

AN OVERVIEW OF CONSUMER PROTECTION ACT

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This overview provides a summary of the Consumer Protection Act (Law no. 12/2020 and hereinafter the “Act”), which details the rights, obligations and responsibilities of consumers, traders and service providers.

- Date of ratification: 31 August 2020
- Effective date: 6 months from the Date of Ratification
- Repealed law: Consumer Protection Act (Law no. 1/96)

STANDARD OF GOODS

Ownership

The seller must possess the full ownership and right to sell the goods in question. Further, the rights of another person must not be entailed with the goods sold, and the purchaser must have full discretion to use the goods sold.

Quality of goods

- Goods sold must be in satisfactory condition. This includes it to be fit and safe for the general purpose of its usage, free from any defects, unable to detect any defects upon reasonable inspection and being usable throughout the normal usage period. Further, if the goods are designed for a specific purpose, it should meet the requirements to fulfil the job.
- In determining whether goods are in satisfactory condition, considerations must be drawn on the general features of the goods, the pricing and the compliance with the advertisements of the trader or manufacturer about its specialty, usage, pricing, and any other important features of the sale of goods.

Use of goods

If a good is being used in a circumstance where it is not generally used, using the good in a circumstance where it is actually designed to be used, and if the good is in an acceptable condition, then the good will be considered to be in an acceptable condition.

Defective goods

Goods that does not comply with the standards set by this Act or those which lacks the technical standards or goods in which the best usage period from the date of manufacture has elapsed.

Sale of defective goods

- It is prohibited to sell any defective goods except where the defected goods won't cause any harm to the consumer and where the defects therein have been brought to the consumer's attention.
- However, under any circumstances, food items or any other goods which has a certain date of expiry should not be sold, after the date of expiry.

Notification of defective goods beforehand

If the purchaser was communicated about any existing defects in the goods before the purchase, it should be deemed to be in satisfactory condition.

Display of defective goods

If the defected goods are displayed in a way that can be identifiable by the buyer, including any notices of such defect, it should be assumed that the defect has been communicated to the buyer.

Altered goods

For the sale of any altered, re-conditioned or re-assembled goods that are being sold on the trade mark of the supplier, a notice of such an alteration must be issued with the goods.

Fit for the purpose

- If the goods are bought for a specific purpose, it shall be considered fit for the said purpose, if the purpose of purchase is communicated to the seller by the buyer and if the seller has informed the buyer the likeliness of the good to be fit for that specific purpose.
- However, if the purchaser does not comply with the instructions provided by the seller or where it is impractical to comply with the instructions of the seller, then the goods cannot be classified unfit for the purpose.

Special features and goods to match a sample

- If the goods are sold as to it containing certain features, it must possess those features, including those put on the display as samples. If a sample of the goods is promoted, all the batches of the goods must be similar to the sample.
- The goods sold should not have any defects on its appearance. Any inconsistencies of the goods sold to that of the sample must be communicated with the purchaser, who should also be provided with a chance to ensure and examine the quality of the goods.

Price of the Goods

- The price of the goods sold must be displayed clearly;
 - It would be deemed that the price of the goods is displayed clearly if the price is written on the goods or printed and attached to the goods or the price is displayed where the goods are stacked or if the catalogue of the goods stipulates the current or periodical pricing of the goods.

- If the price of any goods is controlled under any laws, it should not be sold on a price higher than the controlled price. However, in circumstances where the goods are being sold on a contracted price or where it is agreed under a contract to determine the price or where price is determined in a transaction between the purchaser and the seller, it should not be assumed to have been sold beyond the controlled price.

Guarantee by the producer

- Where the seller gives any guarantee to the purchaser, including where the guarantee is given under the producer's guarantee and as long as the guarantee entailed on a document issued by the producer is proven to be valid, it must be complied with by the seller.
- The producer's guarantee is the assertions made by the producer in respect of the following:
 - Quality, operations and appearance of the goods;
 - Service in relation to the goods;
 - Spare parts to be provided with the goods;
 - Provision of similar goods or additional items;
 - If the standards of the goods are not met, the amount to be returned or any other consideration.

Rights of a buyer

- If the goods purchased is without any specific agreement between the seller and the purchaser and if it does not comply with the standards of the goods encompassed under this Act, the purchaser has the right to return the goods or part of the goods within a reasonable period of time, or to get the purchased price back or to get similar goods in exchange;
 - However, this right does not apply where the law prohibits the handover of the goods to a person due to public health safety concerns or if the goods has been altered completely or partially by the purchaser.
- A reasonable period of time, starting from time of purchase until the time the purchaser becomes aware of the issues would be considered based on the type, usage and usable period of the goods and estimated time frame within which the issues in the goods is possible to be identified.
- The purchaser also has the right to:
 - be informed of any defects in the goods;
 - inspect and examine the goods for any defects; and
 - where the goods bought does not comply with the requirements set out in this Act, or in case of violation of any other provision of this Act, the purchaser may file a lawsuit or file a complaint with the Ombudsman appointed under this Act, to claim for any damages incurred.

STANDARDS OF SERVICES

Applicability

The provisions relating to standards of services must be complied with, by all the businesses registered in the Maldives and those businesses which are obliged to be registered by the law, but is operated without registration.

Skills and equipment's

Services must be provided with appropriate care by those specialized in provision of the service. Further, equipment used must be suitable for the purpose.

Fit for the purpose

- If the consumer has communicated to achieve a certain result from the service provided, the requested result must be attained.
- It would not be deemed that the requested result was not attained where the consumer does not comply with the instructions of the service provider, or if it was unreasonable for the consumer to comply with the instructions of the service provider.

Service period

Except where the period of service is stipulated or agreed to be stipulated in a contract or agreed between the consumer and the service provider, the service must be provided to the consumer within a reasonable time frame.

Price of the period

Except where the price of service is stipulated or agreed to be stipulated in a contract or determined by a transaction between the consumer and the service provider, the fee charged for the service must be reasonable. However, if the fee/charge of a specific service is fixed under a law, it must be complied with.

Rights of consumer

- If any problems are observed in the services obtained, the consumer has the right to request the service provider to rectify the problem within a reasonable period.
- If the issue observed in the service is serious and it is impossible to rectify, the consumer has the right to terminate the service agreement within a reasonable period and claim damages. However, the following circumstances are given exemption:
 - where the service obtained is an additional service obtained through a provision of a goods contract;
 - where the purchaser has the right to return the item received from the service.

- The seriousness of the issue would be determined if the result of the service is different from what would be achieved normally, or if it is useless or unable to be rectified within a reasonable time or if it is not safe.
- Where the services received does not comply with the requirements set out in this Act, or in case of violation of any other provision of this Act, the consumer may file a lawsuit to obtain damages, except in the following circumstances:
 - standard was not met due to an act or omission of a third party other than the service provider or complying with instructions of a third party other than the service provider;
 - the loss was suffered due to an incident beyond the control of any parties.

OBLIGATIONS OF TRADERS AND SERVICE PROVIDERS

Non-discrimination

No consumers should be subjected to unfair discrimination in relation to sales of goods or provision of services.

Prohibited actions

- No sellers or service providers should use unethical and unjust business tactics to:
 - promote or provide the product or service;
 - negotiate on an arrangement to provide certain goods or service or attempt to enforce such an agreement;
 - obtain the price for goods sold or services provided from the consumer; or
 - recall the goods sold from the buyer.
- In addition, sellers and service providers should not act in a way where the rights of a purchaser or a consumer becomes derogated, where the person is unable to protect their own rights in relation to a good or a service, due to a physical or mental disability or being illiterate.

Instances where goods may not be sold

- Even if a purchaser requests, goods may be held off without being sold, in the following circumstances:
 - to complete an action required by the law;
 - an adequate amount of the goods being sold to the buyer at that time;
 - where a person requests to sell a small quantity of goods at a wholesaler.

Display of price

- Except the goods categorized by the Ministry of Economic Development as exempted, Prices of all other goods (whether sold individually or in bulk) must be clearly displayed.
- Exempted goods will be published by the Ministry.

Conditions of sale

- No consumer must be conditioned to purchase an additional item along with the goods bought nor should be required to perform any action other than the payment of the price.
- This does not prohibit the sale of similar or various types of items together as a package where the producer or seller has required as such.

Labelling goods

- Imported, locally produced or packaged food items must be clearly labelled with the details of its content, weight, quantity, date of manufacture, date of expiry and directions of its usage, as per the format provided by the Ministry of Economic Development.

Price and conditions of service

- The price of the service and any conditions associated with the service must be clearly displayed at the venue of service. If required by the consumer, a document containing the said details should be made available.
- If a service requires for an application to be made, a copy of it should be available in Dhivehi language.

Sale of defective or expired goods

Any products with a specific period of usage must not be displayed or sold after the expiry of the period, including anything that is unfit for human consumption.

Handover of receipt

A sales receipt containing the details of the purchased goods or service (including the quantity and type), price, date of purchase, name and address of the seller or service provider must be given to all the consumers.

SAFETY STANDARDS AND RESPONSIBILITIES IN RELATION TO THE GOODS AND SERVICES

Safety and other standards

- Safety and any other standards will be determined by the Ministry or any other institution.

- Safety standards of the goods must include and consider the following aspects:
 - directions of usage, ingredients and stages of manufacturing, design and packaging of the goods;
 - testing the product during manufacturing stage;
 - including the directions and precautionary measures in relation to the product.
- While selling a product or a service for which safety standards has not been set, traders and service providers must ensure that the product or service offers a reasonable standard of protection to the consumers.

Compliance with safety and other standards

- It is prohibited to sell any goods or give any service that does not comply with the standards set out herein.
- Any non-compliance with the safety standards resulting from fulfilling the standard set by another law or any aspect not relevant to the standards set under this Act, should not be deemed as a non-compliance.
- If the non-compliant person proves that it is unreasonable to have known that there is a breach of the standards at the time of sale or rendering the service, then it will not be deemed as a non-compliance.

Prohibition of sale of goods or provision of services

- The Minister of Economic Development (hereinafter “the Minister”) has the discretion to prohibit the sale of any good or provision of services that does not comply with the safety standards. Such a prohibition may be imposed in one of the following ways:
 - retrieval of goods displayed for sale;
 - prohibition of sale of goods or provision of service;
 - exercise a ban on advertisements that promote the sale of goods or service;
 - provide information of the goods or service to the public;
 - rectifying the goods or provision of service; and
 - provide a full or part refund to the consumers who purchased the prohibited goods or obtained the service.
- If the provision of a service or sale of a good is prohibited, it must be publicly announced on the Gazette.

Goods that do not conform to safety and other standards

- If the safety of a good is not satisfied, it must be considered as a defected good, after assessing the following:
 - the process and purpose of marketing of the good;
 - the medium of marketing;
 - the instructions and precautions given on usage of the good;
 - general usage of the good; and
 - time of provision of the good.
- Responsibility for the defected good must be taken by either the manufacturer, the labelled factory manufacturer, the importer or the seller. However, if any situations require the responsibility to be taken by one or many, it should be taken collectively or individually.
- A purchaser has the right to claim for damages incurred due to the purchase of a defected good.
 - In such a claim, if the person who is to be held accountable proves any of the below, they do not have to take responsibility for the damages:
 - the issue with the good arose while fulfilling requirements imposed under another law;
 - no past records of providing defected goods;
 - no defects during the supply of the goods;
 - defects in the goods cannot be observed on reasonable examination according to the current scientific and professional information available.
- Every person has the right not to accept the direct campaigns initiated to advertise a certain goods or services. The disapproval can be communicated in one of the ways:
 - directly disapproving the activity;
 - requesting to prohibit directly approaching the person for advertisement;
 - blocking any advertisements done with other communication mediums.
- If request relating to prohibition of campaigns has been communicated by the purchaser or consumer to the seller or service provider, arrangements to stop such activities must be made within a reasonable time frame, without an additional charge or a fee.

BUSINESSES CONDUCTED VIA ELECTRONIC MEDIUMS

Applicability

All the sections of this Act are applicable to businesses conducted via electronic mediums.

Disclosure of information

- For businesses done via electronic mediums, below information must be disclosed to the purchaser, in addition to all the information required under this Act to be provided in relation to sales of goods or provision of services:
 - name of the seller or service provider;
 - registration number of the seller or service provider;
 - price of the good or service, including any additional fee or charges;
 - whether there is possibility to cancel or withdraw the transaction after requesting to purchase goods or obtain a service and if so, the applicable time period
 - the arrangement under which defected goods could be returned to the seller or service provider and how any damages could be claimed.

- However, the following transactions are excluded from disclosing the above stated information:
 - transactions conducted electronically with the permit of Maldives Monetary Authority;
 - ticketing of bus, airlines and other transportations;
 - trading or services provided under a contract; and
 - any other goods or services excluded by the Regulation to be issued under the Act.

PROHIBITED CONDUCT

Deception

- Traders and service providers are prohibited to express or do any of the following acts towards the consumers with any of the following intentions while selling goods, providing services or while advertising the products:
 - deceiving the purchasers as to the type of goods, manufacturing, unique features or quality or the amount required for a certain purpose or quantity;
 - deceiving the consumers as to the type of service, unique features or quality or the amount of it required for a certain purpose;

- deceiving the purchasers by advertising it as a brand-new item not used before;
- deceiving the purchaser or advertising the product with a discounted price;
- deceiving the purchaser or falsely advertising that the seller or the service provider has been approved by or affiliated with another business; and
- deceiving the purchaser by falsely stating the benefits of having a guarantee or a warranty issued with the product.

Misleading

- Traders and service providers are prohibited to act in any of the following ways while conducting their businesses. The same prohibition applies if the conduct is carried out through a third party:
 - deceiving as to the type of goods, manufacturing, unique features or quality or the amount required for a certain purpose or quantity;
 - to provide unconvincing or misleading information as to a unique feature of the goods or service or concealing certain information about the goods or services that the consumer should have known with the intention to deceive; and
 - not providing the correct information to the purchaser or consumer, despite knowing that the purchaser decided to buy the goods or obtain the service based on false information.

Bait advertising

- Bait advertising in respect of sale of goods or provision of services is prohibited under this Act. It will be considered as bait advertising if:
 - advertising while being aware that it is impossible to sell or provide the service for the price advertised or within the duration specified;
 - considering the aimed market and type of advertisement done, advertising while being aware that it is impossible to provide adequate amounts of goods or provide the service in a reasonable manner, for the price advertised or within the duration specified.
- However, if the goods or service are being advertised to be provided by another seller or service provider, and if the purchaser or consumer refuses to the said arrangement, it should not be registered as bait advertisement.

Gifts and free goods

- It is prohibited to revoke an arrangement where the seller or service provider agrees to provide a monetary reward, gift or any other allowance in providing a service or selling a good. Any such arrangements must be fulfilled within a reasonable time.

- However, if the arrangement was not complied with because of an event beyond the control of the seller or service provider, or it was impossible to fulfil even after trying reasonably enough, it will not be deemed as a revoke of agreement.

Obtaining payment

A seller or a service provider should never take advance payment from their consumers if they are aware that the product cannot be sold or service cannot be provided or they cannot provide the exact same product or service the consumer requires.

Unjust clauses

- Purchasers or consumers do not have to comply with any unjust provisions in any of the contracts, notices or documents which encloses the rights and obligations of the purchasers and sellers. A clause will be deemed unjustifiable if:
 - it provides more benefit to a third party other than the purchaser or the consumer;
 - it causes more loss to the purchaser or the consumer, than anticipated;
 - if it causes a loss to the purchaser or the consumer for relying on the wrong information provided to them.
- A clause in a contract, notice or any other document between the seller, service provider and consumer can be deemed as unfair, if it can be interpreted that clause was drafted with bad intention, and it is unfair to the buyer or consumer more than the service provider or seller. To mark a clause as unjust, consideration must be given to:
 - the type of goods or service provided in the transaction;
 - circumstances when the notice or document was executed;
 - rest of the provisions of the document, notice or agreement;
 - the discretion provided to the purchaser or the consumer to request to amend such provision;
 - previous transactions or agreements between the parties;
 - level of significance given by the purchaser or consumer to the skills, advice and instructions of the service provider or seller while executing the agreement.
- If a court deems a clause in an agreement, notice or document to be unfair, the court has the discretion to rule in one of the following ways:
 - to rule that the agreement, notice, document or part of it is unfair;

- considering the circumstances, if the court deems it fair and necessary, to issue a court order which entails the following:
 - to provide the goods or to reimburse the payment to the consumer or purchaser;
 - to compensate the buyer or consumer for the loss incurred;
 - to order to rectify the business arrangements of the seller or service providers to ensure such actions are not repetitive.
- In such a claim, the burden is on the seller or service provider to prove that the clause is just.
- Even though unjust clause is not a *fact in issue* in an ongoing claim, if a clause is considered to be unjust by the person deciding the matter, an order can be issued to the seller or service provider to respond regarding the unjust clauses.

POWERS AND RESPONSIBILITIES OF THE MINISTRY

Price controlling

- Given the availability of certain goods in the Maldives and given the economic situation of the country, the Ministry can control the quantity and price of the goods sold or even propose a different price for selling goods in different regions of the country, depending on the carriage charges.
- Given the demand of certain service in the Maldives and given the economic situation of the country, the Ministry can control price of the service or even propose a different price for provision of the service in different regions of the country, depending on the total cost that would be incurred in provision of the service.
- It is prohibited to sell goods or provide services for a higher price than the controlled price.

Monitoring

The Ministry has the discretion to monitor the extent to which the sellers or service providers are complying with the Act and the regulations made under the Act.

Recalling goods

- If the Minister finds a good to be harmful to anyone or the trader has not taken enough precautions regarding the safety of the goods, Ministry has the discretion to order to do any of the following acts, via a public notice announced on the Gazette:
 - recall the goods within a certain period of time;

- provide information to the public or a certain group from the public about the goods such as the defect or harm in it, situations where it could be harmful to use the good and measures to be taken while discarding the goods.
- Provide information that the Seller or Service provider has agreed to make arrangement to either fix the goods which is not harmful, or exchange the goods or to provide refund for the goods purchased within a specific period.
- Failure to comply with the Ministry's notice, will result in a fine being imposed on the wrongdoer. In such a case, the purchaser or the consumer can bring a lawsuit against the wrongdoer to obtain damages.

CONSUMER OMBUDSMAN

- A Consumer Ombudsman (hereinafter "Ombudsman") who complies with the candidacy conditions under this Act, must be appointed by the President for a term of 5 years, within 6 months from the Effective Date. The Ombudsman must be accountable to the President and the People's Majlis, on how his responsibilities are being carried out and the outcome of the investigations conducted.
- The responsibilities of the Ombudsman include:
 - to establish a mechanism to submit claims due to non-compliance to this Act;
 - to investigate complaints submitted;
 - to award damages for losses incurred due to non-compliance with this Act;
 - to take actions against any parties who has violated this Act; and
 - to publish the investigation report of the complaints submitted.

Conducting searches

- Both Ministry and Ombudsman, individually, has the following powers to conduct search of premises where business or service is being carried out, in relation to the investigations carried out by them:
 - conduct searches of business premises for investigations in relation to the complaints after giving 2 (two) day notice before conducting the search;
 - apply for a court order if the entry to the place is restricted;
 - while conducting the search, can take videos and photos, take copies or request to handover copies of any documents encountered, seize any goods or documents required for investigation and seek the identity of the person providing information about the business entity; and
 - request to submit any documents or information or give a statement of any person in relation to a complaint submitted.

- Ministry and the Ombudsman, both has the right to appoint personnel to conduct the searches on behalf of them:
 - The personnel appointed by the Ministry must be issued with a document of the Ministry, which confirms their appointment and authority;
 - The personnel appointed by the Ombudsman must be issued with a document of the Ombudsman, which confirms their appointment and authority.

ADMINISTRATIVE ACTIONS FOR NON-COMPLIANCE

- For complaints submitted to the Consumer Ombudsman under this Act, if any parties are found to be in contravention of this Act, the Ombudsman can impose a fine on them in the following order, and granting a time period to rectify the issues.
- While monitoring the places of trading of goods or provision of services under the powers vested in the Ministry, if any parties are found to be in contravention of this Act, the Ministry can impose a fine on them in the following order, and granting a time period to rectify the issues:
 - for the first time, a fine between MVR 1,000/- (Maldivian Rufiyaa One Thousand) to MVR 100,000/- (Maldivian Rufiyaa One Hundred Thousand);
 - for every repetition, a fine between MVR 1,500/- (Maldivian Rufiyaa One Thousand Five Hundred) to MVR 250,000/- (Maldivian Rufiyaa Two Hundred and Fifty Thousand);
 - if the issues have not been rectified after the second fine, an additional fine between MVR 5,000/- (Maldivian Rufiyaa Five Thousand) and MVR 250,000/- (Maldivian Rufiyaa Two Hundred and Fifty Thousand) and temporary shutdown of the business for no longer than 6 (six) months.

MISCELLANEOUS PROVISIONS

Time limit for filing complaints under the Act

Any complaints of non-compliance with this Act must be submitted within 6 (six) months from the date of the event.

Appealing the decision of Ombudsman

If a decision of the Ombudsman is not acceptable to the party who submitted the complaint, the issue can be taken to the relevant court of Maldives.

Exclusion

This Act does not apply to the transactions conducted at auction.

Regulations

- Unless expressly stated in the Act, all the regulations to be made under this Act will be made and enforced by the Ministry.
- All the regulations on carrying out the responsibilities of the Ombudsman will be made and enforced by the Office of the Consumer Ombudsman.
- All the regulations to be made under this Act must be made and published within 6 (six) months from the Effective Date.

Disclaimer:

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