

EXPLANATORY NOTES

PROPOSED AMENDMENTS TO THE CONSUMER PROTECTION (FAIR TRADING) ACT

1. BACKGROUND

- 1.1 The Consumer Protection (Fair Trading) Act (CPFTA) is amended to provide consumers with an alternative simplified regime for obtaining redress for goods which do not conform to contract at the time of delivery (non-conforming goods).
- 1.2 Proposed new Part III of the CPFTA contains the provisions on the new alternative regime. The regime is based on the model of the European Union Consumer Sales Directive¹, as implemented in the UK by the UK Sale and Supply of Goods to Consumer Regulations 2002. The proposed regime will operate as an alternative to existing remedies available under the law of contract. It expressly provides for the right to demand repair or replacement of non-conforming goods and for reduction of price or refund as alternative remedies. It does not prevent consumers from choosing instead to exercise any other existing rights they may have under the law.
- 1.3 The law relating to the domestic sale of goods in Singapore is governed by the **Sale of Goods Act** (Cap. 393) (SGA). It applies in the context of the general common law principles. The SGA applies to any contract for the sale of goods i.e. a contract in which the seller transfers or agrees to transfer property in goods to the buyer for money.
- 1.4 The SGA imposes certain implied terms and conditions in the contract for the sale of goods. These include the implied conditions that the goods are of satisfactory quality² and fit for any particular purpose of which the buyer had, expressly or by implication, informed the seller.³ The implied condition of satisfactory quality encompasses considerations of fitness for purposes for which the goods are commonly supplied, appearance and finish, freedom from minor defects, safety and durability.⁴ In the case of a contract for sale by description, there is an implied condition that the goods will correspond with the description.⁵ There is also an implied condition, in the case of a sale by reference to a sample, that the bulk will correspond

¹ EU Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees.

² Section 14 of the SGA.

³ Section 14(3) of the SGA.

⁴ Section 14(2B) of the SGA.

⁵ Section 13 of the SGA.

with the quality of the sample and be free from defects which are not apparent.⁶

- 1.5 The **Supply of Goods Act** (Cap. 394) (SUGA) provides similar implied terms applicable to contracts for hire⁷ and contracts for the transfer of goods.⁸ Related amendments to the **Hire Purchase Act** (Cap. 125) (HPA) will align the implied terms for hire-purchase agreements with those in the SGA and SUGA.⁹
- 1.6 Goods which do not conform to the express terms of the contract or such implied terms under the SGA, SUGA and HPA will be non-conforming goods for the purposes of the new regime.

2. PROPOSED AMENDMENTS

- 2.1 The proposed amendments divide the CPFTA into Parts. Proposed new Part III of the CPFTA contains the provisions on the new alternative regime. The new regime provides as follows:
 - a. It gives consumers 4 additional remedies for non-conformity with the contract, namely, repair, replacement, reduction in price or rescission (i.e., the parties are restored to their respective positions before the contract was made). (Section 12B)
 - b. Goods which do not conform to the contract for the supply of goods at any time within the period of 6 months from the date of delivery will be taken not to have so conformed at the time of the delivery, unless it is proved otherwise or it is incompatible with the nature of the goods or of the nature of the non-conformity. (Section 12B(3))
 - c. The transferee¹⁰ must not require the transferor¹¹ to repair or to replace the goods if that remedy is impossible or disproportionate in comparison to the other remedies. The remedy is disproportionate if the costs are unreasonable taking into account the value of the goods, the significance of the non-conformity and inconvenience to the buyer. (Section 12C(3) and (4))

⁶ Section 15 of the SGA.

⁷ Sections 8, 9 and 10 of the SUGA

⁸ Sections 3, 4 and 5 of the SUGA

⁹ Proposed sections 7, 7A and 7B of the HPA.

¹⁰ i.e. The consumer who buys, hires or obtains the goods.

¹¹ i.e. The person who sells, bails or transfers the goods.

- d. Reduction of price or rescission are “second tier” remedies which are available only if repair or replacement are unavailable because it is impossible or disproportionate to do so, or if the transferor fails to repair or replace the goods within a reasonable time and without significant inconvenience to the transferee. (Section 12D)
 - e. Further, any reimbursement upon rescission may be reduced to take account of the use that the transferee has had of the goods before the rescission. (Section 12F(5))
 - f. If the transferee has asked the transferor to repair or replace the goods, he must give the transferor reasonable time to do so before seeking some other remedy i.e. reject the goods, terminate the contract for breach of condition, or require repairs or a replacement under existing law. (Section 12E)
 - g. The court may, in addition to any other power it has:
 - (i) order specific performance on the application of the transferee
 - (ii) substitute another remedy available under the provisions which it considers appropriate
 - (iv) make the order on such terms or conditions as to damages, payment of price or otherwise as it thinks just.(Section 12F)
- 2.2 Non-conforming goods are goods that breach an express term of a contract for sale, hire, supply or hire-purchase of goods, or an implied term of satisfactory quality, fitness for purpose or correspondence with description or sample under the SGA, SUGA or HPA. (Section 12A(4))
- 2.3 The new regime applies where the transferee deals as a consumer. A party to a contract “deals as consumer” in relation to another party if —
- (a) he neither makes the contract in the course of a business nor holds himself out as doing so;
 - (b) the other party does make the contract in the course of a business; and
 - (c) in the case of a contract governed by the law of sale of goods or hire-purchase, or other contracts under which the possession or ownership of goods passes, the goods are of a type ordinarily supplied for private use or consumption.
- The transferee in a sale by auction or by competitive tender is not regarded as dealing as consumer.¹² (Section 12A(2))

¹² Section 12 of the Unfair Contract Terms Act (Cap. 396).