

No. S 65

CONSUMER PROTECTION (FAIR TRADING) ORDER, 2011

**CONSUMER PROTECTION (FAIR TRADING) (CANCELLATION OF CONTRACTS)
REGULATIONS, 2011**

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CONSUMER PROTECTION (FAIR TRADING) ORDER, 2011

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In exercise of the powers conferred by sections 10, 18 and 20 of the Consumer Protection (Fair Trading) Order, 2011, the Minister of Finance II, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

Citation and commencement.

1. These Regulations may be cited as the Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations, 2011 and shall commence on the same date as the Consumer Protection (Fair Trading) Order, 2011.

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires —

"cancellation period" means the period specified in regulation 4(1);

"consumer information notice" means a notice in writing containing the information required under regulation 4(6);

"designated person" means a person designated in a consumer information notice as the person to whom notice of cancellation of a contract may be given;

"direct sales contract" means a consumer transaction which is entered into —

(a) during an unsolicited visit by a supplier to —

- (i) the place of residence of the consumer;
- (ii) the place of residence of another person; or
- (iii) the place of business of the consumer;

(b) during a visit by a supplier to any place referred to in paragraph (a) at the express request of the consumer where —

- (i) the goods or services to which the contract relates are not goods or services for which the consumer requested the supplier's visit; and

(ii) the consumer did not know, or could not reasonably have known, the supply of such goods or services formed part of the supplier's business activities; or

(c) after an offer was made by the consumer in respect of the supply by the supplier of the goods or services in the circumstances referred to in paragraph (a) or (b);

"initial contact" means —

(a) any meeting of the supplier and the consumer at a place other than the supplier's permanent place of business; or

(b) any communication between the supplier and the consumer by telephone;

"notice of cancellation" means a notice of cancellation given under regulation 4;

"regulated contract" means a direct sales contract, a time share contract or a time share related contract;

"supplier's permanent place of business" does not include the supplier's temporary premises at a trade fair, exhibition or promotional event;

"time share related contract" means a contract to assist a consumer to dispose of his time share rights conferred under a time share contract;

"trade-in allowance" means the greater of —

(a) the price or value of the consumer's goods as set out in a trade-in arrangement; or

(b) the market value of the consumer's goods when taken in trade under a trade-in arrangement;

"trade-in arrangement" means an agreement or arrangement, contained in a direct sales contract or forming the whole or part of a related contract, under which the consumer sells or agrees to sell the consumer's own goods to the supplier or any other person and the goods are accepted as the whole or part of the consideration under the direct sales contract;

"unsolicited visit" means a visit by a supplier, whether or not he is the supplier who supplies the goods or services, which does not take place at the express request of the consumer.

(2) For the purposes of these Regulations, references to a supplier —

(a) shall be construed as references to a supplier, within the meaning of the Order, with whom a consumer enters into a contract; and

(b) in the definitions of "direct sales contract" and "unsolicited visit" in sub-regulation (1) and in regulation 3(*e*) and (*f*), shall include an employee or agent of the supplier.

(3) For the purposes of the definition of "unsolicited visit" in sub-regulation (1), a consumer shall not be considered to have made an express request for a visit by the supplier by reason only that the consumer consented to the visit by the supplier during or after an initial contact at which the supplier indicates expressly or by implication that the supplier is willing to visit the consumer.

(4) In these Regulations, section 7(9) of the Order shall apply for the purposes of construing the meaning of the term "business use".

Exclusions.

3. These Regulations shall not apply to —

(a) any excluded transactions specified in the First Schedule to the Order;

(b) any lease of residential property;

(c) any contract for the supply of goods or services intended for business use;

(d) any contract under which the total payments to be made by a consumer do not exceed \$50;

(e) any direct sales contract if, prior to the visit during which the consumer entered into the contract or made an offer referred to in paragraph (*c*) of the definition of "direct sales contract" in regulation 2(1), the terms of the contract were read by or explained to the consumer in the absence of the supplier;

(f) any direct sales contract resulting from prior negotiations between the consumer and the supplier which took place in circumstances other than those referred to in paragraph (*a*) or (*b*) of the definition of "direct sales contract" in regulation 2(1);

(g) any direct sales contract entered into by a consumer —

(i) during a visit made by the supplier at the express request of another person to that other person's place of residence or business; or

- (ii) after an offer was made by the consumer in respect of the supply of the goods or services in the circumstances referred to in sub-paragraph (i),

if the consumer attended the visit with the prior knowledge that the supplier would be present to engage in the supply of the goods or services to which the contract relates; and

Right to cancel contract.

4. (1) A regulated contract may not be enforced against the consumer at any time earlier than 5 days (excluding Saturdays, Sundays and public holidays) after —

- (a) the day on which the regulated contract is entered into; or

- (b) if the consumer information notice has not been brought to the attention of the consumer before or at the time when the regulated contract is entered into, the day on which the consumer information notice is subsequently brought to the attention of the consumer.

(2) Where a consumer has entered into a regulated contract, the consumer may give notice of cancellation of the contract in accordance with this regulation at any time within the cancellation period.

(3) If, in a case falling within sub-regulation (1)(b), the consumer affirms the regulated contract at any time after the expiry of 5 days (excluding Saturdays, Sundays and public holidays) after the day on which the regulated contract was entered into —

- (a) these Regulations shall not prevent the contract from being enforced against the consumer; and

- (b) the consumer may not at any subsequent time give notice of cancellation under sub-regulation (2).

(4) If the consumer, having given notice of cancellation of a regulated contract in accordance with this regulation, subsequently enters into a contract (referred to in this sub-regulation and sub-regulation (5) as the subsequent contract) with the supplier on substantially the same terms as the cancelled regulated contract at any time before the expiry of the cancellation period of the cancelled regulated contract —

- (a) the subsequent contract shall not be enforced against the consumer at any time within the cancellation period of the cancelled regulated contract; and

(b) the consumer may give notice of cancellation of the subsequent contract at any time within the cancellation period of the cancelled regulated contract.

(5) Sub-regulation (4) shall not prevent sub-regulations (1) and (2) from applying to the subsequent contract if the subsequent contract is a regulated contract.

(6) A consumer information notice shall inform the consumer of his right to cancel the contract under these Regulations and in particular shall contain the information specified in the First Schedule.

(7) A notice of cancellation may be in the form set out in the Second Schedule or in any other notice in writing of the consumer's intention to cancel the contract under these Regulations.

(8) Subject to sub-regulation (9), a notice of cancellation shall be given —

(a) by delivering it to a designated person personally;

(b) by leaving it at, or by sending it by pre-paid post to, an address designated in the consumer information notice; or

(c) by sending it by facsimile transmission to a facsimile number designated in the consumer information notice.

(9) If the consumer information notice has not been brought to the attention of the consumer or does not contain any of the information specified in Part A of the First Schedule, a notice of cancellation may be given by leaving it at or by sending it by pre-paid post to —

(a) the usual or last known address of the place of business of the supplier or designated person (if any); or

(b) in the case of a body corporate, the registered office or principal office of the supplier or designated person (if any).

(10) A notice of cancellation sent by a consumer by pre-paid post shall be deemed to have been given at the time of posting, whether or not it is actually received.

(11) Notwithstanding sub-regulations (8) and (9), if the supplier agrees to accept notice of cancellation by any additional means, including electronic means, the notice may be given by the means so agreed.

Effect of cancellation of contract.

5. (1) Where a contract is cancelled under regulation 4 —

(a) the contract shall cease to be enforceable;

(b) any sum which the consumer has paid under or in contemplation of the contract to the supplier, or to any person who is the agent of the supplier for the purpose of receiving that sum, shall be repaid to the consumer by the supplier within 60 days after the consumer has given notice of cancellation of the contract to the supplier;

(c) the consumer or any person on his behalf shall have a lien on any goods in the possession of the consumer or any person on his behalf for any sum payable to the consumer under paragraph (b) or sub-regulation (2)(b);

(d) any security which the consumer has provided in relation to the contract shall be treated as not having had effect and any property lodged with the supplier solely for the purposes of the security shall be returned by the supplier within 60 days after the consumer has given notice of cancellation of the contract to the supplier;

(e) subject to regulations 6 and 7, no sum or other consideration may be recovered by or on behalf of the supplier from the consumer in respect of the contract; and

(f) any other contract arranged by the supplier and entered into by the consumer for the purposes of the contract prior to the cancellation shall not be enforceable against the consumer.

(2) In the case of a trade-in arrangement, if the contract is cancelled under regulation 4, the supplier shall either —

(a) return the goods delivered by the consumer under the trade-in arrangement to the consumer in a condition substantially the same as when they were delivered by the consumer; or

(b) pay to the consumer a sum equal to the trade-in allowance.

(3) When a consumer recovers an amount equal to the trade-in allowance, then, if the title of the consumer to goods delivered by the consumer under the trade-in arrangement did not pass from the consumer, the title shall vest in the person entitled to the title under the trade-in arrangement.

(4) Subject to sub-regulation (5), the breach of any duty imposed by these Regulations on a supplier or consumer shall be actionable as a breach of statutory duty in a court.

(5) In the case of an action for a breach of duty under sub-regulation (1)(b), the value of the claim shall not exceed \$20,000.

(6) If, apart from these Regulations, a consumer could have cancelled the contract under any rule of law or any contractual right or other arrangement with the supplier, the fact that the consumer has cancelled the contract pursuant to these Regulations shall not prejudice his right to any compensation that he would have if he had cancelled the contract under that rule of law, contractual right or arrangement.

(7) In determining the amount recoverable in a claim for compensation under a right referred to in sub-regulation (6), the court shall take account of any compensation which has been given to the consumer in satisfaction of any claim for a breach of duty under these Regulations relating to the cancellation of the same contract.

(8) In determining the amount recoverable in a claim by a consumer for a breach of duty under these Regulations, the court shall take account of any compensation which has been given to the consumer in satisfaction of any claim for compensation referred to in sub-regulation (6) relating to the cancellation of the same contract.

Return of goods by consumer on cancellation of direct sales contract.

6. (1) Subject to sub-regulation (2), a consumer who has, before cancelling a direct sales contract under these Regulations, acquired possession of any goods by virtue of the direct sales contract shall —

(a) be under a duty, subject to any lien, upon the cancellation to return the goods to the supplier; and

(b) for the time being retain possession of the goods and take reasonable care of them.

(2) The consumer shall not be under a duty to return —

(a) perishable goods;

(b) goods which by their nature are consumed by use and which, before the cancellation, were so consumed;

(c) goods supplied to meet an emergency; or

(d) goods which, before the cancellation, had become incorporated in any land or thing not comprised in the contract.

(3) Where sub-regulation (2) applies, the consumer shall be under a duty to pay reasonable compensation for the supply of the goods and for the provision of any services in connection with the supply of the goods before the cancellation.

(4) The consumer shall be discharged from any duty to retain possession of the goods or return them to the supplier at the time he delivers the goods to the supplier or to a person designated by the supplier for such purposes.

Compensation for services on cancellation of regulated contract.

7. Where a consumer cancels a regulated contract under these Regulations, the consumer shall be under a duty to pay reasonable compensation for the services supplied under the contract before the cancellation.

No imposition of additional duty or liability on consumer.

8. (1) The supplier shall not by a term in a contract impose, directly or indirectly, any additional duty or liability on the consumer in relation to the duties imposed by these Regulations.

(2) Where any term in a contract is inconsistent with sub-regulation (1), it shall be void to the extent of such inconsistency.

Burden of proof.

9. In any proceedings taken in any court between the consumer and a supplier where a dispute arises as to whether —

(a) the consumer information notice has been brought to the attention of the consumer in accordance with regulation 4(1)(b); or

(b) the consumer information notice informed the consumer of his right to cancel the contract under these Regulations and that it contained the information specified in the First Schedule, in accordance with regulation 4(6),

section 18 of the Order shall apply so that the supplier shall bear the burden of proving that the requirement referred to in paragraph (a) or (b), as the case may be, has been complied with.

Transitional provision.

10. These Regulations shall not apply to any regulated contract entered into before the commencement of these Regulations.

FIRST SCHEDULE

(regulations 4(6),(9)
and 9(b))

INFORMATION REQUIRED IN CONSUMER INFORMATION NOTICE

Part A

Supplier's Contact Information

1. Name of supplier.
2. Supplier's reference number, code or other details to enable the transaction to be identified.
3. Designated person(s) to whom notice of cancellation to be given, including at least one name and at least one address or facsimile number.

Part B

**Consumer's Right to Cancel Contract under Consumer Protection (Fair Trading)
(Cancellation of Contracts) Regulations**

1. The consumer has a right to cancel a regulated contract within 5 days (excluding Saturdays, Sundays and public holidays) after —
 - (a) the day on which the consumer entered into the contract; or
 - (b) if the consumer information notice was not brought to the attention of the consumer before or at the time he entered the contract, the day on which the consumer information notice was subsequently brought to his attention.
2. If the consumer affirms the regulated contract at any time after the expiry of 5 days (excluding Saturdays, Sundays and public holidays) after the day on which the regulated contract was entered into, the consumer will lose his right to cancel the contract under the Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations (the Regulations).
3. If, having cancelled the regulated contract, the consumer enters into a subsequent contract (on substantially the same terms as the cancelled contract) with the supplier at any time before the expiry of the cancellation period of the cancelled contract, the cancellation period for the subsequent contract will expire when the cancellation period of the cancelled contract would have expired. If, however, the subsequent contract is itself a regulated contract, the consumer can also rely on the cancellation period explained in paragraph 1 if it is longer.
4. To cancel the contract under the Regulations, the consumer should give the supplier a notice of cancellation expressed in the form set out in the Second

Schedule to the Regulations or in any other notice in writing of the consumer's intention to cancel the contract under the Regulations.

5. A notice of cancellation must be delivered personally to the person designated in the consumer information notice, or left at or sent by pre-paid post to the address designated in the consumer information notice, or sent by facsimile transmission to the facsimile number designated in the consumer information notice.

6. If the supplier did not designate the necessary person, address or facsimile number in the consumer information notice, the consumer can give notice of cancellation under the Regulations by a notice in writing left at or sent by pre-paid post to the usual or last known address of the place of business of the supplier or designated person (if any). If the supplier or designated person is a body corporate, the notice can be left at or sent by pre-paid post to its registered office or principal office.

7. If the supplier agrees to accept a notice of cancellation by any additional means, the consumer can do so by the means so agreed.

8. A notice of cancellation sent by pre-paid post is deemed to have been given at the time of posting, whether or not it is actually received. The consumer is advised to send the notice by registered post to facilitate proof of posting.

9. The consumer may have other rights to cancel the contract apart from the Regulations. Cancellation under the Regulations does not prejudice those other rights.

SECOND SCHEDULE

(regulation 4(7))

NOTICE OF CANCELLATION

under the Consumer Protection (Fair Trading)
(Cancellation of Contracts) Regulations

Supplier: (Insert name of supplier)

Reference: (Insert supplier's reference number, code or other details to enable the transaction to be identified.)

I hereby give notice that I wish to cancel my contract referred to above under the Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations.

Signature:

Date:

Name:

Address:

Telephone No.(optional):

Fax (optional):

E-mail (optional):

Made this 20th. day of Zulkaedah, 1432 Hijriah corresponding to the 18th. day of October, 2011.

PEHIN ORANG KAYA LAILA SETIA DATO SERI SETIA
AWANG HAJI ABDUL RAHMAN BIN HAJI IBRAHIM
Minister of Finance II,
Brunei Darussalam.