

ASEAN Handbook on Consumer Protection 2018

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Foreword

There are over 600 million consumers in the ASEAN Community today. Consumer protection is an area of policy and law that most closely affects ASEAN citizens in their daily life. The work that ASEAN is doing in respect of enabling and building confident consumers by ensuring consumers have better access to information, wider choices and competitive prices through fair and open markets as well as effective redress mechanisms, brings the concept of the ASEAN Community closer to its people in line with the aspirations of a People-Oriented and People-Centered Community.

This Handbook is the first publication by ASEAN which collates all information on ASEAN Member States (AMS) laws and regulations on consumer protection, the agencies in AMS responsible for consumer protection, the redress mechanisms for consumers as well as a listing of national consumer associations. The Handbook also contains information on the ASEAN regional framework on consumer protection in terms of the work of the ASEAN Committee on Consumer Protection and the ten-year ASEAN Strategic Action Plan for Consumer Protection 2015, including the ASEAN High-Level Principles for Consumer Protection.

ASEAN is characterized by a young and growing population, increasingly well-educated and living in cities, and technologically-connected. This group constitutes half of ASEAN's population and in the years to come, will create a discerning and demanding consumer market and progressively stronger buying power. On the other hand, ASEAN must also not neglect the other consumer groups such as the aged and those with disabilities.

Taking into account the various needs, our goal is to support the emergence of confident and informed consumers, who are able to make reasoned decisions and assert their rights, based on a common ASEAN consumer protection framework of supportive consumer protection regimes. Confident and empowered consumers can represent powerful drivers of innovation, productivity and competition, thereby contributing towards building the ASEAN Economic Community.

I would like to thank the ASEAN Committee on Consumer Protection and the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH for their guidance and support in realising this publication.

Dato Lim Jock Hoi
Secretary-General of ASEAN

Jakarta, May 2018

Introduction

The ASEAN Economic Community (AEC) by 2025 is envisaged to be a highly integrated and cohesive; a more competitive, innovative and dynamic as well as a resilient, inclusive and people-oriented, people-centred community, which generates prosperity for all stakeholders including consumers and business.

The development of a dynamic economy and a people-oriented, people-centred ASEAN cannot take place without strengthening the consumer protection framework of ASEAN Member States. With a market of over 600 million consumers, increasing purchasing power and a young demographic profile, ASEAN represents a growing marketplace for businesses to sell its products and services. Consumer protection policies and laws are therefore a necessary adjunct to ensure consumers buy with trust and confidence and businesses abide by a code of good conduct that enhance consumers' trust. Furthermore, consumer policies and laws would also need to respond to new and emerging challenges and opportunities facing ASEAN. This includes cross-border e-commerce and other new trading and payment methods resulting from globalisation and technological advancement, requiring governments to find innovative ways to protect and promote the interests of consumers.

Hence, as an integral part of the AEC 2025, consumer protection has an important role in supporting a modern, efficient, effective and fair market place in the Community. This will require comprehensive and well-functioning national and regional consumer protection systems enforced through effective legislation, with attendant public awareness outreach and redress mechanisms. These strategic measures are highlighted in the AEC Blueprint 2025 which is the AEC's ten-year blueprint towards achieving the goal of an integrated Community including in the area of consumer protection. At the sectoral level, the strategic measures of the Blueprint were further elaborated under the ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2025 into specific initiatives and activities.

The work on consumer protection in ASEAN is carried out by the ASEAN Committee on Consumer Protection (ACCP). This Committee was established in 2007 and is represented by officials of commerce ministries or dedicated agencies in charge of consumer protection. The initial focus of the ACCP has been to ensure that consumer protection legislation is in place in all AMS, consumer access to information is enhanced, mechanisms for consumer redress and recalls are effective and running, and institutional capacity are strengthened. These are reflected in the strategic approaches under the previous ACCP work plan (2012-2015), and significant progress has been made in the last nine years, and which is now further pursued under the ASAPCP 2025.

The ACCP has placed significant emphasis on building the capacity of agencies to enforce consumer laws, as well as enhance awareness on consumer rights through various capacity building and advocacy activities. In particular, these have been implemented through the development of public awareness and advocacy models and guidelines, the publication of 24 policy digests and four case studies, the convening of ASEAN Consumer Protection Conferences, and the development of training modules in six core areas including on product safety and labelling. The ASEAN Consumer Protection Portal was also set up to serve as the main reference point for ASEAN consumers and others on matters pertaining to

recalled/banned products, consumer redress mechanism, training and education information, as well as a point of reference for consumer legislation and regional activities.

Moving forward under the ASAPCP 2025, the focus will be on ensuring a more integrated consumer protection framework in ASEAN; supporting activities towards a higher level of consumer empowerment and protection; ensuring enhanced consumer confidence in the AEC and cross border transactions as well as mainstreaming consumer concerns into ASEAN policies. In addition to these four areas, supportive measures were incorporated to reflect additional efforts that focus on new and emerging consumer issues, developing long- term capacity building programmes to assist AMS to implement its consumer protection legislations and strengthening of the ACCP.

As part of the advocacy and awareness objectives under the ASAPCP 2025, the ASEAN Handbook is being published to provide more detailed information in a single point of reference for consumers and other stakeholders. The Handbook provides brief overview on the meaning and scope of consumer protection, consumers and businesses rights and responsibilities, the set-up of consumer laws as well as related dispute resolution mechanisms. The Handbook also compiles the available information on consumer protection in AMS with a key section on AMS consumer protection laws and regulations. There is also specific information on consumer protection mechanisms in AMS in six specific areas covering product safety and labelling; phone and internet services, and e-commerce; consumer credit and banking; environment; healthcare services; and professional services, with another section covering the contact details of related agencies and associations dealing with consumer protection.

Part 1 – Consumer Protection System

What is Consumer Protection?

Consumer protection refers to the measures that aim to protect and promote the well-being and/or financial interests of consumers. Consumer protection measures, including consumer education, mobilization and representation, work to ensure that consumers can make well-informed decisions about their choices, that producers and sellers will fulfill their promises about the products and services they offer and that there are effective redress mechanisms.

A consumer protection system may consist of several elements, including but not limited to a principal consumer legislation; other sector-specific laws, rules and regulations protecting the interests of consumers in specific areas; institutional structure to enforce the laws; and the existence of non-governmental organisations working to protect the interests of consumers.

Why is Consumer Protection important?

Consumer protection is important because consumers in any modern market economy often experience information asymmetry and a significant imbalance of bargaining power as compared to producers and sellers of products and services.

In competitive markets, producers and sellers must gain new sales, new clientele by satisfying consumer needs through increasing the range of choices available, since if consumers dislike the offerings of one producer/seller, they might turn to others. This is because the availability of substitutable goods at acceptable prices in competitive markets enables consumers to shift purchases, which pushes each producer/seller to try to meet consumer preferences.

However, producers/sellers may not always act competitively and very often would resort to unfair means, for example offering low-quality products at lower prices or misleading the consumers to believe that the products offered are of good quality. As a result, consumer interests are affected. Not only consumers do not receive a fair value for their money, their health and safety could also be adversely affected by the unsafe or defective products and services.

Hence the need for interventions, either by governmental consumer protection agencies, consumer associations or organizations, or any other relevant stakeholders, in accordance with rules and regulations laid down to protect the legitimate interests of consumers.

Who is the “Consumer”?

It is important to note that there is no universally agreed definition of the term ‘consumer’. Different laws of different countries might define the term differently depending on their varying purposes, contexts and needs.

A ‘consumer’ might be generally understood as a purchaser of goods and services for the personal satisfaction of themselves or other members of their households, as distinct from use to generate further income.

It follows that the main characteristics of consumer protection statutes are that the supplier acts in the course of a trade or business, the recipient is a private individual or entity that acts in a private or not-for-profit capacity. However, it is important not to limit the term

‘consumer’ to only contracting parties, as that might exclude the end user of goods and services.

This Handbook offers no standard definition of the term ‘consumer’. Readers would find different country definitions of the same term in Part 3 of the Handbook on Consumer Protection in the ASEAN Member States.

Consumer Rights and Responsibilities

The prevalence of deceptive practices and irregularities in the market means that governments have to intervene to safeguard the interests of consumers by recognizing and upholding their rights in various legal instruments, including consumer protection laws.

The United Nations’ Guidelines for Consumer Protection (UNGCP),¹ a set of principles first adopted by the UN General Assembly, sets out the main characteristics of effective consumer protection legislations, enforcement institutions and redress systems, and recognises eight basic consumer rights and responsibilities.

Consumer Rights:

- 1. The right to satisfaction of basic needs** - To have access to basic, essential goods and services: adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.
- 2. The right to safety** - To be protected against products, production processes and services which are hazardous to health or life.
- 3. The right to be informed** - To be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labeling.
- 4. The right to choose** - To be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.
- 5. The right to be heard** - To have consumer interests represented in the making and execution of government policy, and in the development of products and services.
- 6. The right to redress** - To receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services.
- 7. The right to consumer education** - To acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them.
- 8. The right to a healthy environment** - To live and work in an environment, which is non-threatening to the well-being of present and future generations.

Consumer Responsibilities:

- 1. Critical awareness** - The responsibility to be more alert and questioning about the use of, and the price and quality of goods and services we use.

¹ The UNGCP is downloadable from <http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf>

2. **Action** - The responsibility to assert ourselves and act to ensure that we get a fair deal. As long as we remain passive consumers, we will continue to be exploited.
3. **Social concern** - The responsibility to be aware of the impact of our consumption on other citizens, especially disadvantaged or powerless groups, whether in the local, national or international community.
4. **Environmental awareness** - The responsibility to understand the environmental consequences of our consumption. We should recognize our individual and social responsibility to conserve natural resources and protect the earth for future generations.
5. **Solidarity** - The responsibility to organise together as consumers to develop the strength and influence to promote and protect our interests.

Scope of Consumer Protection Law

A comprehensive legal framework for consumer protection might include, but is not limited to the following elements:

- The **rights of consumers** as protected by law – rights such as right to safety, choice, information, education, fair price, representation and redress, etc as mentioned above;
- **Basic principles** or general policy on consumer protection;
- A **definition** of the ‘consumer’;
- The **coverage of the supply of consumer goods and services**, and consumer transactions, which sometimes might include the provision of professional services (doctors, dentists, lawyers, engineers, architects, etc);
- The imposition of pre-contractual **disclosure requirements** on the products sold or services provided, covering price and tariffs, as well as contract terms;
- The **prohibition of unfair terms** in consumer contracts, and provisions related to standard-form contracts and general trading conditions;
- The **prohibition of false, misleading or deceptive advertising** and other dubious forms of commercial communication;
- The **prohibition or restriction of commercial practices** that are considered to be misleading, aggressive or unfair to the consumer, and/or practices which are considered unconscionable;
- The **creation of consultative bodies** comprising of representatives of the government, industry, consumer and other relevant stakeholders, or which could be inter-ministerial, to proactively address systemic consumer problems and recommend legislations and other consumer protection measures;
- Issues related to **product and service safety and provision for standard setting**, notification of unsafe products and recall of defective products;
- The **facilitation of compensation of consumers** for defective products by introducing the principle of strict liability wherein defective products have caused material losses, personal injury or death to consumers;
- The **establishment, structure, powers and functions of government agencies** responsible for policy-making and law enforcement on consumer protection (‘Consumer protection agencies’), which could be cross-sectoral or sector-specific;

- The **establishment of special tribunals**, more recently **Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) systems** where simplified rules of procedure and evidence are created to hear consumer complaints. They usually facilitate consumers' access to justice by allowing collective redress procedures. In such cases, they may confer upon a public officer, and in some instances social action groups such as consumer associations, the right to commence litigation on behalf of a consumer or a group of consumers; and
- **A range of remedies**, including rescission, in which consumers' right to damages (including punitive damages), injunctive and declaratory relief are provided for.

Some countries could also have separate legislations/statutes to provide more detailed regulations on such issues as Product Quality and Safety, Product Liability, Unfair Contract Terms, or to provide for the establishment and powers of Consumer Protection Agencies, special tribunals, ADR, or consumer case procedures.

Very often, countries could also adopt sectoral rules on consumer protection, or incorporate a set of provisions related to the protection of consumer interests in sectoral laws and regulations, e.g. telecommunications, e-commerce, consumer credit and banking, healthcare, professional services, and transportation services such as civil aviation. The responsibilities and powers to protect consumers in these sectors could be given to the Consumer Protection Agencies, or to the respective regulatory bodies, or to line ministries, or be shared amongst these relevant agencies.

Consumer Protection Agencies

In addition to adopting a comprehensive law on consumer protection to serve as the legal framework, countries would often establish a new agency to take charge of consumer protection matters in its territory. Alternatively, such powers and responsibilities could also be vested with an existing one, which is often the ministry of industry and trade or commerce, which would set up or assign a specific department to oversee all consumer-related affairs. Such agencies, here below commonly referred to as the 'Consumer Protection Agencies', would have one or more than one of the following powers and responsibilities:

- Enforcing consumer protection (and competition) laws;
- Registering and issuing licences for certain designated types of business activities;
- Issuing administrative rules to regulate conduct of business entities and ensuring the protection of consumer interests;
- Advising the government on appropriate measures for consumer protection;
- Representing the consumer interest in other intergovernmental committees;
- Advising consumers and businesses of their rights and obligations under the relevant consumer protection laws;
- Conducting, or commissioning market surveys and research into consumer protection problems;
- Conducting or commissioning product testing for safety and quality, and disseminating information to consumers;
- Managing and/or monitoring the performance of consumer tribunals or other mechanisms for the handling of consumer claims;
- Consulting with relevant stakeholders to understand consumer issues and developing policy to address problem areas;
- Organizing public education and information programmes independently or in collaboration with consumer organizations or business entities; and

- Representing the national consumer interests at regional and international negotiations on individual cases and discussions of regional and international policies.

Where the agency's role is not interventionist in nature, its functions could be advisory to ensure that both businesses and consumers are informed of their rights and responsibilities through public education and information programmes. The agency could also play a representative role within the government to comment and make recommendations on consumer protection laws and other related laws including where it resides within the jurisdiction of other departments that would have an impact on the consumer interests.

While there are different models to choose from, the functions of the consumer protection agency are quite similar, as listed above, whether it is part of the government or an autonomous entity. Some agencies, though independent in structure, are still dependent on the government for their operating costs and are answerable to the minister charged with the responsibility and, as public bodies, to national parliaments or assemblies.

Where the responsibilities and powers for consumer protection are not centralised into one single agency, but shared amongst different public bodies, the consumer protection agency or a high-level body with the consumer agency as the secretariat, could and should still play a central role of coordinating amongst these bodies, to ensure policy coherence, and avoid the problems of overlapping mandates, duplication or negative forum-shopping, while according the consumers with the highest level of protection possible.

Consumer Organisations/Associations

A consumer organisation/association is a membership-based non-governmental non-profit body created to promote the interests of consumers of goods and services, by disseminating information and lobbying for laws to protect consumers against producers or sellers, who may usually be better organised or have more resources.

Citizens often gather together to form consumer organisations/associations on the basis of their recognition that:

- There is a need for an independent party which is non-political and non-commercial to voice the issues that impact consumers in a market economy;
- There is a need for the views of the under-represented, i.e. the inarticulate and disadvantaged to be heard in order to address the disparity in bargaining power, knowledge and resources between consumers and business; and
- Consumer organisations/associations would be an effective avenue to collectively exercise the civil rights of disadvantaged/vulnerable communities/groups or those with disabilities to be represented and heard before decisions affecting them are taken.

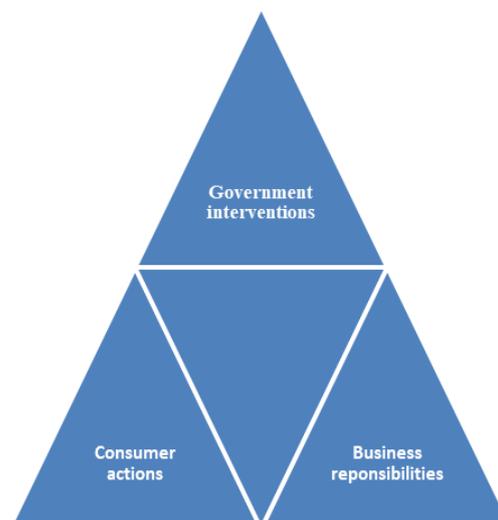
There may be differences in the manner in which consumer organisations/associations operate. In well-developed economies, where the public is relatively well-educated and well-resourced, comparative testing and provision of sound information to consumers have been the main roles of many consumer organisations/associations. Millions of consumers subscribe to the publications of these organisations and are willing to pay for the independent and well-researched information and advice contained in them on products and services. In developing countries, consumer organisations/associations often take a basic-needs approach and are involved at the local level in raising the awareness of consumers about their rights while advocating and representing consumer interests at the national level. They, however, may be faced with resource constraints in providing detailed information on products and services to consumers.

Nevertheless in many countries now, consumer organisations at national and local levels have undertaken a wide range of actions that draw on their well-honed skills in independent research, advocacy, testing and publishing. A majority of these actions involve *inter alia*:

- educating consumers with a view to changing their attitudes and behaviour;
- providing consumers with timely information about popular products and services;
- monitoring and exposing misleading "claims" by product manufacturers and advertisers, and helping governments draw up codes of practice, laws and regulations that outlaw them;
- researching "labelling" schemes to help consumers identify ethical and "green" products;
- conducting campaigns in response to specific consumer-related problems;
- advocating for the interests of consumers at relevant national, regional and international fora; and
- networking and cooperating with other NGOs on consumer issues of shared concern and interest.

Responsible Business

In addition to *governments'* interventions in the market to protect consumers, be it disciplinary in nature through the enforcement of laws and regulations, and/or imposition of sanctions and remedies, or educational and information-based; and in addition to *consumers'* self-protection actions, such as through the formation of consumer organisations/associations and participation in campaigns to protect their own right and interests; *business* also has an important role to play vis-a-vis consumer protection. Business is in fact the third component that completes the triangle for a comprehensive consumer protection system.



Customers are the lifeline of most businesses. In order to ensure long-term sustainable growth and success for their business, business proprietors and managers need to be able to understand consumer demands and anticipate future trends; pay close attention to consumer opinion polls, feedback, and attitudes; and respond to consumer complaints in a timely and effective manner; in addition to constantly improving product designs, production and

delivery. This is based on the recognition that the relationship between consumers and business does not just happen during a transaction; but starts from the initial stages of market research, marketing and advertising; and extends beyond the actual supply of goods and services to customer care, warranty and repair, etc.

As products or services can be defective or there is need for more product and service information, companies are increasingly setting up customer hotlines, inquiry desks and consumer complaint-handling sections/departments to respond to the needs of consumers.

Principles for Good Business Practices under the UNGCP:

- **Fair and Equitable Treatment** - Businesses should deal fairly and honestly with consumers at all stages of their relationship;
- **Commercial Behaviour** - Businesses should not subject consumers to illegal, unethical, discriminatory or deceptive practices, or other improper behaviours that may pose unnecessary risks or harm consumers;
- **Disclosure and Transparency** - Businesses should provide complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to take informed decisions;
- **Education and Awareness Raising** - Businesses should, as appropriate, develop programmes and mechanisms to assist consumers to develop necessary knowledge and skills to take informed decisions;
- **Protection of Privacy** - Businesses should protect consumers' privacy through a combination of appropriate control, security, transparency and consent mechanisms relating to the collection and use of their personal data; and
- **Consumer Complaints and Disputes** - Businesses should make available complaints-handling mechanisms that provide consumers with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden.

Dispute Resolution and Redress

Fostering the development of effective, low-cost ways for consumers to resolve disputes and obtain replacements or monetary compensation for losses sustained is a key objective of all consumer protection systems. The particular features of consumer disputes require tailored mechanisms that can provide consumers with access to remedies that do not impose costs, delays and burdens disproportionate to the economic value at stake.

Consumer protection laws of different countries could provide for one or more than one of the mechanisms for consumer dispute resolution and redress described below.

Internal complaints handling procedures by business

Internal complaints handling processes are an integral element of consumer dispute resolution and redress systems. The efficient and effective handling of consumer complaints at the earliest stage can bring benefits to businesses and consumers alike, alleviating the need for recourse to more costly and time-consuming external mechanisms in a large number of cases. As with other informal mechanisms, however, recourse to internal complaints handling processes will not be effective in cases where consumers have been the victims of illegitimate businesses or fraudsters.

Alternative Dispute Resolution (ADR)

Where efforts to resolve disputes directly with businesses fail, alternative dispute resolution (ADR) can offer consumers a quick, effective and affordable way to obtain a remedy without the burden and expense of taking formal legal action. There are a wide variety of ADR mechanisms. Some of the most common forms are mediation, conciliation, assisted negotiation, and arbitration.

Mediation, conciliation, and assisted negotiation are all consensual processes whereby a neutral third party facilitates communication between the parties to help them reach agreement. Arbitration is an adjudicative process whereby a neutral third party gathers information from both parties and makes a decision that is often intended to be legally binding and final.

In recent years there has been an increasing use of information communication technologies (ICT) in alternative dispute resolution processes. In particular, the growth of the Internet during the 1990s provoked great interest in online ADR, or online dispute resolution (ODR).

Small Claims Procedures

Recognising that the regular court system is often beyond the reach of average consumers with low value claims, many countries around the world, including some in the ASEAN region, have introduced simplified court procedures for small claims. These procedures are designed as alternatives to traditional civil court proceedings, allowing individuals to resolve disputes and obtain redress at a cost and burden not disproportionate to the amount of their claim. Being independent, binding and enforceable, small claims procedures offer consumers the main benefits of the judicial system without the high costs, delay and procedural complexities procedures associated with the regular courts.

Private Collective Action Lawsuits

In some countries, there is a procedure available for legal action to be filed by groups of private individuals who have suffered similar harm as a result of the actions of the same defendant. Typically associated with the class action lawsuit in the United States, in recent years this type of action has been gaining in popularity in many other countries as a consumer protection mechanism (albeit often in a more limited form). Collective action can be particularly useful in cases where large numbers of consumers have each suffered small losses. It offers an avenue for redress to consumers who, due to the low value of the claim, would not be willing to undertake the burden and cost of legal action individually.

Legal Actions by Consumer Organisations

In some countries, the rights of consumers to take private legal action are supplemented by rights provided to consumer organisations to file lawsuits on behalf of a consumer or, more frequently, a group of consumers. Like private collective action lawsuits, actions by consumer organisations are particularly useful in cases of widespread consumer harm, providing a mechanism to prevent or remedy wrongful conduct by a defendant that may otherwise go unchecked.

Government-obtained Redress

Consumer protection laws could also grant statutory authority to government officials to bring legal actions to protect consumers. The organisational forms for these governmental consumer protection bodies vary from country to country, ranging from consumer ombudsman offices, to independent commissions, to directorates or divisions within a ministerial branch of the government.

Government consumer protection agencies could apply – either directly or via the courts – a number of different types of remedies to address marketplace infractions. They can be broadly characterised as conduct remedies and monetary remedies. Conduct remedies can involve injunctions, cease-and-desist orders and related measures. Monetary remedies can take a variety of forms, including fines or civil penalties, which are intended to deter infractions of the law, and disgorgement orders, which deprive a wrongdoer of the profits of the unlawful activity. The proceeds of both of these remedies usually end up back in government treasuries.

Another type of monetary remedy is an order for monetary redress. Orders for monetary redress aim to recover monies wrongfully obtained by a trader for return directly to the injured consumers. In addition to alleviating consumer injury, redress orders serve a deterrent function by depriving the wrongdoer of the ill-gotten gains.

Part 2 – Regional Framework on Consumer Protection in ASEAN

Consumer protection has long been recognised as an integral part of the ASEAN economic and social integration process. As the ASEAN Member States (AMS) integrate more deeply; individuals move across borders more frequently; companies expand their business operations beyond geographical boundaries, supplying goods and services to customers based in different countries more easily; and the digitalisation of social and economic activities progresses at unprecedented paces; consumer protection has come to occupy a central place in the regional policy-making agenda.

The ASEAN Committee on Consumer Protection (ACCP)

The ASEAN Committee on Consumer Protection (ACCP) was established in 2007 by the ASEAN Economic Ministers (AEM). It comprises of representatives of consumer protection agencies of all ten (10) ASEAN Member States. The ACCP serves as the focal point to implement and monitor regional arrangements and mechanisms to foster consumer protection in the ASEAN Economic Community (AEC).

The ACCP's role is to ensure that consumer protection measures, including laws, regulations and policies, are in place in all AMS; consumers' access to information is enhanced, mechanisms for consumer redress and product recalls are in place, and institutional capacity strengthened. These are reflected in the strategic approaches adopted under the AEC Blueprint 2015-2025 and the more detailed initiatives under the ASEAN Strategic Action Plan on Consumer Protection (ASAPCP 2025).

The major accomplishments of the ACCP till date include *inter alia*:

- Nine AMS have consumer protection laws, with Cambodia aiming to enact its consumer protection law in the near future;
- The launch of the ASEAN Consumer Protection Website in 2012 (www.aseanconsumer.org);
- Notification and information exchange mechanism developed for official and voluntary recalled/ banned products where Member States are able to upload its recalled/ banned products in real time through the ACCP website;
- Publication of a set of 24 policy digests on various consumer topics, a set of six modules on specific consumer protection areas, and a set of public awareness models and guidelines;
- Convening of 2 ASEAN Consumer Protection Conferences; and
- Adoption of the ASEAN High-Level Principles on Consumer Protection in 2017.

The [ASEAN Consumer website](http://www.aseanconsumer.org), launched in 2012, serves as the main reference point for matters pertaining to consumer protection issues including the provision of information on:

- AMS focal points for handling cross-border complaints;
- Notifications on recalled/banned products;
- Consumer protection legislations of AMS; and
- Other information such as publications and workshop materials.

The ASEAN Strategic Action Plan on Consumer Protection (ASAPCP) 2016-2025

The AMS are committed to develop a dynamic, people-centered AEC that generates prosperity for consumers and business; to build consumer confidence in fair and transparent ASEAN markets; and to achieve this by working along and together with national consumer administrations and consumer organizations.

The ASEAN Strategic Action Plan for Consumer Protection 2016-2025 (ASAPCP)², based on the strategic measures in the AEC Blueprint 2025, charts the course of the ASEAN Committee on Consumer Protection (ACCP)'s work and contains the following strategic goals and initiatives:

1. Establish a Common ASEAN Consumer Protection Framework through higher levels of consumer protection legislation, improve enforcement and monitoring of consumer protection legislations through peer reviews, and make available redress mechanisms, including alternative dispute resolution mechanisms;
2. Promote a higher level of consumer empowerment and knowledge by addressing consumer concerns and strengthening consumer associations as well as enhancing consumer knowledge and advocacy;
3. Build higher consumer confidence and cross-border commercial transactions by strengthening product safety enforcement, addressing cross-border complaints through online dispute resolution, and promotion of sustainable consumption;
4. Encourage consumer-related matters in ASEAN policies through impact assessment of consumer protection policies and development of knowledge-based policies; and
5. Promote consumer protection measures in products and services sectors such as finance, e-commerce, air transport, energy, and telecommunications.³

Compared to the AEC Blueprint 2015⁴, the ASAPCP 2016-2025 has shifted and deepened its priorities to focus on pressing issues to strengthen the institutional framework to effectively enforce consumer protection laws, promote consumer and business empowerment and confidence, strengthen regional cooperation to address cross-border consumer issues and integrate consumer protection provisions into the work plans of other ASEAN sectoral bodies. The ASAPCP 2025 aims to ensure a common protection framework to enable ASEAN consumers to receive the relevant protection and fair treatment, reduce gaps in the implementation of consumer protection across the ASEAN region, and enhance the technical capabilities of officials, especially in the younger jurisdictions. Various initiatives under the ASAPCP 2025 once delivered, would help ASEAN to have in place effective consumer protection systems, in accordance with international norms and standards and taken into account technology developments.

² The ASAPCP 2016-2025 is downloadable from <<http://asean.org/storage/2012/05/ASAPCP-UPLOADING-11Nov16-Final.pdf>>

³ See <<http://www.aseanconsumer.org/accp/index.php?r=portal/article&id=53>>

⁴ The AEC Blueprint 2015 is downloadable from <<http://asean.org/wp-content/uploads/archive/5187-10.pdf>>

ASEAN High-Level Principles on Consumer Protection

The first initiative under Strategic Goal 1 of the ASAPCP 2025 proposes the adoption of a Set of High-level Principles on Consumer Protection in ASEAN, as the first step towards building a Common ASEAN Consumer Protection Framework.

The ASEAN High-Level Principles (AHLP) are intended to support AMS in their efforts to improve consumer protection as ASEAN launches the AEC. They provide the direction for a broad framework on consumer protection for ASEAN. They also provide a consistent context for ASEAN laws and arrangements and, in so doing, promote a common base level of cooperation and exchange of experiences and best practices. The Principles also have the purposes of:

- Setting benchmarks on key aspects of consumer protection;
- Address legislative and information gaps as a basis for the modernization of consumer protection legislation;
- Provide an agreed set of criteria for peer reviews and peer learning that enhances regional cooperation and convergence in policy.

The AHLP thus constitute a broad framework of sound practices relevant to all ASEAN Member States. Broad applicability of the high-level principles, however, does not mean a one-size-fits-all approach to consumer protection. Application of these principles should be proportionate to the level of development and tailored to the scale and scope of its markets and consumer interests over the course of the ASAPCP 2025 and beyond.

ASEAN High-Level Principles:

1) Principle 1 – Enforcement of Consumer Protection Laws are Fair, Consistent, Effective and Proportionate

This principle calls for the adoption of up-to-date, comprehensive and flexible consumer protection legislations in all AMSs, which should deal with all current and emerging consumer problems. AMS should ensure that consumer protection agencies are equipped with the legal powers, necessary skills and competencies to implement the laws in accordance with best practice criteria. Risk-based methodologies should be utilised by consumer protection agencies at best to direct resources where they can have the maximum impact.

2) Principle 2 – Consumers are Equipped with the Skills, Knowledge, Information and Confidence to Exercise their Rights

In addition to ensuring that consumers are provided with comprehensible, accurate and relevant product information, there is a need to raise the awareness of individual consumers about their rights under existing consumer legislations by enhancing advocacy work of key stakeholders. The relevant agencies and consumer associations should also provide consumers with as much information as possible on their rights and responsibilities and how they can seek redress.

3) Principle 3 – Consumers are Protected from Harmful Goods and Services

Ensuring consumers' access to safe goods and services should be a collective effort of governments, businesses and consumers. Governments should adopt appropriate measures, including laws and safety regulations to ensure that products are safe for consumption and use. Governments and businesses should apply and actively comply with the national and international standards in order to ensure the safety of consumers in

relation to the use of products. They should be pro-active and undertake the necessary actions to provide redress and remove harmful products from circulation. Consumers should be made knowledgeable with regards to recognizing hazardous products.

4) *Principle 4 – Consumers Have Access to Appropriate and Convenient Sources of Advice and Redress including Alternative Dispute Resolution (ADR)*

It is essential that consumers have access to information to enable them to make informed choices and ready access to affordable and easy-to-use dispute resolution arrangements. This principle calls for AMS to establish in-house complaints and redress systems by businesses, national consumer complaint centres by consumer associations, small claim courts, and online dispute resolution (ODR) mechanisms *inter alia*; as well as to provide for adequate administrative penalties to act as deterrent against violations of consumer protection legislations.

5) *Principle 5 – Consumers Understand the Impact of Consumption Decisions on the Shared Environment*

Informed consumers have an essential role in promoting consumption that is environmentally, economically and socially sustainable, including through the effects of their choices on producers. AMS should promote better understanding of such impacts through the development and implementation of policies for sustainable consumption and the integration of those policies with other public policies. It is also essential that AMS act proactively to help consumers understand the environmental impacts of their purchasing decisions and protect consumers from misleading information.

6) *Principle 6 – Strong Consumer Advocacy is Promoted*

The consumer voice should be heard by governments and consumer representation must be effective. Governments should seek consumer views before decisions are taken on relevant industrial, trade and social policy issues. They should ensure that the development of consumer policies is based on sound evidence and should put additional resources into research and regularly poll consumers directly.

7) *Principle 7 – High Levels of Cooperation between Different Levels of Government and with Business and Other Stakeholders*

This principle calls for AMS to adopt, at the national level, a general consumer protection policy and strategy as well as planning. This can then feed down to planning at the individual organisation level with each part of the consumer protection system understanding its role and what it can contribute overall. Only with a more ‘joined-up’ approach within the governments, it would be possible to interact in a meaningful way with non-governmental bodies and the business community; and with counterparts across the ASEAN region.

8) *Principle 8 – Consumers in E-commerce are Protected*

This principle calls for AMS to conduct regular reviews of existing consumer protection laws and practices to determine amendments or additional subsidiary legislations needed to be implemented to provide effective protection to consumers on electronic commerce. Consumers should be informed about potential security and privacy challenges they may face in e-commerce and m-commerce and the measures which can be used to limit the risks. Specialized dispute resolution mechanisms should be established, including on-line mechanisms, to handle cross-border transactions and provide the consumers with fair outcomes.

Part 3 – Consumer Protection in the ASEAN Member States

BRUNEI DARUSSALAM

Laws and Regulations

The principal law for consumer protection in Brunei Darussalam is the Consumer Protection (Fair Trading) Order, 2011 (CPFTO), which was passed in November 2011 and came into effect since 1 January 2012.

Scope and Coverage

The CPFTO protects consumers against any unfair practices by sellers, such as:

- Deceiving or misleading consumers; e.g. hidden fees and surcharges, manipulation of measurement units, using small print to conceal terms and conditions in giving discounts, etc;
- Making false claims; e.g. claiming a second hand good as a new/ unused; and
- Taking advantage of consumer who is not in position to protect his own interest or is not reasonably able to understand the transaction.

The CPFTO applies to all businesses or consumers residing in Brunei Darussalam; or business-to-consumer (B2C) transactions which are made in or sent from Brunei Darussalam.

Definition of Consumer

According to the CPFTO, a consumer is a person who purchases goods/services for personal consumption and not for commercial purposes.

Consumer Rights and Responsibilities

Any consumer who has entered into a consumer transaction involving an unfair practice has the right to commence an action in a court of competent jurisdiction against the supplier. The right to commence such an action shall not apply where

- the amount of the claim exceeds a prescribed limit; or
- 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 a prescribed limit.

Product Safety and Liability

Brunei does not have a specific statute/legislation on product safety and liability.

Some statutes that regulate product safety, as opposed to product liability, in the country include the Medicines Order 2007, the Poisons Act 1956, the Wholesome Meat Order 2011, and the Public Health (Food) Act 2000.

Since Brunei also follows the common law system, as is the case under English law, a purchaser in Brunei may bring a tortious claim against the manufacturer or supplier for negligence where the conduct of the manufacturer or the supplier falls below the standard of care expected at law. Liability is fault-based and is extended not only to the buyer but also to any other end-users who come into contact with the purchased product, i.e. the consumer(s).

Weights and Measures

These issues are regulated under the purview of the Brunei Weights and Measures Act, 1983. This Act is implemented by the Weights and Measures Unit, under the Energy and Industry Department, Prime Minister's Office of Brunei.

This Unit is thus responsible for:

- providing the verification and re-verification services for all weighing and all measuring equipment use for trade purposes in Brunei Darussalam
- promoting awareness to the consumers, traders and general public on the use of accurate and reliable weight and measurements intended to be used in trade
- addressing and resolve consumers and traders grievances related to weight & measures

Unfair Practices and Unfair Contract Terms

The CPFTO listed 20 specific unfair practices under its Second Schedule.⁵

Unfair contract terms are generally regulated under the Brunei Unfair Contract Terms Act, 1999. However, the CPFTO considers it an unfair practice to take 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.

Misleading Advertisements

With regards to advertisements, the CPFTO consider it an unfair practice to make 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.

Direct Selling/Pyramid Marketing

This is not regulated under Brunei law.

Sectoral Issues

Phone, Internet Services and E-Commerce

Matters related to telecommunications services, Internet services and E-commerce in Brunei are regulated by the Ministry of Communications <<http://www.mincom.gov.bn>> and the Authority for Info-Communications Technology Industry (AITI) of Brunei Darussalam <<https://www.aiti.gov.bn>>.

Some relevant legislations include the Brunei Broadcasting Act 2000, the Internet Code of Practice Notification 2001, the Computer Misuse Order 2000, the AITI Order 2001, the Telecommunications Order 2001, and the Electronic Transactions Act 2001 (amended in 2008).

Consumer Credit and Banking

Various laws and regulations are already in place in Brunei Darussalam in relation to consumer credit and banking, including hire & purchase, loans and credit card, money lending and pawn broking. Interest rates are regulated through various legal instruments and self-regulatory mechanisms by banking institutions. The Government, through the Ministry of Finance <<http://www.mof.gov.bn>>, has published fees and charges imposed by banks in order to increase transparency and enhance public awareness. Additionally, there are measures in the Banking Order 2006 and Islamic Banking Order 2008 that restrict the sharing of credit data amongst credit providers to safeguard consumers' personal data.

⁵ For more information on these practices, see <<http://www.depd.gov.bn/cad%20images/resource/Resources%20%20Specific%20Unfair%20Practices.pdf>>

Healthcare Services

The Ministry of Health <<http://www.moh.gov.bn>> exercises most functions related to health and healthcare services in the country. Relevant laws and regulations include the Poisons Act 1956, the Infectious Diseases Order 2003, the Medicines Order 2007, the Medicines (Licensing, Standard Provisions and Fees) Regulations 2010 and Medicines (Labelling) Regulations 2010, and the Medicines (Labelling) Regulations 2010.

Professional Services

In Brunei Darussalam, the most commonly engaged professionals by consumers are:

- Legal services (regulated by the Attorney General's Chambers <<http://www.agc.gov.bn>> in accordance with the Legal Profession Act 2006)
- Medical and dental services (regulated by Ministry of Health in accordance with the Medical Practitioners and Dentists Act 1984)

The aforementioned laws, along with relevant codes of conduct, regulate the conducts of medical and legal professionals, and the advertising of their services.

Transport Services

The Civil Aviation Order, 2006 is the prescribed law that regulates civil aviation services within Brunei airspace. The Order is implemented by the Department of Civil Aviation, under the Ministry of Communications <<http://www.mincom.gov.bn/dca/Theme/Home.aspx>>. There is, however, no specific agency established to handle consumer complaints in this sector.

Consumer Protection Agencies

The enforcement agency responsible for consumer protection in Brunei Darussalam is the Competition and Consumer Affairs Department (CCAD), formerly known as the Price Control Division, under the Department of Economic Planning and Development (JPKE), Prime Minister's Office <<http://www.depd.gov.bn/cad/Home.aspx>>.

The CCAD is responsible for implementing the CPFTO and also the Price Control Act, 2002 of Brunei. Its main functions include:

- Handling consumer complaints within the scope of the two aforementioned laws;
- Raising consumer awareness and promoting consumer education in Brunei through various media and business engagement;
- Compilation of price data on select essential goods for publication;
- Business compliance inspection and enforcement (vis-a-vis the Price Control Act); and
- Setting maximum price of the 4 controlled items and 13 categories of essential food items during festive seasons.

Consumer Organisations and Associations

There is currently no consumer organisation or association in Brunei Darussalam.

Redress

In Brunei Darussalam, an aggrieved consumer encountering unfair practices has to first approach the seller with supporting documents, such as receipts, to explain the problem and try to negotiate for a satisfactory outcome. In case that does not work, the aggrieved consumer can then file a complaint and seek compensations through the following channels:

- The CCAD

- Small Claims Tribunal

The CCAD handles general consumer complaints relating to civil redress and business-to-consumer complaints/claims where those complaints can be channelled in-person or

- via telephone
- via email or websites
- via fax
- via post
- via complaints form

There is no fee involved for submitting a complaint to the CCAD.

The Small Claims Tribunal in Brunei is established in accordance with the Small Claims Tribunal Order, 2006. The Small Claims Tribunal have the authority to hear cases brought by consumers under the CPFTC and will decide if manufacturers or sellers have been found to have engaged in an unfair practice. The Small Claims Tribunal can award several different remedies, including:

- Ordering restitution of any money given by the consumer;
- Awarding the consumer damages in the amount that the consumer has suffered;
- Making an order of specific performance against the manufacturers or sellers;
- Making an order directing manufacturers or sellers to repair goods; and
- Making an order to change the contract between the consumer and manufacturers or sellers.

Parties who are not domicile or resident in Brunei can be brought within the jurisdiction of the Brunei courts if the sale contract was performed in Brunei or the breach of contract or relevant laws and regulations occurred in Brunei.

Legal costs are recovered by winning parties before the Brunei courts and the successful parties can hope to recover approximately 60 percent of their legal fees and all of their disbursements, so long as they have been incurred reasonably.

CAMBODIA

Laws and Regulations

Till date, Cambodia does not have a comprehensive legislation on consumer protection yet. Such a law, however, is being drafted and the Government of Cambodia is making every effort possible to enact the same at the earliest possible.

The closest that Cambodia has to a general consumer protection law is its Law on the Management of Quality and Safety of Products, 2000 (LMQSP).

Scope and Coverage

The LMQSP provides an administrative framework for the Cambodian Government to inspect and prevent the production of hazardous products and the provision of hazardous services.

It applies to all commercial enterprises; all manufacturers for commercial ends; importers, exporters and merchants; service providers; advertisers of products, goods, and services; civic associations and non-governmental agencies engaged in manufacturing, commerce or humanitarian relief.

The LMQSP covers issues such as consumer rights and business obligations; quality label and creation procedures; commercial fraud repression; actions against products or services which are likely to induce grave or imminent dangers; inspection procedures for quality and safety of products, goods and services; and relevant offences.

Definition of Consumer

There is currently no formal definition of a consumer in Cambodia laws yet, even though this term is repeatedly used in the LMQSP.

Consumer Rights and Responsibilities

The LMQSP mentions the following rights of consumers in Cambodia:

- Right to safety; and
- Right to information (to be provided with accurate information about the composition or configuration of products, goods or services to avoid confusion)

Product Safety and Liability

The LMQSP imposes criminal and administrative liabilities upon producers, retailers, inspectors and service providers for their manufacturing and commercialisation of products, goods and services which could be harmful to the health or safety of consumers.

When goods and services could harm the health or safety of consumers, the manufacturers and persons who commercialise those goods and services are required to submit a declaration and obtain an authorisation from the competent agencies prior to the commencement of such activities. The competent authorities could also issue an order to the manufacturers, sellers or service providers to take necessary measures to ensure the relevant quality and safety requirements are met. These measures may include warnings and other precautionary measures as well as the recall of defective products for modification or a partial or total refund of the purchase price.

Besides, the Civil Code of Cambodia provides that the sources of liability include contract, unilateral acts, acts of management of affairs without mandate, act of unjust enrichment,

tortious acts, or as provided for by law. A consumer who claims to have been injured by a product, or who otherwise suffered loss or damage, can commence an action at a court of law seeking compensation to enforce a contract or to hold the producer, seller or owner of a product causing injury, loss or damage liable in tort.

Misleading Advertisements

The LMQSP prohibits all forms of commercial advertising if they are deceitful, misleading, or false, or likely to cause confusion on the quality and safety of products, goods and services when they pertain to the following:

- Expected effects of the products;
- Identity, type, nature, place of origin, physical or nutritional quality, contents, quantity, manufacturing methods, and date of production;
- Expiry date, usage guidelines and terms;
- Methods of sale, product availability and prices; and
- Other warranties.

Sectoral Issues

Phone, Internet Services and E-Commerce

The Law on Telecommunications, promulgated by the Royal Decree No.NS/RKM/1215/017 dated 17 December 2015, is considered the most comprehensive legal instrument supervising the telecom sector in Cambodia. This law:

- defines the authorities of the Ministry of Post and Telecommunication,
- establishes and sets duties of the Telecom Regulator Cambodia
- classifies different types of authorization, certificate and licenses
- sets the supervision on the use of infrastructure and network, the fees, the fair competition and the protection of the consumers.

Consumers of telecommunications services have the following basic rights:

- rights to enjoy quality telecom services, and to receive information about telecom services;
- right to security and safety while using telecom services, including protection of private information;
- right to participate in any public consultation on the preparation of policy or regulation in the sector;
- right to redress and obtain compensation on damages caused by the telecom operators or service providers; and
- right to establish telecom consumer association.

The Ministry of Posts and Telecommunications <<http://www.mptc.gov.kh/>> and the Telecommunication Regulator of Cambodia <<https://www.trc.gov.kh>> are responsible for implementing this law, as well as all consumer protection issues within the telecom sector.

Consumer Credit and Banking

The main piece of legislation for this sector in Cambodia is the Law on Banking and Financial Institutions 1999, but it has only a few provisions related to consumer protection. It empowers the supervisory authority to define, after having consulted the profession, a corpus

of rules of good conduct aimed at ensuring customer protection, including transparency, openness and the level of charges and remuneration for banking or financial services.

The Prakas on Utilization and Protection of Credit Information (2006) establishes a process for banks to share negative credit information as part of a government sponsored framework known as CIS (Credit Information System). The system is currently inactive, but the wording of the prakas has been interpreted by lenders to preclude the sharing of personal credit information other than the negative information provided for under this system.

The National Bank of Cambodia <<https://www.nbc.org.kh>> is the sector regulator and as such carries several responsibilities under *the* Law on Banking and Financial Institutions 1999. There is, however, no provision for the establishment of any banking ombudsman or tribunal to hear consumer complaints.

Healthcare Services

The Law on the Management of Pharmaceuticals, 1996 of Cambodia makes it an offence for a person to produce, import, export or trade poor quality or counterfeit pharmaceutical products that affect the health or life of the consumers, or pharmaceuticals containing addictive substances without authorisation.

The Ministry of Health of Cambodia is the implementing agency for all laws and regulations on health and healthcare services in Cambodia. The Ministry has no website as of date.

Professional Services

The Law on the Management of Private Medical, Paramedical and Medical Aide, 2000 is deemed to address the problem of unregistered private medical practitioners providing unqualified services to the public in Cambodia. It requires that any person practising as a medic, paramedic or medical aide must hold a degree recognised by the Ministry of Health, and be registered with the relevant medical professional association. This law is also implemented by the Ministry of Health.

Legal services were partly regulated under the Law on Bar Statutes 1995, which is implemented by the Ministry of Justice <<http://www.moj.gov.kh/>>.

Consumer Protection Agencies

The governmental focal point for consumer protection matters in Cambodia currently is the Cambodia Import Export Inspection and Fraud Repression Directorate-General (CAMCONTROL), under the Ministry of Commerce.

CAMCONTROL is responsible for:

- Ensuring the quality and safety of products and services for the protection of consumers' health and safety;
- Ensuring the protection of consumers' economic interests;
- Ensuring the compliance of the regulatory requirements related to trade; and
- Providing the service of commercial inspection as third party.

Consumer Organisations and Associations

There is currently no consumer organisation or association in Cambodia yet.

Redress

Currently, consumers in Cambodia can only take legal action for tort or other actions to enforce their rights in courts.

INDONESIA

Laws and Regulations

The principal law for consumer protection in Indonesia is the Law No. 8 of 1999 on Consumer Protection (hereinafter referred to as “Law No. 8”). It came into effect on April 20, 2000.

Scope and Coverage

The Law No. 8 aims at protecting the rights of and promoting the recourses available to, users of both goods and services in Indonesia.

It consists of detailed provisions on *inter alia* the rights and obligations of consumers; the rights and obligations of the entrepreneurs; prohibitions imposed on the entrepreneurs; provision to include ‘standard clauses’; the establishment, structure and functions of the national consumer protection agency; the role of non-governmental consumer foundations; settlement of disputes between consumers and entrepreneurs; the establishment, composition and functions of consumer dispute settlement bodies; and sanctions for violations.

Definition of Consumer

A consumer is defined as an individual user of goods and/or services available in the society, consuming/purchasing goods and/or services for the benefit of themselves, family members, other people, and other living creatures and not for trading.

Consumer Rights and Responsibilities

The Law No. 8 recognises and protects the following rights of the consumers:

- to obtain comfort, security and safety in using or consuming the goods and/or service (*right to safety*)
- to choose and obtain the goods and/or services with the promised conversion value and condition and warranty (*right to choose*)
- to obtain correct, clear and honest information on the condition and warranty of the goods and/or services (*right to information*)
- to be heard in expressing opinion and complaints on the goods and/or services they use or consume (*right to be heard*)
- to obtain proper advocacy, protection and settlement in the consumer’s protection dispute (*right to representation*)
- to obtain consumer’s training and education (*right to education*)
- to receive proper and honest and nondiscriminatory treatment or service
- to obtain compensation, redress and/or substitution, if the goods and/or services received are not in accord with the agreement or not received as requested (*right to redress*); and
- to obtain rights as regulated in the other provisions of the law.

Similarly, the Law clearly prescribes the following obligations of the consumers:

- to read or follow the information instructions and application or usage procedures of the goods and/or services for security and safety;

- to act in good faith in conducting the transaction of purchasing the goods and/or services;
- to pay for the price in accordance with the agreed conversing on value; and
- to follow the proper legal settlement of consumer's protection dispute.

Product Safety and Liability

According to the Law No. 8, the producer or manufacturer of the products will be held liable for the products except if they are imported into Indonesia by an independent importer. Further, the law stipulates that a business actor, e.g. the manufacturer/importer that sells goods to other business actors, e.g. retailers/sellers, will be responsible for consumer claims and/or compensation if:

- That other business actor is selling the goods to the consumer without making any changes to the goods; or
- That other business actor, in a sale or purchase transaction, does not have knowledge of the changes to the goods made by the business actor, or the goods and/or services are not in accordance with the sample, quality and composition originally stated.

Every consumer who has suffered damage may file charges against entrepreneurs through the Consumer Dispute Settlement Body ('BPSK') or through a judicial process at the relevant District Court. The law also recognises class actions by a group of consumers who can demonstrate that they have suffered serious losses and have common interests in the same action.

The burden of proof of fault and compensation is theoretically reversed and the entrepreneur, not the end consumer, bears the burden of proof.

The Law also allows entrepreneurs to recall their products from the market. If a product is defective, polluted, violates applicable standards or is fraudulently marketed, the producer or distributor must recall the product.

Other than the Law No. 8, the Law No. 7/1996 on Food specifies legal provisions related to food safety, quality and nutrition, labelling and advertisement in Indonesia.

Standards

Under the Law No. 20/2014 on Standardization and Conformity Assessment, product safety standards (whether of goods or services) in Indonesia are determined by the National Standardization Agency of Indonesia (BSN). There are currently 10,320 Indonesian National Standards (SNI). SNIs are essentially voluntary. However, if the SNIs are related to safety, security, public health or environmental conservation and/or economic considerations, the Government could partially or entirely enforce certain technical specifications and/or parameters of the relevant SNIs.

Unfair Practices and Misleading Advertisements

Certain practices are deemed unfair and thus prohibited by the Law No. 8. These include, among others, the following:

- Producing goods or providing services which: (i) do not conform to standards or laws, label statements, actual measurements, described or guaranteed quality, composition, efficacy or description, or promised or advertised benefits; (ii) do not mention the expiration date or period of best use of the goods; (iii) are not "halal" when they are stated to be so; (iv) do not give certain specified details about the goods (e.g. name, size, weight, use directions, side effects, etc.) in the Indonesian language (if required)

by law); or (v) in the case of goods, are damaged or flawed without specifying such condition.

- Offering, promoting or advertising goods or services falsely as if they: (i) had discounts, special prices or certain characteristics, had obtained or had sponsors, certain profits or certain working characteristics or accessories; (ii) were available, did not contain a hidden flaw, hailed from certain areas, were complementary to other goods or denigrated other goods; (iii) were harmless or without side effects or promised certain things when, in fact, this was not the case.
- Offering, promoting, advertising or making incorrect or misleading statements about: (i) the price or usefulness of, or the condition/right/compensation regarding, particular goods or services; and (ii) offered discounts, attractive prizes or the hazards of using the goods or services.
- In sales or auctions, cheating or misleading customers by: (i) stating that goods or services fulfilled certain quality standards or had no hidden flaws; (ii) not intending to sell the goods or services offered but rather other goods or services; (iii) raising prices or fees prior to conducting the sale.
- Offering, promoting or advertising goods or services: (i) stating that goods or services fulfilled certain quality standards or had no hidden flaws; (ii) by offering free prizes if these are not so awarded as promised.

In addition to the above prohibited activities, the Law No. 8 also forbids or regulates certain actions relating to the following areas:

- advertising agents producing misleading, incorrect or exploitative advertisements;
- the offer, promotion or advertising of medicines, food supplements, health equipment or health services by promising certain prizes;
- offering goods or services intended to be traded with prizes given through a lottery;
- offering goods or services by advance order; and
- coercion or other sales methods which may be disturbing to consumers.

Unfair Contract Terms

"Standard clauses" which are imposed unilaterally upon a consumer in a document or agreement are prohibited if they contain certain provisions or try to transfer the liability of the business agent.

Any standard clause must be clearly printed, easy to see and easy to understand. Standard clauses breaching the Law must be amended, although no time period for this is given.

Sectoral Issues

Phone, Internet Services and E-Commerce

The major legislations related to consumer protection issues in this sector in Indonesia are the Telecommunications Law No. 36/1999 and the Information and Electronic Transaction Law No. 11/2008. Indonesia also has a Consumer Protection Guidelines for ICT which stipulates that:

- Solicitations includes advertising and billing shall include clear, conspicuous and accurate disclosure of applicable rates, terms and conditions for each service offered in the solicitation, bills to reflect all charges briefly and clearly; and

- Consumers shall have the right to select their providers and services, where multiple options exist.

The Guidelines also states that the privacy of consumers shall be respected regarding their personal information and calling patterns.

The specific agencies responsible for implementing the aforementioned legislations and guidelines and as such consumer protection in this sector are the Indonesian Telecommunications Regulatory Authority <<http://brti.or.id/>> and the Ministry of Communication and Information Technology.

Consumer Credit and Banking

The Ministry of Finance <<https://www.kemenkeu.go.id/en>> and the Bank of Indonesia <<http://www.bi.go.id/>> are the primary regulatory authorities in the banking and finance sector in the country. The Banking Mediation Bureau, which is part of BI, is the designated agency for consumers to seek redress.

Healthcare Services

The Law No. 23/1992 concerning Health provides consumers in Indonesia with the rights to:

- Information
- Make informed consent
- Confidentiality and privacy; and
- Second opinion

The Law No. 36/2009 on Health, which is an improvement of the Health Law No. 23/1992, specifies various provisions related to the rights of individual/citizen in health, among others include access to safe, good, and affordable healthcare services, healthy environment, and information.

The Law No. 44/2009 on Hospitals (Hospital Law) contains several provisions on the rights and obligations of patients, hospital management, and health practitioners, including criminal and civil sanctions.

The National Drugs Policy (2006) is put in place to ensure the availability, safety, and affordability of drugs, especially essential drugs, apart from research and development, monitoring and evaluation in Indonesia. The Policy includes provisions on the protection of consumers from the misuse of drugs, rational use of drugs, as well as financing, availability and distribution, affordability, selection of essential drugs.

The Ministry of Health <<http://www.depkes.go.id/>> is the key agency in charge of handling specific areas on health and healthcare services in Indonesia. The National Agency for Drug and Food Control <<http://www.pom.go.id/>> is the key agency in implementing food and medicines related laws.

Professional Services

In Indonesia, three types of professional services are often sought by consumers:

- Medical services
- Notary services for housing and land; and
- Legal services

The Law No. 2g/2004 on Medical Practices of Indonesia regulates medical practitioners and their services, providing for specific rights and obligations of patients and medical

practitioners which are enforced through the Indonesian Honorary Board of Medical Disciplines under the Indonesian Medical Council.

Consumers expectation related to professional services from doctors include:

- Reliability: doctors should have the capacity to provide services as described in effective and satisfactory manner
- Responsiveness: doctors should have the capacity to provide unprejudiced assistance and services, regardless of race, religion, or economic background
- Assurance: of quality, safety, and security
- Empathy: doctors should have the capacity to communicate and understand consumer needs.

The Law No. 18/2003 concerning Advocates was the first advocate law enacted in Indonesia, which regulates the qualifications for and practices of advocates. Indonesian advocates are also subject to various codes of conducts, with serious ethical and legal obligations to their clients. Advocates' duties to clients include, among others:

- Presenting a peaceful workable resolution
- Maintaining the confidentiality of all matters informed by a client, even after advocate-client relationship comes to an end.
- Should oblige to refuse cases that lack legal ground;
- Not providing misleading information to a client in respect of the case.
- Not promising any guarantee for successful outcome to a client.
- Not imposing on client with a burden of unnecessary expenses and costs.

The Ministry of Health <<http://www.depkes.go.id/>> is the key agency in charge of all matters related to medical professional services; while the Ministry of Justice and Human Rights <<https://www.kemenkumham.go.id/>> is the key agency in charge of matters related to legal professional services in Indonesia.

Transport Services

The Indonesian Aviation Law (Law No. 1 of 2009 on Aviation) is the specific sectoral law that governs civil aviation matters in Indonesia. However, any claims against an air carrier may also be subject to the Indonesian Civil Code, particularly the provision concerning unlawful acts (tort).

In accordance with the provisions of this law, passengers or the owners of cargo being carried on an aircraft have the right to receive compensation for damages resulting from:

- death of passengers on air transportation;
- death of passengers boarding or disembarking an aircraft at an airport;
- permanent injuries owing to an aircraft accident;
- injuries and hospitalisation owing to an aircraft accident;
- missing, destroyed or damaged listed luggage; and
- missing or destroyed cargo.

Recently, the Minister of Transportation issued the Regulation No. 89/2015 regarding Flight Delay Management on Scheduled Commercial Air Transport Business Entities in Indonesia. This regulation sets out a new obligation that airlines must inform passengers if there is any flight delay along with its reasons. Such information must be provided at least 45 minutes

before the scheduled departure or once the airline realizes the possibility of such delay, such as in the event of delay caused by weather factors.

Consumer Protection Agencies

The national consumer protection agency in Indonesia, established in accordance with the Law No. 8, is the Directorate of Consumer Empowerment under the Directorate General of Consumer Protection & Trade Compliance, Ministry of Trade of Indonesia. The Directorate is responsible for both policy-making, law enforcement, consumer education and awareness-raising as well as receiving consumer complaints.

Consumer Organisations and Associations

The Law No. 8 recognises the role of non-governmental consumer protection foundations with regards to promoting consumer education and awareness, providing counsels to consumers, receiving and settling consumer complaints as well as general cooperation with governmental agencies on consumer protection in Indonesia.

There are three registered consumer organisations in Indonesia, who are also members of Consumers International:

- Indonesia Consumer Association (YLKI) <<https://ylki.or.id/>>
- Institute For Consumer Development and Protection (LP2K) <<http://siswaspk.kemendag.go.id/lpksm/41>>
- Yogyakarta Consumer Institute (LKY) <<http://lembagakonsumen.org/>>

Redress

The Law No. 8 establishes that any consumer who has suffered from damages, or a group of consumers having common interests, may file charges against the entrepreneurs through the relevant agencies responsible for settling disputes between consumers and entrepreneurs or through a court of law having jurisdiction.

Disputes between consumers and entrepreneurs could be settled outside the court if the involved parties could reach an agreement regarding the type and amount of compensation and/or regarding certain measures that must be taken to ensure that no such damages should occur again to the consumers. Settlement of disputes in court must be in accordance with court procedures.

The Law provides for the establishment of Consumer Dispute Settlement Bodies (BPSK - Badan Penyelesaian Sengketa Konsumen) by the government at district levels for the purpose of settling consumer disputes out of court. The decisions of the BPSK have binding effects and could be enforced by the district courts at the jurisdiction of the consumers who have suffered damages. Similarly, these decisions could be appealed to the relevant district courts and then to the Supreme Court of Indonesia.

The BSPKs are also authorised to impose administrative sanctions on the entrepreneurs who have violated relevant provisions of the Law.

LAO PDR

Laws and Regulations

A Consumer Protection Law was passed by the National Assembly of Lao PDR in June 2010, and promulgated by the country's President in September 2010. The Law, consisting of 9 parts and 74 articles, is the first of its kind in this area in Lao. Prior to its promulgation, consumer protection works in the country were quite negligent and fragmented across different laws, policies, regulations and institutions.

Scope and Coverage

The Law applies to all individuals and legal entities including domestic and foreign organizations which produce, import, sell, and distribute goods and services, which are licensed and have registered their business entities; and the consumers in the territory of Lao PDR. For those suppliers that not registered, their business activities are governed by other laws of the country.

The Law covers such issues as consumer rights and responsibilities, rights and obligations of suppliers, different types of consumer protection, advertising, labelling and contracts, implementation of consumer protection activities, government agency for consumer protection and non-governmental consumer organisations, settlement of disputes between consumers and suppliers, prohibitions and applicable sanctions, etc.

Definition of Consumer

According to the Law, a consumer is an individual, legal entity or organization who buys or uses goods and service properly without profit-making purpose.

Consumer Rights and Responsibilities

The Lao consumers, according to Article 32 of the Law, have five (05) out of the eight (08) globally-recognised rights: (i) the right to choose, (ii) the right to information, (iii) the right to safety, (iv) the right to redress or remedy, and (v) the right to be heard (specifically with regards to the manufacturing of counterfeit products, and polluting production activities – which in a way could also be understood as containing some elements of ‘the right to a healthy environment’).

In addition, Lao consumers have the following responsibilities:

- To pay for goods and services in Lao currency (LAK);
- To use the goods and services in accordance with instructions or manuals properly;
- To report on the goods and services that are below standards and quality to the relevant competent agencies.

Product Safety and Liability

Under the Law on Food 2013 of Lao PDR, any business operator that is licensed to conduct any food related business must follow the provisions of the law and the food safety standard set by the Food and Drug Department under the Ministry of Health <http://www.fdd.gov.la/index_en.php>.

The Law on Drugs and Medical Products 2011 provides that drugs and medical products supplied in the Lao PDR must be of good quality, be safe, meet the acceptable standards, be properly labelled with their international common medical name and be validly registered in the Lao PDR. It also provides that all drug or medical product advertisements must be approved by the Ministry of Health.

Article 10 of the Consumer Protection Law states that protection for the consumers of goods consists of the imposition of measures to ensure that consumers use quality and standard goods and that the goods pose no risk of harm to the life, health, property, rights and interests of consumers and the environment. Consumers have the right to sue suppliers and claim for compensation and remedies for any loss or injury caused by the consumption or use of goods that are of poor quality, below the acceptable standard, and unsafe for consumption and use. Any business operator, who produces, imports, sells and distributes goods and services of poor quality, and/or below the acceptable standard, must be liable for any loss or damage suffered by the consumer of the goods and services (Article 70).

Suppliers must promptly inform consumers and relevant competent agencies about any risks to the life and health of consumers during consumption of goods and services; propose appropriate measures to be taken; and bear the costs of examining, re-testing and warning. (Article 17)

Misleading Advertisements

According to the Law on Consumer Protection, all advertisements in Lao PDR must be conducted in accordance with the following principles:

- the context of advertisement must be correct, presenting the truth on the category, type, characteristics, quality of the goods, trademarks and services;
- sufficient information about the goods and services must be provided;
- the advertisement shall not satirize, and look down the goods and services of others.

Sectoral Issues

Phone, Internet Services and E-Commerce

In Lao PDR, the following Laws are in place to ensure quality of service provided by telephone and Internet Service Providers:

- Law on Telecommunication, 2011
- Law on Information and Communication Technology, 2016
- Decision on the Interconnection of Telecommunication, 2016
- Decision on the Quality of Phone and Internet Connectivity, 2016
- Decision on the Fee Charge on Phone and Internet, 2011
- Electronic Transactions Law, 2013
- Law on Cyber Crimes, 2015

The Ministry of Post and Telecommunication (MPT) <<http://www.mpt.gov.la/>> is the policy-making body for the telecommunication sector in Lao PDR. The Lao Telecommunication Regulatory Authority under the MPT is the sector regulator, being responsible for resolving the complaints of telecommunication users and service providers on the quality, technical standards, service charges of telecommunication services and other relevant complaints.

E-commerce, on the other hand, falls under the purview of the Ministry of Science and Technology <<https://www.most.gov.la/>>, in accordance with the provisions of the Electronic Transactions Law 2013.

Consumer Credit and Banking

The main legal instrument for regulating consumer credit and banking issues in Lao PDR is the Law on Commercial Banks 2006.

Accordingly, commercial banks shall undertake to protect the interests of depositors/consumers by:

- Being members of the depositors' protection fund;
- Creating conditions to facilitate customers to deposit or withdraw their money, including principal and interest, completely and in a timely manner;
- Keeping information relating to the accounts of customers confidential, except as otherwise provided in the laws; and
- Giving notice of rates of interest on deposits, rates of service fees, and exchange rates by various means *inter alia*.

The Bank of Lao PDR <<https://www.bol.gov.la/>> is the central bank, with licensing, supervision, and prudential regulatory powers over all financial institutions in the country including microfinance institutions.

Consumer Protection Agencies

According to the Consumer Protection Law, the State organisations for the implementation of the consumer protection activities from the central to local levels in Lao PDR comprised mainly of four (04) sectors: Industry and Commerce, Public Health, Agriculture and Forestry, and Science and Technology, which fall under the responsibilities of four (04) corresponding ministries: Ministry of Industry and Commerce (MOIC), Ministry of Health, Ministry of Agriculture and Forestry, and the Ministry of Science and Technology.

The four sectors are categorised as follows:

- Industry and Commerce: the manufacturing, marketing and pricing of goods and services
- Health: foods and medicines, medical equipment and services in health treatment
- Forestry and Agriculture: the production process of agricultural products, fertilizers, chemical substances used in agriculture, pesticide, animal medicines, foods for animal, agricultural products, seeds, animal species, agricultural equipment and machinery
- Science and Technology: quality, standards, measurement, weight, and intellectual property rights

The relevant Ministries would be responsible for organising and implementing consumer protection activities within their sector from the central to local level, including the issuance of implementing rules and regulations, decisions and notices; inspection; and dispute settlement; etc. Amongst the four agencies, the MOIC would play the coordinating role, though no coordination mechanism or model is specified by the law yet.

Consumer Organisations and Associations

The Law also provides for the role and duties, rights and obligations of consumer associations, though no such association has been successfully established in Lao PDR till date.

Redress

Dispute settlement between consumers and suppliers of goods and services are stipulated in Part V of the Law. There are basically four methods for settling disputes between consumers and suppliers as follows:

- reconciliation (or direct negotiation) between consumers and suppliers,

- mediation (which could be conducted by an arbitrator, a mediation unit set up by the State agency for consumer protection, or a consumer association),
- through administrative procedures conducted by the State organisations for consumer protection (district-level agencies would have jurisdiction over claims worth below one hundred million LAK, while claims worth more than one hundred million LAK would fall under the jurisdiction of provincial-level agencies)
- through court proceedings.

Any consumer who suffers loss or damage caused by the consumption or use of goods and services may notify and request the supplier to provide compensation or other remedies. The supplier must reply within three days from the date it receives the notice or request, and propose solution to the consumer within seven days from that date.

Any consumer who files a petition to the consumer protection agencies or the relevant ministries must provide evidence which proves (i) the purchase of goods and services, and (ii) a violation by the supplier.

The State consumer protection agency has the power to order the supplier to remedy and compensate the damage or loss suffered by the consumer.

MALAYSIA

Laws and Regulations

The principal law for consumer protection in Malaysia is the Consumer Protection Act (CPA) 1999. The CPA is said to drive the establishment of various consumer protection mechanisms in Malaysia, and to bridge gaps that may occur in other major laws, which may be inadequate in protecting consumers.

The CPA has undergone several amendments since its enactment to cover various emerging issues relating to consumers, including the inclusion of E-commerce and unfair contract terms until the most recent amendment on 26 April 2017 related to the inclusion of credit sale agreements of goods under the purview of the Act.

Scope and Coverage

The CPA applies to all consumer transactions in Malaysia, i.e. transactions related to goods and services that are offered or supplied to one or more consumers in trade including any trade transaction conducted through electronic means.

As mentioned, the CPA, through many rounds of amendments, is a very comprehensive piece of legislation, covering almost every aspects of consumer protection; ranging from misleading and deceptive conducts, false representation and unfair practices; safety of goods and services; unfair contract terms; guarantees in respect of the supply of goods and services; and product liability; to the establishment, structure and functions of the National Consumer Advisory Council; the Committee on Advertisement; the Tribunals for Consumer Claims; and other matters related to enforcement, offences, remedies, compensation, etc.

Definition of Consumer

The CPA defines a consumer to be a person who acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purpose, use or consumption.

Any person who acquire or use the goods or services, or hold himself out as acquiring or using the goods or services, primarily for the purpose of resupplying them in trade; or consuming them in the course of a manufacturing process; or in the case of goods, repairing or treating, in trade, other goods or fixtures on land, is not considered as a consumer.

Consumer Rights and Responsibilities

Though not clearly mentioned, under different provisions, the CPA in Malaysia recognises the following fundamental rights of the consumers:

- Right to safety (General safety requirement for goods, prohibition against unsafe goods and services)
- Right to information (to be provided with information about unsafe goods and services)
- Right to choose (consumers' options of refund and replacement); and
- Right to redress (consumers' rights against suppliers of goods and services, manufacturers, etc)

Product Safety and Liability

The CPA provides for general safety requirements to ensure the safety of consumers, prohibiting any goods which are not reasonably safe having regard to all the circumstances, including the manner in which, and the purposes for which, the goods are being or will be marketed, the get-up of the goods, the use of any mark in relation to the goods; and instructions or warnings in respect of the keeping, use or consumption of the goods. (Section

21) Section 32 of the CPA further provides that, where goods are supplied to a consumer, there is an implied guarantee that the goods are of acceptable quality.

According to Section 67(1) of the CPA, a ‘defect’ exists if the safety of the product is not such as a person is generally entitled to expect. The CPA, however, does not impose liability on every person connected with the defective products. Where any damage is caused wholly or partly by a defect in a product, only the producer, the brand-owner and the importer shall be liable for damage. In respect of death, personal injury and damage to property caused by a defective product, a plaintiff only has to prove the causal link between his damage and the defect in order to be successful in a product liability claim.

In addition, the Food Act 1983 and its Food Regulations 1985 under the Ministry of Health <<http://www.moh.gov.my>> is also an important law that protects consumers in Malaysia against unsafe food, which also carries specific provisions on labelling and nutrition. The Poison Act 1952 and Poison Regulations 1952 regulate the import, transport, storage, and labelling of poisons to be used for industry, agriculture or horticulture that prohibit storing of poisonous substances on a shelf or near food. It also regulates labelling of dispensed medicine (Section 12).

The advancement of modern biotechnology, including genetically modified organisms, and its potential impact on the safety of consumers’ health and environment is also being addressed through the Biosafety Act 2007 under the Ministry of Science, Technology and Innovation (MOSTI) <<https://www.mosti.gov.my/>>.

Unfair Practices and Unfair Contract Terms

Unfair practices are mentioned by the CPA but are not clearly explained.

On the other hand, the CPA clearly defines an unfair contract term as a term in a consumer contract which, with regard to all the circumstances, causes a significant imbalance in the rights and obligations of the parties arising under the contract to the detriment of the consumer. (Section 24a(c))

Furthermore, a contract or a term of a contract is *procedurally* unfair if it has resulted in an unjust advantage to the supplier or unjust disadvantage to the consumer on account of the conduct of the supplier or the manner in which or circumstances under which the contract or the term of the contract has been entered into or has been arrived at by the consumer and supplier. A contract or a term of a contract is *substantively* unfair if the contract or the term of the contract is in itself harsh; or is oppressive; or is unconscionable; or excludes or restricts liability for negligence; or excludes or restricts liability for breach of express or implied terms of the contract without adequate justification.

If a contract or a term of a contract excludes or restricts liability, or excludes rights, duties and liabilities, it is for the supplier relying on such exclusion or restriction to prove that it is not without adequate justification. If a contract or a term of a contract is deemed procedurally or substantively unfair by the court, the court may declare the contract or the term of the contract as unenforceable or void.

Misleading and Deceptive Conduct, False Representation

The CPA defines “false”, “misleading” or “deceptive”, in relation to conduct, representation or practice as conduct, representation or practice which is capable of leading a consumer into error. It goes on to prohibit all misleading conducts, false or misleading representation, false or misleading representations with regards to land and price, bait advertising and other similar conducts.

Sectoral Issues

Phone, Internet Services and E-Commerce

Relevant legislations for this sector include the Digital Signature Act 1997, which provides an avenue for secure online transactions through the use of digital signatures, the Computer Crimes Act 1997, the Communications and Multimedia Act 1998 and the Personal Data Protection Act.

The Communications and Multimedia Act (CMA) 1998, for example, has provisions on matters related to the consumer code, including model procedures to reasonably meet consumer requirements, the handling of customer complaints and disputes, including an inexpensive arbitration process other than a court, and procedures for the compensation of customers in case of a breach of a consumer code, and/or the protection of consumer information.

The Personal Data Protection Act 2009 regulates the processing of personal data in commercial transactions. It also provides for an individual's rights and expectation related the usage of his or her private, including prescribed fee for data access or formal request in writing and approval.

The Electronic Commerce Act 2006 provides for legal recognition of electronic messages to fulfil legal requirements and to enable and facilitate commercial transactions through the use of electronic means and matters that protect consumers from illegal e-commerce transactions.

The agencies responsible for implementing these laws are the Ministry of Information, Communication and Culture <<http://www.kkmm.gov.my>>, the Ministry of Domestic Trade, Cooperative and Consumerism <<https://www.kpdnkk.gov.my>>, and the Malaysian Communication & Multimedia Commission <<https://www.mcmc.gov.my/>>.

Consumer Credit and Banking

All banks and financial institutions in Malaysia must be licensed under the Banking and Financial Institutions Act 1989, which specifies provisions on licensing and regulation of banks and financial institutions.

The Hire Purchase Act 1967 regulates hire purchase activities, scheduled payments, rates and default payments, including an implied condition that the goods are of merchantable quality. The Act also states that "merchantable quality" may not be implied where the consumer has examined the goods and found defects, or if the goods are second-hand.

The Moneylenders Act 1951 regulates and controls the money lending business and protects borrowers of monies lent in the course of such business.

The Pawn Brokers Act 1972 regulates and controls the business of pawn broking, the protection of those who pawn valuables and pledges pawned in the course of such business.

The agencies responsible for issues related to consumer credit and banking in Malaysia are the Central Bank of Malaysia <<http://www.bnm.gov.my/>> and the Ministry of Urban Wellbeing, Housing and Local Government <<http://www.kpkt.gov.my/>>.

Healthcare Services

In general, Malaysia has also put in place several laws and regulations to regulate its healthcare industry, including the:

- Medicine Act (Advertising and Sales 1956);
- Private Hospitals Act 1971;

- Telemedicine Act 1997 (Act 564);
- Private Healthcare Facilities and Services Act 1998;
 - Private Healthcare Facilities and Services (Private Medical Clinic or Private Dental Clinics) Regulations 2006; and
- Sale of Drugs Act 1952
 - Control of Drugs and Cosmetic Regulations 1984.

The agencies responsible for implementing these laws and regulations and protecting the consumers' interests with regards to healthcare services in Malaysia include Malaysian Medical Council <<http://www.mmc.gov.my/>>, the National Pharmaceutical Regulatory Agency <<http://npra.moh.gov.my/>>, the National Pharmaceutical Control Bureau (NPCB) and the Medical Services Unit under the Ministry of Health.

Professional Services

The Medical Act 1971 governs the medical profession in Malaysia, under which the Malaysian Medical Council (MMC) has been established to protect consumers and outline the code of conduct for medical practitioners. The MMC has disciplinary jurisdiction over all practitioners registered under this Act, and can exercise disciplinary jurisdiction over any registered person who has been convicted in Malaysia or elsewhere of any offence related to fraud or misrepresentation.

There are four main categories of 'Infamous Conduct' for which a complaint against a registered medical practitioner can be inquired into:

- Neglect or disregard of professional responsibilities;
- Abuse of professional privileges and skills;
- Conduct derogatory to the reputation of the medical profession; and
- Advertising, canvassing and related professional offences.

With regard to charges, medical practitioners are encouraged to price their fees reasonably and this should be discussed with the patient prior to investigation or treatment, while adhering to the Schedule of Fees published by the Malaysian Medical Association <<https://www.mma.org.my/>>.

Transport Services

The main pieces of legislation in relation to civil aviation in Malaysia include the Civil Aviation Act 1969, the subsidiary legislation made there under (i.e., the Civil Aviation Regulations 2016), the Malaysian Aviation Commission Act 2015 (the MACA), which came into force on 1 March 2016, and the Civil Aviation Authority of Malaysia Act 2017.

With the establishment of the Malaysian Aviation Commission (MAVCOM) <<https://www.mavcom.my/>>, the area of civil aviation is now under the joint purview of MAVCOM and the Department of Civil Aviation (DCA), both of which are under the supervision of the Ministry of Transport.

The functions of MAVCOM as set out in Section 17 of the MACA are to:

- regulate economic matters relating to the civil aviation industry; and
- provide a mechanism for the protection of consumers; *inter alia*.

Consumers could make direct complaints to MAVCOM for any claims related to the aviation industry.

Consumer Protection Agencies

The government agency which is primarily responsible for policy-making and law enforcement on consumer protection in Malaysia is the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) <<https://www.kpdnkk.gov.my>>. The MDTCC is also responsible for receiving consumer complaints and acts as a secretariat to the National Consumer Advisory Council (NCAC) – an institution established by the Minister of Domestic Trade to advise him on any relevant consumer issues and the implementation of the CPA.

Consumer Organisations and Associations

The most notable non-governmental institution on consumer protection in Malaysia is probably the Federation of Malaysian Consumers Associations (FOMCA) <<http://www.fomca.org.my>>. It is the umbrella body for 13 consumer associations in Malaysia, and a member of Consumers International since the year 1975.

Most consumer organisations and association in Malaysia would have dispute settlement services (through mediation, and arbitration) for its members and non-members, in addition to other advocacy and campaign activities, as well as general consumer research, education and awareness raising.

Redress

Before the establishment of the Tribunal for Consumer Claims (TCC), all disputes between a consumer and a supplier and/or manufacturer, if could not be solved amicably, had to be brought before a civil court, which was often costly and time-consuming. The CPA establishes the Tribunal for Consumer Claims with the primary function of hearing and determining claims lodged by consumers under the CPA.

The tribunal has jurisdiction to hear and determine any claim in respect of any matter within its jurisdiction provided under the CPA where the total amount claimed does not exceed twenty five thousand ringgit. A consumer therefore can lodge a claim with the tribunal claiming for any loss suffered on any matter concerning their interests as a consumer arising from any of the guarantees implied by the CPA, any express guarantees, the safety of goods and services, and misleading and false representation or unfair practices.

Aggrieved consumers can also lodge a complaint with the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) through telephone, website, letters and walk-in to its Consumer Complaint Management Centre (CCMC).

A third institution in this regard is the National Consumers Complaints Centre (NCCC). The NCCC handles national and cross-border complaints without any charge. It is an independent alternative dispute resolution body in Malaysia. The NCCC receives consumer complaints through various channels such as telephone, walk in, e-mail, messaging system, e-complaint, letters and fax. Currently, the NCCC receives complaints on more than 25 industrial sectors. The complainant needs to follow a certain format to fill up the particulars of the complaint. Online complaints are encouraged as it is able to capture the important information about the complainant. The NCCC primarily acts as a mediator between complainants and respondents. The role of NCCC for complaints handling is, however, limited to cases with claims of not more than 15,000 ringgit. Any claims of more than this amount are referred to the TCC.

MYANMAR

Laws and Regulations

Enacted on March 14, 2014, the Law on Consumer Protection of the Republic of the Union of Myanmar is the first law comprehensively addressing consumer issues in the country. An amendment to this law, however, is being considered by the Parliament to incorporate more specific provisions on product safety and liability, so as to better protect the consumers of Myanmar.

Scope and Coverage

The Law is divided into 12 Chapters and 31 Sections and covers the following aspects:

- Definition of ‘consumer’ (Section 2(a)) and ‘entrepreneur’ (Section 2(g))
- The rights and duties of the consumers (Section 6)
- Rights and duties of the entrepreneurs (Section 7)
- Weight and measurement matters as related to consumer protection under Section 8(c)
- Standardisation and inspection for product safety and quality – Section 8(f),(g),(h) and Section 28
- False, unfair and misleading indications and advertisement under Section 8 (a),(b),(e), (i), (j) and (Section 9-12, 14)
- Harassment (Section 13)
- National Consumer Protection Agency: The establishment of a Central Committee on Consumer Protection, its functions and duties (Section 4&5)
- Redress mechanism: The establishment of consumer dispute settlement bodies at different levels and how they would operate (Section 16 to 18), The right to take action of the Consumer Dispute Settlement Bodies (Section 19)
- Dispute settlement procedures, offences and penalties (Section 20 to 26); and
- Role of consumer protection association (non-governmental organisations) under Section 30

Definition of Consumer

A consumer, as defined by the Law, is a person who takes or uses goods or services not for trading.

Consumer Rights and Responsibilities

According to the Law, any consumer in Myanmar would have the following fundamental rights:

- right to safety,
- right to choose,
- right to information,
- right to redress, and
- right to fair treatment

Furthermore, the consumers would have the following responsibilities:

- complying with the information and guideline related to goods or services intended and expressed to ensure safety;
- complying with the decisions of the Consumer Dispute Settlement Bodies regarding the settlement of consumer disputes;
- avoiding false accusation intended to cause detriments to entrepreneurs;
- avoiding any act of saying, writing and acting in order to cause detriments to relevant entrepreneurs by mean of media or by other mean while the relevant person is settling the consumer disputes.

Product Safety and Liability

There are many government ministries and private sector organisations that monitor and implement specific product safety measures in Myanmar. Under the aegis of the Ministry of Commerce, the Consumer Protection Law also seeks generally to secure safe products and services. The Law imposes prison sentences on those who break the law, for instance acts of misleading and deceiving consumers by selling or providing goods or services while stating incorrectly that these goods and services meet the prescribed standard and quality. Section 6 of the Law obliges suppliers to provide safe goods and services, in that consumers have rights to guarantees given by the entrepreneurs and to receive full and correct information on the goods and services purchased.

Anyone who sells unsafe and low quality goods, or expired goods to consumers will be punished with imprisonment for a term not exceeding 3 years or with fine not exceeding 5 million Kyats or with both. Section 24 of the law also provides that a consumer has the right to sue under civil litigation, even if the convicted has served his or her jail sentence or fine or both.

Furthermore, in Myanmar, the National Food Law 1997 (amended in 2013), the National Drug Law 1992 (amended in 2014), and the Traditional Drug Law 1996 (amended in 2014) are the key legislations relating to product safety and liability for foods and drugs.

In order to monitor the safety of food, drugs and cosmetics, the Department of Food and Drug Administration (FDA) <<http://www.fdamyanmar.gov.mm>> was formed under the Ministry of Health and Sports.

There are also other government ministries and agencies such as the Ministry of Agriculture, Livestock and Irrigation, the Ministry of Industry, the Ministry of Natural Resources and Environmental Conservation, the Ministry of Education, and City Development Committees, etc. which are responsible for ensuring product safety in their relevant sectors/localities.

Unfair Practices and Misleading Advertisements

The Consumer Protection Law provides a detailed definition of fraud, which means an act which is not in good faith of wrong statement or incorrect advertisement with the intention to mislead the consumer related to goods or services, and/or an act done dishonestly to lead the public to have wrongful belief of the natural quality, manufacturing process, activity process, characteristic, specified standard, intention or quantity relating to goods or services.

The law thus prohibits various unfair practices or frauds, which are meant to deceive or mislead the consumers with regards to different characteristics and aspects of the goods and services produced, provided and traded. The law also prohibits some specific types of advertising conducts, which were meant to mislead consumers. (Section 9, Section 11-14). In particular, the law holds the entrepreneur or advertiser liable to the consequences of his or her own advertisement.

Unfair Contract Terms

Unfair contract terms in Myanmar are regulated under the Contract Act 1872. Accordingly, contracts and agreements that are entered into not by consent of both parties but by ‘coercion’, ‘undue influence’, ‘fraud’, ‘misrepresentation’, and ‘mistake’, would be unlawful and thus ‘void’ (Section 14-22).

Sectoral Issues

Phone, Internet Services and E-Commerce

The main pieces of legislation relevant to this sector are the Telecommunications Law 2013 and the Electronic Transaction Law 2004 (amended in 2014). The Ministry of Communications and Information Technology (MCIT) is the State agency responsible for implementing these laws.

Consumer Credit and Banking

The relevant legislations for this sector are the Financial Institutions Law 2016 and Central Bank of Myanmar Law 2013. The Central Bank of Myanmar (CBM) <<http://www.cbm.gov.mm/>> remains the regulator and is given the powers to regulate and supervise banks and other financial institutions; while the Ministry of Planning and Finance <http://www.mof.gov.mm> retains only policy-making powers.

Healthcare Services

Private healthcare institutions including private clinics, private hospitals, private nursing house etc. in Myanmar are presently regulated under the Private Healthcare Services Law 2007 (as amended in 2013).

The Ministry of Health and Sports <https://www.mohs.gov.mm> regulates the operations of private healthcare services providers in terms of licensing them, inspecting and monitoring whether they follow the prescribed conditions or not, and giving guidance to the relevant personnel to follow the prescribed standard with a view to maintaining the quality of private health care services and ensuring the safety and welfare of patients.

Professional Services

Legislations relevant to professional services in Myanmar include the Myanmar Medical Council Law 2000, the Traditional Medical Council Law 2000 (amended in 2013), the Teeth and Mouth Medical Council Law 2011, the Bar Council Act 1929 and the Legal Practitioners Act 1880.

According to the Myanmar Medical Council Law 2000, the Council is responsible for issuing licenses for medical treatment, licenses for pharmacists, registration certificates for doctors while monitoring the doctors to check whether they follow the ethics of doctors or not and investigating and taking actions as necessary against those who fail to follow such ethics upon reporting such practice.

According to the Traditional Medical Council Law 2000, the Council issues registration certificates, stipulates the code of conduct and discipline to be abided by traditional medical practitioners, and takes action against traditional medical practitioners who have violated the code of conduct and discipline.

According to the Teeth and Mouth Medical Council Law 2011, the Council is responsible for issuing registration certificates and licenses for medical treatment for dental and oral medical practitioners, supervising the registered dental and oral practitioners, investigating and

inspecting dental and oral medical practitioners to check whether they fail to follow ethics or not and takes actions against them as necessary.

Consumer Protection Agencies

The national designated agency for consumer protection, according to the Consumer Protection Law, is the Consumer Protection Central Committee, which comprises of the Union Minister of the Ministry of Commerce as Chairman, the Deputy Ministers from the respective Ministries, the Heads from respective government departments and organisations, the representatives from the non-government organisations and experts as members and persons assigned duty by the Chairman as Secretary and Joint-Secretary (Section 4).

According to the Law, the Central Committee is responsible for: policy formulation; conducting surveys; issuing notifications, orders, directives and notifications as necessary in accordance with the Consumer Protection Law; settling consumer complaints; informing the relevant departments and organisations about the prohibition of goods that are not fit for consumption – forming standardisation experts groups and laboratories for product testing in coordination with the Ministry of Education; and receiving and hearing appeal cases on administrative penalties passed by the Consumer Dispute Settlement Bodies.

As of date, the Central Committee has been established in accordance with the Union Cabinet's Executive Order No. 38/2014, 112/2016, and 15/2017.

The Department of Consumer Affairs under the Ministry of Commerce serves as some sort of a secretariat to the Central Committee.

The Law also provides for the establishment of Consumer Dispute Settlement Bodies at State, Regional and District levels, by the orders of the Central Committee (Section 16). Regional or State Consumer Dispute Settlement Bodies are responsible for conducting field visits and market inspection activities, investigating complaints, mediating and conciliating consumer disputes, imposing administrative penalties upon finding infringements of the law, and taking actions in accordance with the Consumer Protection Law and other relevant existing laws while working in coordination with relevant government Ministries.

In addition, the Central Committee also established the Product Safety Working Committee and the Consumer Complaint Working Committee under Regional and State Consumer Dispute Settlement Bodies.

Consumer Organisations and Associations

A non-governmental organisation working to protect the consumer interests, Myanmar Consumers' Union (MCU) <<http://www.myanmarconsumersunion.org/en/home/>>, was formed in November 2012 with 15 Executive Committee members from different professional backgrounds such as medical, legal, educational, agricultural, engineering, chemical, and economic and so on. The MCU's Organisational Registration has been granted by the Ministry of Home Affairs in June 2017, and the organisation is now awaiting response from Consumers International (CI) on its membership application.

Redress

According to the Consumer Protection Law, any consumer in Myanmar would have the right to have their disputes (related to goods and services used by the consumer him/herself) heard and settled, to be protected and obtain correct settlement for their loss. [Section 6(a)(iv)]

Accordingly, consumers suffering from loss during their consumption of goods and services should lodge a complaint with the relevant Consumer Dispute Settlement Bodies for examining, passing appropriate decisions and taking actions (Section 17 to 19), or send their

complaint to the Consumer Information and Complaint Center, which would examine the same and send the complaint to the Consumer Dispute Settlement Bodies if relevant.

Once a consumer complaint is received, the dispute settlement process would be as follows:

- The Consumer Dispute Settlement Bodies accept and examine consumer complaints (made in writing or orally) on issues relating to the relevant goods or services
- The Consumer Dispute Settlement Bodies examine the entrepreneur who is accused of violation
- The Consumer Dispute Settlement Bodies examine the person who knows the consumer dispute, eye-witnesses and experts
- The Consumer Dispute Settlement Bodies examine and assess the documents required in inquiry and other exhibits
- The Consumer Dispute Settlement Bodies examine and decide whether or not there is loss at consumer's side
- The Consumer Dispute Settlement Bodies mediate and conciliate consumer disputes
- The Consumer Dispute Settlement Bodies report to the higher authorities if the case is found to violate the existing laws or an agreement could not be reached after being settled by means of mediation or conciliation
- The Consumer Dispute Settlement Bodies notify the decision related to consumer protection to the entrepreneur who has been found to violate the existing laws
- The Consumer Dispute Settlement Bodies take appropriate actions upon finding violations contained in Section 8 of the law.

Entrepreneurs found to have infringed the prohibitions of the law, as prescribed from Section 9 to Section 14 (mainly concerned with false, unfair and misleading indications and advertisements) could be punished with imprisonment for a term not exceeding 3 years or with fine not exceeding 5,000,000 Kyats or with both (Section 23).

Additionally, the dispute settlement bodies could take the below given actions if entrepreneurs are found to have infringed Section 7 (b) – concerned with the duties of entrepreneurs and/or Section 8, which is mainly concerned with prohibitions for entrepreneurs with regard to product labelling, safety and quality:

- Warning/Severe Warning
- Remedies
- Prohibiting the sale and distribution of the relevant goods temporarily
- Recall from the market
- Destroying the goods causing danger to consumers
- Coordinating with the relevant Ministries, if required to revoke business licence either temporarily or permanently (Section 19)

Entrepreneurs should prove that they have no intention to mislead under Section 9 of the Law. Those who do not agree with decisions passed under Section 19 could appeal to the Central Committee within 60 days from the day when the concerned decision is passed. Consumers could also sue for injury in accordance with civil litigation procedures once the entrepreneur's violations have been found under Section 23.

PHILIPPINES

Laws and Regulations

The principal law for consumer protection in the Philippines is the Consumer Act, 1992 (Republic Act No. 7394). It came into effect on July 15, 1992. RA 7394 embodies the Philippines' State policy on the protection of consumers and establishes standards of conduct for business and industry in the country. The general objective of the Act is to protect the 'interests of the consumer, promote his general welfare and establish standards of conduct for business and industry'.

Scope and Coverage

RA 7394 covers a wide range of areas:

- Consumer product quality and safety
- Food, drugs, cosmetics and devices
- Hazardous substances
- Deceptive, unfair and unconscionable sales acts and promises
- Weights and measures
- Consumer product service and warranties
- Price tag
- Labelling and packaging
- Liability for product and services
- Consumer credit transactions
- Advertising and sales promotions
- Repair and service firms, and
- Consumer complaints handling

It applies to all consumer products and services and consumer transactions in the Philippines.

"Consumer products and services" means goods, services and credits, debts or obligations which are primarily for personal, family, household or agricultural purposes, which shall include but not limited to, food, drugs, cosmetics and devices.

"Consumer transaction" means a sale, lease, assignment, award by change, or other disposition of consumer products, including chattels that are intended to be affixed to land, or of services, or of any right, title, or interest therein, except securities and contracts of insurance, or grant of provision of credit to a consumer for purposes that are primarily solicitation or promotion by a supplier with respect to a transaction aforementioned.

Definition of Consumer

As explained by RA 7394, "consumer" means a natural person who is a purchaser, lessee, recipient or prospective purchaser, lessee or recipient of consumer products, services or credit.

Consumer Rights and Responsibilities

Although not explicitly mentioned, from the specific objectives of RA 7394, consumers in the Philippines enjoy the following fundamental rights:

- Right to safety ('protection against hazards to health and safety')
- Right to information ('provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer')
- Right to education
- Right to redress; ('provision of adequate rights and means of redress')
- Right to representation ('involvement of consumer representatives in the formulation of social and economic policies')

Product Quality and Safety

According to RA 7394, it is the duty of the State to develop and provide safety and quality standards for consumer products, including performance or use-oriented standards codes of practice and methods of tests. (Article 5) Accordingly, it is unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the Philippines any consumer product which is not in conformity with an applicable consumer product quality or safety standard promulgated in the Act. (Article 18)

The responsibilities for ensuring product quality and safety in the Philippines are shared amongst three governmental agencies:

The Department of Health (DOH) through its Bureau of Food and Drugs (BFAD), now Food and Drug Administration (FDA) <<http://www.fda.gov.ph/>>, establishes standards for processed food, drugs and cosmetics.

The Department of Agriculture (DA) through its Bureau of Agriculture and Fisheries Standards (BAFS) <<http://www.bafps.da.gov.ph/>> develops standards for agriculture and agriculture-related products including fruits and vegetables and grains.

The Department of Trade and Industry (DTI) <<https://www.dti.gov.ph/>> is responsible for developing quality and safety standards with respect to all other consumer products

Liability for Products and Services

In the Philippines, the doctrine of strict liability applies to manufacturers, producers and importers of consumer goods. RA 7394 expressly provides that, "any Filipino or foreign manufacturer, producer and any importer shall be liable for redress, *independently of fault*, for damages caused to consumers by defects resulting from design, manufacture, construction, assembly and erection formulas and handling and making up, presentation or packing of their products, as well as for the insufficient or inadequate information on the use and hazards thereof." (Article 97)

Accordingly, the concept of defect that would give rise to a liability for damages under the Act is relatively broad. RA 7394 also places upon manufacturers, producers and importers the burden of proving that the products they have placed on the market are not defective and imposes liability independent of the existence or absence of fault on the part of such manufacturer, producer or importer.

RA 7394 also similarly provides for strict liability for defective services. A service is consider defective when it does not provide the safety the consumer might rightfully expect of it, taking the relevant circumstances into consideration, including but not limited to the manner in which it is provided, the result of hazards which may reasonably be expected of it, and the time when it was provided.

Unfair Practices

RA 7394 promotes and encourages fair, honest and equitable relations among parties in consumer transactions, and protects the consumer against deceptive, unfair and

unconscionable sales acts or practices. An act or practice is deemed unfair and unconscionable if:

- the producer, manufacturer, distributor, supplier or seller took advantage of the inability of the consumer to reasonably protect his interest because of his inability to understand the language of an agreement, or similar factors; or
- when the consumer transaction was entered into, the price grossly exceeded the price at which similar products or services were readily obtainable in similar transaction by like consumers; or
- when the consumer transaction was entered into, the consumer was unable to receive a substantial benefit from the subject of the transaction; or
- when the consumer transaction was entered into, the seller or supplier was aware that there was no reasonable probability or payment of the obligation in full by the consumer;
- or the transaction that the seller or supplier induced the consumer to enter into was excessively one-sided in favour of the seller or supplier.

Misleading Advertisements

RA 7394 also protects the consumer from misleading advertisement and fraudulent sales and promotion practices.

An advertisement is deemed, under the provisions of RA 7394, to be false, deceptive or misleading if it is misleading in a material respect. Furthermore, no claim can be made in the advertisement which is not contained in the label or approved by the competent agencies already. And no person shall advertise any food, drug, cosmetic, device, or hazardous substance in a manner that in false, impression regarding its character, value, quantity, composition, merit, and safety.

Direct Selling and Pyramid Marketing

In the Philippines, it is prohibited to employ chain distribution plans or pyramid marketing schemes in the sale of consumer products. (Article 53)

Sectoral Issues

Phone, Internet Services and E-Commerce

Two separate laws set the policy framework for telecommunications services and E-commerce in the Philippines: the Public Telecommunications Policy Act of 1995 and the E-Commerce Law of 2000.

The E-Commerce Law, in particular, provides the legal recognition of electronic documents or data messages. It also mandates all government agencies to, among others, transact business and perform functions using electronic documents. The Act also penalises hacking and piracy offenses.

Below are some orders issued related to the E-Commerce Law to specifically protect consumers in the sector:

- JOINT DTI-DOH-DA Administrative Order No. 1 Series of 2008 which prescribes rules and regulations for consumer protection for online transactions that covers both local and foreign-based retailers;
- The Central Bank of the Philippines (BSP) <<http://www.bsp.gov.ph>> issued Circulars No. 269 in 2000 and No. 542 in 2006 which cover electronic banking and safeguard of

customer information, prevention of money laundering and terrorist financing, respectively.

The National Telecommunications Commission (NTC) <<http://ncr.ntc.gov.ph/>> under the Department of Transportation and Communications (DOTC) is the government agency responsible for the supervision, adjudication and control over all telecommunications services throughout the Philippines.

The DTI directs and supervises the promotion and development of electronic commerce in the country with relevant government agencies.

Consumer Credit and Banking

RA 7394 states that the government shall: ‘simplify, clarify and modernize the laws regarding credit transactions and encourage the development of fair and economically sound consumer credit practices.”

Furthermore, the Truth in Lending Act of 1963 requires creditors to furnish borrowers, prior to the consummation of the transaction, a clear statement in writing. This is expected to ensure consumer awareness of the true cost of financial services.

In the Philippines, one of the largest providers of consumer credit is through credit cards. With the proliferation of credit cards, many laws and regulations were promulgated to govern credit card operations in the country, including:

- The Access Devices Regulation Act of 1998, which requires credit card providers to provide information in writing or orally (with regard to annual percentage rate; computation method, fees, and toll-free numbers, etc);
- BSP Circular No. 398 dated 21 August 2003 which promotes the development of consumer credit through innovative products under conditions of fair and sound consumer credit practices; and
- BSP Circular no. 702 series of 2010 which aims to enhance consumer protection in the credit card operations of banks and their subsidiary or affiliate credit card companies.

Consumer Protection Agencies

The National Consumer Affairs Council (NCAC) is the body created by RA 7394 to improve the management, coordination and effectiveness of consumer programs and policies by different government agencies and private organizations. The Council is composed of representatives from the following government and non-government agencies:

- DTI
- Department of Education <<http://www.deped.gov.ph/>>
- DOH
- DA
- 4 consumer organisations of nationwide base
- 2 business/industry sectors

The NCAC performs the following functions:

- Rationalising and coordinating the functions of consumer protection agencies

- Monitoring and evaluating the implementation of consumer programs and projects and taking appropriate steps to comply with the established priorities, standards and guidelines
- Undertaking a continuing program on consumer education and information campaign
- Submitting to Congress and the Office of the President a full report on the progress of the implementation of consumer programs in the Philippines.

The Council is headed and presided by a Chairman who is elected by the members. He sets up, with the concurrence of the Council, the policies, procedures and standards to govern the implementation and interpretation of the functions and duties of the Council.

Amongst all the relevant departments involved in the implementation of RA 7394, the DTI plays the central role. It is also the focal point for the ASEAN Consumer Protection Committee (ACCP).

Consumer Organisations and Associations

A number of consumer organisations have been established in the Philippines, though none of these organisations has been admitted as a member of Consumers International till date. Some notable organisations include:

- The Consumers Union of the Philippines (CUP)
consumersunion.philippines@gmail.com
- Coalition for Consumer Protection and Welfare, Inc.
<http://www.ccpw.org/>
- Nationwide Association of Consumers, Inc.
<http://naciphil.tripod.com/>
- Laban Consyumer, Inc.
<http://labankonsyumer.com>

Redress

Under RA 7394, consumers can seek redress by filing a letter of complaint addressed to the concerned department or government agency. The governmental departments concerned – the DTI, DOH, and the DA – upon petition or receipt of complaint letter from any consumer may each, within their own area of competence, commence an investigation. Upon findings of a *prima facie* violation of any rule or regulation promulgated under their jurisdiction, the departments upon verified complaint may commence formal action against any person who appears responsible. Any civil/criminal action shall be filed with the appropriate regular courts (Municipal Trial Court/Regional Trial Court).

A wide range of penalties may be imposed, even if not requested in the complaint. These include cease-and-desist orders, assurance to recall, replace repair or refund the money value, restitution or rescission of the contract, and the imposition of fines of between PhP500 to 300,000 depending on the gravity of the offence.

Among the implementing agencies of RA 7394, it is the DTI which has the largest network of mechanisms providing consumer redress. It has set up mechanisms in all levels i.e. national, regional and local levels. Consumer complaint can be filed at the DTI provincial offices having jurisdiction over the subject of the complaint. In areas where there are no provincial offices, the complaint shall be filed in the regional offices. In cases where the complainant

and respondent are situated in different provinces, the complainant has the option to choose the place where to file the complaint.

At the national level, DTI maintains a consumer hotline called DTI Direct which accepts, reviews, and resolves consumer queries and complaints.

Notably, in the Philippines, industries that have national presence have started to set up Consumer Welfare Desks (CWDs), as part of the Gold Bagwis Program of the DTI which is a self-policing mechanism in the business sector to resolve consumer complaints. The main objectives of the establishment of CWDs are to forge partnership between the government and the private sector in the promotion of consumer welfare, and set up procedures to systematically and appropriately address consumer complaints.

CWDs in business establishments are manned primarily by the manager/supervisor of the participating stores and should be situated at a strategic place easily located by consumers preferably near the Customer Relations Desk of the stores. In case of dissatisfaction, consumers can always tap the DTI services to resolve the issue.

For disputes involving financial institutions, consumers may contact or personally talk to the manager or officer-in-charge of his/her bank. In cases when complaints are not resolved, consumers may write his/her complaint and send by mail, email, fax or proceed to the BSP.

SINGAPORE

Laws and Regulations

First enacted in 2003 and adapted from the consumer protection laws in various Commonwealth jurisdictions, the Consumer Protection (Fair Trading) Act (CPFTA) is currently the principal legislation on consumer protection in Singapore. The Act has gone through several rounds of amendment, the latest one being in 2016.

Other legislations that are relevant for the implementation of the CPFTA include:

- Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations 2009 relating to direct sales contract, long-term holiday product contract, time share contract or time share related contract.
- Consumer Protection (Motor Vehicle Dealer Deposits) Regulations 2009 relating to deposits for motor vehicle purchases
- Consumer Protection (Fair Trading) (Notifiable Events) Regulations 2016 relating to notifiable events for companies under injunction orders for unfair practices under the CPFTA
- Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations 2009 relating to opt-out practices for goods and services (e.g. goods supplied on a continuing or free-trial basis)
- Consumer Protection (Fair Trading) (Regulated Financial Products and Services) Regulations 2009 relating to financial products and services regulated by the Monetary Authority of Singapore or under the Commodity Trading Act (Cap. 48A)

Scope and Coverage

The CPFTA applies to most consumer transactions, but does not apply to sales of land and houses and employment contracts.

‘Consumer transactions’, as defined by the Act, means 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 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.

The CPFTA aims to protect Singaporean consumers against unfair practices and to give consumers additional rights in respect of goods that do not conform to contract (i.e. lemon law), and for other relevant matters.

It covers the following main issues *inter alia*:

- The meaning of unfair practices
- Consumer’s right to sue for unfair practice
- Jurisdiction and powers of courts
- Right to cancel certain contracts within cancellation period
- Additional consumer rights in respect of non-conforming goods (i.e. lemon law)
- Investigative powers of Competition and Consumer Commission of Singapore; and
- Relevant offences

Definition of Consumer

A consumer, as defined in the CPFTA, means 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.

Consumer Rights and Responsibilities

According to the CPFTA, consumers in Singapore have the following rights:

- Right to commence an action against a supplier to seek redress for an unfair practice relating to a consumer transaction
- Right to cancel certain contracts within specified cancellation period; and
- Other rights in respect of non-conforming goods such as to have the goods repaired or replaced, to have reduction in the amount to be paid, or to rescind the contract with regard to those goods (i.e. lemon law).

Product Safety and Liability

The following legislations are the primary ones that deal with product safety and labelling in Singapore:

- Singapore’s Sale of Food Act (Chapter 283) and Food Regulations, 2017.
- Singapore’s Consumer Protection (Safety Requirements) Regulations (2004 Edition)
- Singapore’s Consumer Protection (Consumer Goods Safety Requirements) Regulations (2011 Edition)

Several governmental agencies in Singapore are responsible for consumer product safety and administering regulations on standards of quality, including:

Product Type	Regulator
Food	Agri-Food and Veterinary Authority of Singapore < http://www.ava.gov.sg/ >
Health products including cosmetic products, medical devices, therapeutic products and , Chinese proprietary medicines	Health Sciences Authority < http://www.hsa.gov.sg/ >
33 categories of household electrical, electronic and gas appliances/accessories classified as “Controlled Goods”	Enterprise Singapore < https://www.enterprisesg.gov.sg/ >
Motor vehicles, motorcycle helmets and children car seats	Land Transport Authority < https://www.lta.gov.sg/ > Traffic Police
Hazardous substances, pesticides and other vector repellants	National Environment Agency (NEA) < http://www.nea.gov.sg/ >

In addition, the “Lemon Law” inserted via the 2012 CPFTA amendments provides consumers in Singapore with effective forms of redress against sellers of non-conforming products. The “Lemon Law” provides for a presumption of non-conformity within the first 6 months after the goods was delivered. In other words, it presumes that goods were defective at the time of sale or delivery, for defects that are detected within 6 months, unless such presumption is incompatible with the nature of the goods or the seller could prove otherwise.

Unfair Practices and Misleading Advertisements

According to the CPFTA, it is an unfair practice for a supplier, in relation to a consumer transaction to do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled; or to make a false claim; or to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer is not in a position to protect his own interests; or is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction.

There are also twenty-four (24) specific unfair practices are listed in the Second Schedule of the CPFTA <[https://sso.agc.gov.sg/Act/CPFTA2003#Sc2->](https://sso.agc.gov.sg/Act/CPFTA2003#Sc2-), including “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.”

Unfair Contract Terms

Unfair contract terms are regulated under the Unfair Contract Terms Act (UCTA) 1994 of Singapore, a body of law designed to primarily protect consumers who may be prejudiced by the weaker bargaining positions they occupy in most consumer transactions.

The UCTA prohibits a person from using a contract term or notice to exclude his own liability for negligent acts causing death or personal injury on another. In contrast, for loss or damage beyond death or personal injury, exclusion clauses are valid insofar as they are reasonable.

In the case of a consumer dealing with a business entity, if the transaction is entered into using the latter's standard form, the UCTA disallows the business from using its standard contractual terms to exclude its own liability for breaches of terms; or exclude or limit its own liability for breaches of terms, or rely on a term to render a different kind of service from that which was reasonably expected of him, or not service at all, unless the standard contractual term is reasonable.

Furthermore, the CPFTA also prohibits any business or person from 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.

Sectoral Issues

Phone, Internet Services and E-Commerce

To ensure quality of service provided by telephone and Internet Service Providers in Singapore, Telecommunications Act on Code of Practice for Competition in the Provision of Telecommunication Services was enacted in 2012.

As regards to e-commerce transactions, Singapore does not have a consumer protection law specifically for e-commerce. However, the CPFTA could also apply to e-commerce transactions.

For personal data protection - the Personal Data Protection Act 2012, administered by the Personal Data Protection Commission <<https://www.pdpc.gov.sg/>> is in place, which applies in conjunction with sector laws that incorporate data protection elements. In the event of any inconsistencies, the sector law will prevail.

In addition, Singapore has also put in place the Electronic Transactions Act and the Electronic Transactions (Certification Authority) Regulations 2010 to ensure a certain level of security and certainty for the use of electronic transactions. These are administered by the

Infocomm Media Development Authority (IMDA) <<https://www.imda.gov.sg/>>. These laws apply equally to e-commerce transactions.

Consumer Credit and Banking

For issues related to consumer credit and banking, the following legislations are relevant:

- Banking (Credit Card and Charge Card) Regulations 2013 (revised edition 2017), issued under Singapore's Banking Act, Revised Edition 2017
- Moneylenders Act, Chapter 188 ,Revised Edition 2010
- Hire Purchase Act, Chapter 125, Revised Edition 2014

Other regulations/ executive orders that are relevant include:

- Personal Data Protection Act (PDPA) covering personal data protection on consumer credit and banking implemented by Personal Data Protection Commission
- Guidelines on standards of conduct for marketing and distribution activities by financial institutions on prohibiting false and misleading advertisements on consumer credit or banking. These guidelines implemented by the Monetary Authority of Singapore (MAS) <<http://www.mas.gov.sg/>> set out the MAS' expectations that the board and senior management of financial institutions are accountable and responsible for ensuring that there are proper controls in place for their financial institution's marketing and distribution activities.
- Association of Banks in Singapore's code of advertising practice which specifies that advertisements should be legal, clear, fair, reasonable and not be misleading.
- Singapore Code of Advertising Practice (SCAP), a voluntary code implemented by the Advertising Standards Authority of Singapore <<https://asas.org.sg/>> where the SCAP states that advertisements should not mislead consumers.
- Section 16 Moneylenders Act, Registrars' Directions on Advertising (issued 31 July 2013) prohibiting false and misleading advertisements on consumer credit or banking where it specifies the minimum information which must be included in advertising and marketing material; and the format and location of such material.

Healthcare Services

Healthcare institutions, namely hospitals (including nursing homes), medical and dental clinics, as well as clinical laboratories, in Singapore are currently regulated under the Private Hospitals and Medical Clinics Act 2007 and its subsidiary legislation.

The Ministry of Health <<https://www.moh.gov.sg>> regulates healthcare institutions, namely hospitals (including nursing homes), medical and dental clinics, as well as clinical laboratories, licensing them and ensuring that they maintain good standards of medical/clinical services, to protect the safety and welfare of patients.

Professional Services

Legislations relevant to professional services in Singapore include:

- Medical Registration Act 1997 (MRA) and relevant subsidiary legislations
- Legal Profession Act 2011 (LPA) and relevant subsidiary legislations

The Singapore Medical Council (SMC) <<http://www.healthprofessionals.gov.sg/>>, a statutory board under the Ministry of Health, maintains the Register of Medical Practitioners in

Singapore, administers the compulsory continuing medical education programme and also governs and regulates the professional conduct and ethics of registered medical practitioners.

The Ministry of Law's Legal Industry Division <<https://www.mlaw.gov.sg>> is responsible for the overall policy, regulatory framework, promotion and strategic development of Singapore's legal services industry.

The Law Society of Singapore <<http://www.lawsociety.org.sg/>> and the Supreme Court oversee the regulation of professional conduct of Singapore lawyers and foreign lawyers.

A Professional Conduct Council chaired by the Chief Justice oversees the enactment of the relevant rules relating to professional conduct matters. This ensures that all Singapore lawyers and foreign lawyers practising law in Singapore are subject to common ethical and professional responsibility standards.

Consumer Protection Agencies

The Ministry of Trade and Industry oversees policy matters relating to the CPFTA, whereas Competition and Consumer Commission of Singapore (CCCS) is the administering agency for the CPFTA.

The legal powers of CCCS under the CPFTA include:

- Power to investigate (Section 12G)
- Power to require documents, articles or information (Section 12H)
- Power to enter premises without warrant (Section 12I)
- Power to enter premises under warrant (Section 12J)
- Power to require evidence as to identity (Section 12L)
- Power to examine, secure attendance, etc (Section 12M)

Consumer Organisations and Associations

Consumers Association of Singapore (CASE), a non-profit, non-governmental organisation provides assistance, advice, and mediation services to consumers, and more importantly, consumer rights education, in order to protect and enhance consumer interests and awareness. CASE is a member of Consumers International.

Redress

Consumers should first seek to resolve the disputes out of court. Consumers may also make a complaint with CASE in relation to the dispute with sellers. Upon receipt of the complaint, CASE may, if deems appropriate, invite the relevant consumer and seller for mediation of the dispute. If the dispute still cannot be settled, the consumer may file a claim in court for civil remedies. Most claims under the CPFTA may be filed in the Small Claims Tribunals <<https://www.statecourts.gov.sg/SmallClaims/Pages/GeneralInformation.aspx>> which deals with disputes involving sums of S\$10,000 and below.

Where a consumer seeks recourse in respect of non-conforming goods under the CPFTA, the court may make an order unconditionally or on such terms as to damages, payment for the goods and otherwise as it thinks just. Hence it is possible that consumers may sue for consequential losses which have resulted from non-conforming goods. The remedies under the CPFTA in respect of non-conforming goods only apply to consumers and not businesses.

Where the consumer's claim involved an unfair practice, the consumer may only commence an action in a court of competent jurisdiction against the supplier where the amount of the

claim does not exceed the prescribed limit of S\$30,000. Under the CPFTA, consumers can claim against the supplier for unfair practice if the supplier, for example, does or says anything, or omits to do or say anything, if as a result, a consumer might reasonably be deceived or misled; or makes a false claim.

For disputes regarding financial products or services, parties may look to the Financial Industries Disputes Resolution Centre Ltd <<http://www.fidrec.com.sg/website/index.html>> as an affordable alternative.

THAILAND

Laws and Regulations

The principal law for consumer protection in Thailand is the Consumer Protection Act 1979 (CPA). The CPA has been revised many times so as to provide the most comprehensive protection possible for consumers in Thailand, the latest being in 2013.

Other laws that are most relevant to consumer protection in Thailand include:

- The ~~Thai~~ Product Liability Act 2008; and
- The Consumer Case Procedure Act 2008; and
- **The Direct Sales and Direct Marketing Act 2002 (as amended in 2017)**

Scope and Coverage

In principle, the CPA provides protection in three different areas: consumer protection on advertising, labelling and contracts. It also provides for a definition of the ‘consumer’; his fundamental rights; the establishment, powers and functions of the Consumer Protection Board; the establishment, powers and functions of the Office of the Consumer Protection Board (OCPB); procedures for appeal regarding consumer disputes; and relevant penalties.

Definition of Consumer

According to the CPA, a consumer means a person who buy or obtains services from a business man or a person who has been offered or invited by a businessman to purchase goods or obtain services, including a person who duly uses good or a person who duly obtains services from a businessman even if he/she is not the person who pays the remuneration.

Consumer Rights and Responsibilities

The CPA recognises the following fundamental rights of all Thai consumers:

- the right to receive correct and sufficient information and description as to the quality of goods or services;
- the right to enjoy freedom in the choice of goods or services;
- the right to expect safety in the use of goods or services;
- the right to receive a fair contract; and
- the right to have the injury considered and compensated.

Product Safety and Liability

For product safety, Section 36(1) of the CPA empowers the OCPB to order testing on any goods which it suspects may be harmful to consumers and, if appropriate, to prohibit the sale of any goods. Therefore, indirectly, the CPA allows for the quality control of thousands of products throughout Thailand.

Other than the CPA, there are also important specific product safety laws in Thailand which are directly related to the daily lives of consumers as follows:

- The Drug Act 1967, whose purpose is to control the production of drugs, the sale of drugs and the import of drugs for sale in Thailand, and to provide regulations on pharmacists who are responsible for the sale of dangerous drugs.
- The Food Act 1979, which aims at promoting consumer safety through controlling the quality and standards of foods as well as their packaging.

The Product Liability Act which came into force in February 2009 aims to protect consumers who incur damage from defective or dangerous products, by imposing strict liability on business operators involved in the manufacturing and/or sale of the products. It addresses manufacturing defects, design defects, and warning defects (or failure to warn). The Act imposes a strict liability standard.

Unfair Practices/Advertising

The CPA prohibits any advertisements which contain statements, including statements related to the origin, condition, quality or description of goods or services as well as the delivery, procurement or use of goods or services, which are unfair to consumers or which may cause adverse effect to the society as a whole.

More specifically, the following statements would be regarded as being unfair to consumers or likely to cause adverse effect to the society as a whole:

- Statement which is false or exaggerated;
- Statement which will cause misunderstanding in the essential elements concerning goods or services,
- Statement which is directly or indirectly encouraging the commission of an unlawful or immoral act, or which adversely affects the national culture; and
- Statement which will cause disunity or adversely affects the unity among the public.

Another notable piece of legislation in this regard is the Act Governing Prices of Goods and Services 1999, which establishes a Central Board Governing Prices of Goods and Services with the authority to prescribe goods and services to be controlled by the Act; fix the sale/purchase prices of controlled goods and services; ensure that there is sufficient supply of goods or services to meet the domestic demand; consider complaints of distress or damage arising from unfair price practices; lay down regulations governing the payment of rewards and money; and prescribe bases, procedures, and conditions regarding the display of goods and services prices.

Unfair Contract Terms

In Thailand, two laws deal with unfair contract terms for consumers: the CPA and the Unfair Contract Term Act 1997.

The CPA empowers the **Committee on Contract** who appointed by the Consumer Protection Board to consider any business using a written contract to be a “contract-controlled” business. The so-called “controlled contract” to which a business operator and a consumer are parties must adhere to the following elements:

- Essential provisions, as determined by the ~~Board~~ **Committee**, whereby without such essential provision the consumer could be in a disadvantaged position compared to the business operator;
- Prohibition from applying unfair terms to the consumer.

In the case any essential or unfair term(s) in a controlled contract is deemed by the ~~Board~~ **Committee** to be excluded but persists therein, the designated unfair terms shall be considered null and void, without prejudice to the rest of the contract.

The main principle of the Unfair Contract Terms Act 1997 is that the Court will examine the terms in a contract by consideration of the good faith of all parties to it, what the parties have done, and the potential negative effects on the parties. Additionally, any term in a contract

between the parties, which is made for excluding or restricting liability before the result has occurred, is void and unenforceable.

Under the Unfair Contract Term Act, a 'consumer' is defined as 'any person entering a contract as buyer, lessee, hire-purchase, borrower, insurance applicant or party to any other type of contract in order to acquire property, service or any other interests with remuneration, provided the transaction is NOT for commercial purposes'.

Sectoral Issues

Phone, Internet Services and E-Commerce

In Thailand, the quality of service provided by telephone and Internet service providers is regulated by the Telecom Business Act 2001. The regulatory agency in charge of the sector is the National Broadcasting and Telecommunication Commission (NBTC) <<https://www.nbtc.go.th>>.

The NBTC requires telecom and Internet service providers to offer services in compliance with standards set by the NBTC. These standards address technical issues, service contracts, tariffs, service charges, as well as protection of consumer rights in the areas of personal data, privacy, and freedom of communication via telecommunication networks. The standards are meant to provide services on a fair and equitable basis for both the licensee and users. During the implementation of these standards, the NBTC (or its predecessor) issued several notifications concerning the protection of service users, which have been published in the Government Gazette of Thailand in order to become effective under various laws. This includes procedures for receiving and considering user complaints, the establishment of the Telecommunications Consumer Protection Bureau <<http://tcp.nbtc.go.th>>, and the 1200 Call Centre, which were implemented to protect the rights of consumers and to enhance their bargaining power and awareness in these areas.

In addition, the NBTC also requires that telecom and Internet service providers establish separate call centres to settle disputes and pursue solutions to user complaints at no additional charge. These centres have been established by operators providing fixed-line, mobile, internet, and payphone services. Thus, service users with issues relating to false tariffs, charges inconsistent with actual usage, services inconsistent with advertisements, or those who wish to terminate their contracts due to poor quality of services or 'unfair' treatment, can now seek assistance in this way.

Consumer Credit and Banking

The main pieces of legislation regulating consumer payment, deposit and lending services in Thailand are the Financial Institutions Act 2008 (FIA), the Bank of Thailand Act 1915 (BOTA), and the Civil and Commercial Code (CCC). The FIA and the BOTA, including subsidiary rules and regulations issued thereunder, generally prescribe the scope of permitted and prohibited activities for service providers providing payment, deposit and lending services to customers, whereas the CCC governs the legal relationship between consumers and service providers in respect of the services provided.

The BOT <<https://www.bot.or.th/English/Pages/default.aspx>> is the main authority in charge of supervising and examining financial institutions (and non-financial institutions in certain cases, e.g., granting personal loans and credit cards). Where financial institutions violate or fail to comply with the FIA, the BOT has the power to take certain action, for example, issuing a warning, demanding compliance with relevant requirements, or ordering the closure of offending institutions.

In January 2012, the Financial Consumer Protection Centre (FCC) was established by the BOT to serve as a one-stop service centre to handle enquiries and complaints regarding financial products and services provided by service providers, as well as to resolve problems, coordinate, and track results of complaints. The FCC generally forwards a consumer's complaint together with its suggestions to the relevant department within the BOT for consideration. Consumers are easily able to file a complaint with or contact the FCC for consultation through several channels (for example, doing so by phone, fax or email, or by visiting the BOT's offices).

Consumer Protection Agencies

The OCPB is the governmental agency that is primarily and directly responsible for the protection of consumers in Thailand, including receiving complaints, mediating and bringing cases to court on behalf of the consumers. The OCPB has its own website that distributes information relating to consumer protection including details of certain unsafe products.

Consumer Organisations and Associations

The Foundation for Consumers (FFC) was established in 1994 as a non-government and non-profit consumer organisation working directly with consumers to do policy and advocacy work in Thailand. Originally, the FFC started as a Coordinating Committee for Primary Health Care to coordinate health groups at the national level (1983). Now it is the main leading consumer organisation in Thailand. It also helped to set up the Confederation of Consumer Organisations (CCOT), a non-governmental and non-profit network organisation comprised of 17 consumer organisations and groups around the country working on issues related to health, gender, agriculture, labour rights.

FFC's consumer magazine called Smart Buyer Magazine is an established bi-monthly magazine with more than 12,000 subscribers. The FFC also established a Complaints and Legal Assistance Center in 1994 in conjunction with its magazine. Relevant complaint cases are then relayed to the mass media, in particular through the weekly one hour television programme called Consumers Assembly.

Redress

In addition to submitting complaints to the OCPB and FFC for dispute settlement as mentioned above, consumers in Thailand could also now file a "consumer case" in the Court of Justice, which performs as a "Consumer Court", in accordance with the provisions of the Consumer Case Procedure Act of 2008.

This Act contains many detailed provisions which aim to simplify and facilitate the procedural aspects of bringing consumer claims and to reduce the burden on consumers. For example, consumers can now file claims orally as well as in writing; consumers are exempted from court fees and other charges in certain circumstances; cases must proceed on a faster basis; the court will take a proactive inquisitional approach; the court is given additional powers to issue protective injunctions; and the Act reverses the legal burden of proof, which now lies with the business operators.

VIETNAM

Laws and Regulations

With the objective of providing a comprehensive framework for the protection of consumer rights in the country, Vietnam's National Assembly passed the Law on Protection of Consumer Rights (commonly referred to as the Consumer Protection Law 2010) on 15 November 2010. This enactment replaced the 1999 Ordinance on Protection of Consumers' Rights, which is deemed too simple and therefore does not work in practice.

The Consumer Protection Law came into effect from 1 July 2011. To guide in the implementation of a number of articles of the law, the Government of Vietnam has issued the Decree No. 99/2011/ND-CP.

Scope and Coverage

This Law regulates the rights and obligations of consumers, the obligations of business individuals and organizations, the obligations of social organizations in protecting the interests of consumers; mechanisms for resolving disputes between consumers and business individuals and organizations, and the responsibilities of the State on the protection of consumers' interests.

It applies to consumers; business individuals and organizations; agencies, organizations or individuals involved in any activities to protect the interests of consumers in the territory of Vietnam.

Definition of Consumer

According to the Law, a consumer is a person who purchases or uses goods and/or services for personal use or use for families or use for organizations.

Consumer Rights and Responsibilities

The Law recognises the following fundamental rights of the consumers:

- Right to safety
- Right to information
- Right to choose
- Right to be heard
- Right to representation
- Right to redress (divided into two specific rights: right to complain and right to be compensated for any loss and damages suffered)
- Right to consumer education (Article 8)

Besides, the Law also recognises the right of consumers in Vietnam to have their personal information kept confidential and protected. (Article 6)

Apart from the rights, consumers in Vietnam have the following obligations according to the law:

- To check carefully before receiving the goods; to select and consume only goods and/or services with clear origin or source, which cause no harm to the environment, which is not contrary to the fine customs and social morals, which do not cause harm to their own lives or health and that of others; and to observe precisely and fully the manual of goods and/or services.
- To inform State agencies, organizations or individuals concerned when detecting goods and/or services circulating in the market which are not safe, which may cause damages or

threaten to cause damages to the life, health and property of consumers; or when detecting behaviours of business individuals and organizations which may infringe upon the legitimate rights or interests of consumers.

Product Safety and Liability

Several legislations have been promulgated to address the issues of product safety and liability in Vietnam, in addition to specific provisions incorporated in the Consumer Protection Law 2010, including inter alia the Law on Quality of Products and Services 2007; and the Law on Food Safety 2010.

The Law on Quality of Products and Services 2007 addresses the quality of goods and services, and the allocation of compensation for defective goods and services amongst producers, importers, sellers, purchasers and consumers. It distinguishes the type of damage to the consumer that shall be compensated and stipulates exceptions where producers, importers and sellers may not have to pay compensation to purchasers and consumers. This law is implemented by the Ministry of Science and Technology of Vietnam (MOST) <<https://www.most.gov.vn>>.

According to Article 3 of this law, ‘The quality of products and services is the level at which the characteristics of a product or service meet requirements for applicable announced standards and corresponding technical specifications.’ Manufacturers are required by this law to issue a notification and cease production if their product is unsafe. A similar obligation applies to importers.

The Law on Food Safety 2010 sets out the rights and obligations of organisations and individuals with respect to food safety in Vietnam; conditions to ensure the safety of manufacturing, doing business in, and importing and exporting food; advertising and labelling food; testing food; analysing threats to food safety; and protecting, preventing and overcoming food safety problems. This law is implemented by the Ministry of Health of Vietnam (MOH) <<http://moh.gov.vn>>.

Under Article 3.13 of the Law on Consumer Protection 2010, defective products are products which fail to ensure the safety of consumers, which endanger their lives or health and could cause loss or damage to their assets. This includes products which meet current technical standards or criteria but the defect was undiscoverable at the time they are supplied to the consumer. Manufacturers and/or importers are liable, at their own cost, for the recall of defective products. The law provides for clear procedures for product recall. However, it is silent on the issue of defective services.

Unfair Practices and Misleading Advertisements

The Consumer Protection Law 2010 does not provide a general definition of unfair practices against consumers. However, it provides for a list of prohibited practices with certain elements of ‘unfairness’, which also includes misleading advertisements:

- Attempt in deceiving or misleading consumers via advertising activities, or hiding or providing information that is incomplete, false or inaccurate about the goods and/or services being provided; or the reputation, business ability, and ability to provide goods and/or services; or the contents and characteristics of transaction with consumers;
- Harassing consumers through the marketing of goods and/or services contrary to the wishes of consumers two or more than two times or other acts that obstruct or affect the normal works or activities of consumers;

- Using force, threatening to use force or other means to cause damage to life, health, honor, prestige, dignity and property of consumers;
- Taking advantage of disadvantaged consumers or taking advantage of natural disasters and diseases to force a trade;
- Conducting trade promotion activities, or suggest transactions directly with a person who have no capacity for civil acts or who have lost their civil act capacity;
- Requiring a consumer to pay for goods or services provided without prior agreement with the consumer;
- Taking advantage of disadvantaged consumers or taking advantage of natural disasters and diseases to provide goods and/or services that does not guarantee quality; *inter alia*.

Unfair Contract Terms

According to the Consumer Protection Law 2010, terms of the contracts concluded with consumers and general trading conditions shall have no effect (*because they are unfair in nature*) in the following cases:

- Where they exclude liability of business individuals and organizations to consumers;
- Where they restrict or exclude the right to complaint and take lawsuits by consumers;
- Where they allow business individuals and organizations to unilaterally change the conditions of the contract agreed in advance with the consumer or the rules and regulations for the sale of good sales or provision of services which apply to consumers when buying and using goods and/or services are not specifically indicated in the contract;
- Where they allow business individuals and organizations to unilaterally declare that the consumer has failed to perform one or more obligations;
- Where they allow business individuals and organizations to set forth or change the price at the time of delivery of goods or provision of services;
- Where they allow business individuals and organizations to explain the contract in case of different interpretation of the terms;
- Where they exclude the liability of business individuals and organizations in cases where the business individuals and organizations sell goods or provides services through a third party;
- Where they force consumers to comply with obligations even if the business individuals and organizations have not fulfilled their obligations; and
- Where they allow business individuals and organizations to transfer rights and obligations to third parties without the consumer's consent.

Sectoral Issues

Phone, Internet Services and E-Commerce

The Law on Telecommunications of 2009 provides the legal basis for regulating the telecom sector in Vietnam, while issues related to information technology and electronic communications are covered under the Information Technology Law of 2006 and the Electronic Communication Law of 2005.

The provision of electronic communication services to consumers is subject to mandatory quality control for certain types of services (for example, telephone services via terrestrial

fixed telecoms networks, telephone services via terrestrial mobile telecoms networks, terrestrial fixed broadband internet access services using xDSL, among others).

In addition, the confidentiality of personal information transmitted via a public telecoms network must be protected. Telecoms enterprises may not disclose personal information about a telecoms service user (including the user's name and address, the number and location of the transmitting or receiving server, times of calls and other personal information supplied by the user when contracting with such enterprise).

The Ministry of Information and Communications (MIC) of Vietnam <<http://english.mic.gov.vn/>> is in charge of the implementation of these laws.

Consumer Credit and Banking

There are two laws that cover the banking sector in the country: the Law on Credit Institutions of 2010, which licenses and regulates banks and financial institutions, and the Law on the State Bank of Vietnam of 2010 which regulates banking activities. The latter replaced the State Banking Act No. 10/2003/QH11.

The State Bank of Vietnam (SBV) <<https://www.sbv.gov.vn/>> is the regulator for all matters related to monetary policies, credit and banking activities in the country.

Healthcare Services

Laws governing healthcare services in Vietnam are all enacted in the years since 2000. They include the Law on Medicines of 2005, the Law on Health Insurance of 2008, and the Law on Medical Examination and Treatment of 2009.

The Law on Health Insurance requires compulsory participation in social health insurance by Vietnamese citizens and stipulates six groups of participants for compulsory social health insurance.

The Law on Medicines regulates conditions for trading drugs. It requires that drugs must be registered with the MOH for circulation in Vietnam. This law also governs the advertising and clinical trials of drugs.

The Law on Medical Examination and Treatment is designed to ensure that all patients receive appropriate and equal treatment. It therefore sets out many stringent requirements for medical practitioners and medical examination and treatment establishments regarding professional qualifications and ethical criteria.

The MOH is responsible for overall State management of the health sector in Vietnam. The Drug Administration of Vietnam (DAV) <<http://www.dav.gov.vn/>> under the MOH manages drug registration, drug quality, business activities relating to drugs, and drug prices. Vietnam Social Security (VSS) <<https://vss.gov.vn/>>, which is an agency under the government, is responsible for the implementation of health insurance policy and management of health insurance funds.

Consumer Protection Agencies

The State agency responsible for implementing the Consumer Protection Law 2010 of Vietnam is the Vietnam Competition and Consumer Authority (VCCA), formerly known as the Vietnam Competition Authority (VCA), under the Ministry of Industry and Trade.

The VCCA is in charge of policy-making and inter-agency coordination in the area of consumer protection. It also receives and mediates complaints from consumers, imposes administrative sanctions on violations of the law, governs standard contracts and general trading conditions, and undertakes consumer education and awareness-raising.

The VCCA maintains a hotline (18006838) through which consumers could submit their complaints and receive specific explanations and counsel from the officials of the VCCA.

The Departments of Industry and Trade (DOITs) at the provinces are responsible for law enforcement on consumer protection at the provincial level.

Consumer Organisations and Associations

The most notable non-governmental consumer organisation in Vietnam is the Vietnam Standards and Consumers Association (VINASTAS), with other provincial consumer organisations locating throughout the country. VINASTAS has contributed significantly to the formulation and promulgation of the Ordinance 1999 as well as the Consumer Protection Law 2010. It is also active in disseminating relevant information to consumers via its magazine “The Consumer”, receiving and mediating consumer complaints and campaigning for consumers in areas such as competition, fair trade, anti fake goods, tobacco control, and energy saving.

Redress

According to the Consumer Protection Law 2010, disputes between consumers and business could be resolved through:

- Negotiation (i.e. direct negotiation between the parties)
- Mediation (usually conducted by the VCCA as well as VINASTAS as part of their complaint-handling functions)
- Arbitration; and
- Court.

Consumers have the right to initiate a lawsuit in accordance with fast track procedures, in addition to normal civil lawsuits filed at the courts, when the following conditions are met in full:

- There is only one plaintiff who is a consumer;
- The transaction is valued up to 100 million Vietnamese dong; and
- The defendant directly supplies goods and services to the consumer.

In civil cases, consumers and consumer organisations are obliged to provide evidence proving the damages to their legitimate rights and interests, but would not have to prove the faults of business individuals and organisations. They will also be exempted from court fees and charges. Business individuals and organisations, on the other hand, shall bear the burden of proof with regard to their innocence.

The Consumer Protection 2010 also provides for another channel for protecting the consumer interests: via administrative actions. Provincial DOITs, upon finding that the consumer interests have been violated, could impose the following sanctions:

- Forcing business individuals and organizations to withdraw and destroy goods or stop supplying goods or services;
- Suspending or suspending temporarily the business activities of the violating organizations or individuals; and
- Forcing business individuals and organizations to eliminate provisions that violate the interests of consumers from the form-based contract, general trading conditions.

Annexes