rendered. This is in line with Lemon Laws in other foreign jurisdictions.

The Lemon Law covers purchase of physical goods made over online platforms, but not virtual goods.

Definitions

Q5: How do you define what is a Lemon or what is a defective product?

A5: The Lemon Law provisions apply in the event of non-conformity to contract at the time of delivery (e.g. a sale of goods contract). Non-conformity to contract is defined under existing laws such as the Sale of Goods Act, and includes situations such as the product not being of satisfactory quality, not fit for the purpose it is purchased for, or not meeting reasonable performance expectations, taking into account description of the goods, the price and other relevant circumstances.

“Satisfactory Quality” includes their state and condition, as well as the following aspects:

- (a) fitness for all the purposes for which goods of the kind in question are commonly supplied;
- (b) appearance and finish;
- (c) freedom from minor defects;
- (d) safety; and

(e) durability.

Q6: How do you define terms like 'disproportionate', 'significant inconvenience' or 'reasonable time'?

A6: One remedy is disproportionate in comparison to the other if the imposed costs on the supplier is unreasonable, taking into account :-

(a) the value which the goods would have if they conformed to the applicable contract;

(b) the significance of the lack of conformity to the applicable contract; and

(c) whether the other remedy could be effected without significant inconvenience to the transferee.

As for 'reasonable time' and 'significant inconvenience', section 12C(5) provides that these issues are to be determined by the nature of the goods and the purpose for which the goods were acquired. It is not practicable to define these terms in greater detail given the huge diversity of goods in the market.

The courts will thus interpret the provisions and determine disputes.

Industry associations may adopt codes or guidance for their members as appropriate dispute resolution practices. Industry standards and guidelines may also indirectly influence the court's view.

Q7: How many times is a retailer entitled to repair the product before he has to do a replacement? Why can't we specify in the law terms of defect, and conditions for remedy, especially for clothes and big-ticket items?

A7: Given the diverse range of products, it may not be possible to specify a reasonable number that can apply to all goods. Nevertheless, the supplier is required to repair or replace within a reasonable timeframe, and without causing significant inconvenience to the buyer. Otherwise, the buyer is entitled to ask

for rescission or reduction of price. The courts will interpret the provisions and determine disputes accordingly.

Beyond the guidelines provided by the Sales of Goods Act, stipulating the exact terms of defect and remedy is also not practical and will make the law complicated in application. It will also remove the flexibility for both retailer and consumer to work out mutually acceptable arrangements. The law must be adaptable to new goods that come on to the market. It will not be possible to change the law every time a new product is launched.

Clarifications

Q8: What constitutes a proper replacement, can it be a used product? After the "lemon" is replaced, is the consumer protected for another 6 months after replacement?

A8: The replacement should conform to contract, that is, be of the quality, make, model, and condition that is expected at the point of sale. Wear and tear due to usage by the consumer will be considered, and the replacement need not always be new. If the consumer is not satisfied with the replacement, he could ask for other remedies, such as a reduction in price, or return the product for a refund.

The 6 months where the burden of proof is placed on the retailer cannot be renewed with each replacement. However, the Lemon Law provisions for remedies of repair, replacement, discount or refund will still apply beyond this 6 months period, but the consumer will have to prove that the replacement provided did not conform to the contract.

Q9: Consumers are covered by the new law for defects that manifest within six (6) month. How is this period derived?

A9: The six month period is consistent with that set in UK and EU laws. The six month period is also not too long, such that it makes it difficult for the seller to prove that the defect was not present at the time of delivery.

Q10: Who is responsible for providing repairs/ replacement/ rescission/ discounts under the new Lemon Law regime? Is it the retailer, distributor or manufacturer?

A10: Contractual liability only binds the parties to the contract. If it was the retailer who entered into a sales contract with the consumer, the retailer will be directly responsible for the exchange/refund/discounts arising from non-conformity of the goods supplied with the contract.

The retailer may seek recourse against his supplier based on his contract with the supplier, or exercise his rights under the Sale of Goods Act as a purchaser in respect of the supplier (in particular, the implied terms for non-consumers under the Sale of Goods Act are likely to apply). Under the Act, the retailer can return faulty goods to his supplier on grounds that the goods do not conform to contract.

If the manufacturer or supplier has separately granted a warranty to the consumer (e.g. under a warranty card), the consumer will continue to have rights against the manufacturer or supplier under that separate warranty.

Q11: When will the law come into force? Are contracts entered into before that date eligible for recourse under Lemon Law?

A11: The Lemon Law will only take effect on 1st September 2012. Sale contracts entered into before the date cannot be covered under the new law.

Procedures on the Ground

Q12: Are vouchers acceptable for refunds in lieu of cash?

A12: The seller may make the refund in cash or using the same mode of payment as the original transaction, e.g., if the payment was made in cash, the consumer has a right to a refund in cash. The consumer may choose to accept vouchers or a credit note, if offered. If the consumer made payment using credit or vouchers, the seller can choose to refund via credit or vouchers.

Q13: Can the consumer ask for costs or compensation for transport and time wasted when he sends the product for repairs repeatedly?

A13: Under the proposed law, the retailer must bear any necessary costs incurred in providing repairs (including the cost of any labour, materials, postage, or delivering the goods for repair). If the retailer is unable to provide the repairs within a reasonable time and without causing significant inconvenience to the consumer, the consumer may demand an alternative remedy, meaning a replacement, reduction in price or a refund.

Cars and Hire Purchase

Q14: When a dealer receives a trade-in vehicle from a customer, and subsequently sells it to another customer, and it is then determined that the vehicle is a "Lemon", is the dealer able to seek recourse from the customer whom the dealer purchased the vehicle from? How does the dealer claim for consequential losses if any?

A14: The proposed lemon law applies only to business-to-consumer transactions. It would usually not apply to consumer-to-business transactions. Therefore, the proposed lemon law would not usually apply in relation to transfer of the trade-in vehicle from the first customer to the dealer.

However, the usual remedies that arise from the contract between the dealer and the first customer continues to apply. These include the ability to sue the customer who traded-in the vehicle if the vehicle does not conform to the contract. The Sale of Goods Act will also apply, and the dealer can, under the law, reject

the traded-in vehicle for serious defects or non-conformity. The dealer may protect himself by clearly stipulating the obligations of the trade-in customer in writing.

Q15: For a hire purchase vehicle, who is responsible to process claims from the Hirer (i.e. consumer)? The Owner (i.e. Finance company/bank) or the Seller (the retailer who sold the product)?

A15: Under a hire purchase agreement, the finance company pays the seller and becomes the owner of the vehicle. The hirer does not become the owner until the final payment is made. However, if the seller is open to the hirer approaching them directly, this is possible.

The position is similar in UK, Ireland and NZ, where the finance company is held liable until ownership is transferred to the hirer.

Since the seller has effectively sold the car to the finance company (car was transferred from seller to owner), the finance company can seek recourse from the seller for breach of implied terms (i.e. reject product or claim damages). However, as the finance company is not a consumer, the implied terms are treated as warranties. This means that the finance company may not have a right to reject for slight defects, and can only claim damages.

The finance company can however, contract with the seller to ensure that it has the necessary indemnities to protect itself in the event that the vehicle is rejected or the agreement is rescinded.

Q16: The Hire Purchase Act currently contains value caps (e.g. Car value cannot exceed \$55,000 excluding COE). Does this mean I cannot be protected by the Lemon Law provisions if my hire purchased car exceeds that value?

A16: The value caps in the HPA will not apply to the implied terms in the HPA and the proposed Lemon Law provisions. Cars of all value will therefore be covered.

Queries on COE/ARF Transfer Eligibility (from MOT/LTA)

Q17: Why were specific conditions imposed on the transfer eligibility of COE/ARF from a defective vehicle to its replacement?

A17: To encourage and facilitate the replacement of a defective vehicle, LTA will allow the transfer of the ARF and Certificate of Entitlement (COE) from a defective vehicle to the replacement vehicle only if the defective vehicle meets the following criteria:

- (i) The defect occurs within 1 year of the vehicle's registration or within a mileage of 20,000 km, whichever is earlier; and
- (ii) At least 3 attempts have been made to repair the defect, or at least 1 attempt if the defect is safety-related, within 1 year from the date the defect was reported.

The conditions have been drawn up with reference to overseas legislation and are intended to minimise tax leakage due to frivolous claims. The stipulated conditions serve to discourage abuse of the proposed scheme.

Q18: Is there a possibility of re-registering a Lemon vehicle (for trader's own use as rental vehicle, or subsequent sale to willing consumers)?

A18: The defective vehicle's COE and ARF have already been transferred to the replacement vehicle. Thus it is not possible for the defective vehicle to be retained for the trader's own use as a rental vehicle or for subsequent sale.