

NEWSLETTER

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28 MAY 2020

The new bill for consumer protection

The recent turmoil caused by the price hike in one of the local supermarkets chain, has reminded us about the importance of having in place effective laws and regulations to successfully secure the rights of local consumers.

However, when we look to the existent legal framework we may immediately realize that the same is scarce and outdated. Indeed, the main piece of legislation currently in force to protect consumers rights, the Law n.º 12/88/M (the “Consumer Protection Law”), dates back to 1988 and during the 32 years of its existence, it was only amended once, in 1995, by virtue of the Law n.º 4/95/M which has restructured the Consumers Council.

It is thus quite obvious that the Macau SAR consumers legal framework needs to be updated, modernized and adjusted to the changes in society carried forward by the technological breakthroughs that occurred since the late 80’s until today. The existence of the world wide web, smart phones, social media, internet of things, cryptocurrencies, blockchain, are clear examples of technology achievements that are still revolutionizing the way of doing business and also bringing new forms of goods and services. As a result, consumer rights are constantly threatened and new and complex legal questions arise at a pace that legislators are not able to anticipate.

Regulatory and Compliance

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In this context, it is with optimism that we welcome the draft bill for the protection of consumers rights (the “New Consumers Bill”) which was discussed in March last year at the Legislative Assembly and is still to be enacted.

Among the innovations that the New Consumers Bill aims to implement we would highlight the following:

a) Prohibition of misleading and aggressive commercial practices:

pursuant to the New Consumers Bill misleading and aggressive commercial practices, meaning unfair practices which have the ability to materially distort the average consumer's economic behaviour, will be strictly forbidden and its contravention will be subject to the application of fines that will range between **MOP20,000.00** and **MOP60,000.00** also including the application of ancillary sanctions, notably the suspension of business activities.

b) Defective products: according to the New Consumers Bill if the product acquired by a consumer becomes defective within the first **6 (six) months** of the delivery, it is presumed to be defective at the date of delivery, unless the retailer can prove otherwise. During this period, it is up to the retailer to prove that the defect was not there when the consumer has bought the product.

c) Distance contracts (e-commerce): the New Consumers Bill introduce for the first time in the Macau SAR the concept of distance contracts. The definition of distance contract in the New Consumers Bill is like in other jurisdictions neutral technology wise. In this sense, the law defines the distance contract as an agreement between a consumer and a commercial operator, without the physical presence of the parties to the contract, by means of an organised system to sell goods or provide services at distance through the exclusive use of means of communication at distance. For this form of negotiation, commercial operators will be required to provide the consumer with a set of mandatory pre-contractual information, and the consumer is entitled with a 7 (seven) days cooling of period.

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d) **Role of Consumers Council** – according to the New Consumers Bill the role and authority of the Consumers Council will be quite reinforced, as the same will be empowered with sanctionary powers in case of infringements to the New Consumers Bill.

Notwithstanding the above, a closer look at the provisions of the New Consumers Bill allow us to spot some points that would be convenient to be reviewed before being gazzetted.

In the first place, when comparing the list of consumers rights laid down in the article 2 of the Consumer Protection Law with the article 9 of the New Consumers Bill, we realize that the consumer rights seem to have shrunk. In this regard, we may highlight the disappearance of the right to education on consumer matters (currently set forth in the paragraph b) of article 3 of Consumer Protection Law) and more importantly the right of consumers to have access to justice without burden (currently set forth in the paragraph b) of article 3 of Consumer Protection Law).

Secondly, taking into account that the 2 (two) official languages in the Macau SAR are the Chinese and the Portuguese, it sounds a bit awkward that the duty to inform the consumers about the goods and/or services could be complied by the commercial operators in English as an alternative to the use of one of the official languages (the Portuguese). It would be more consistent with Macau SAR legal system and its cultural identity, that such duty shall be complied in both official languages and the use of any foreign language should be of course encouraged, however on a complementary basis rather than an alternative to any of the official languages as it is currently stated in the paragraph number 2 of the article 12 of the New Consumers Bill.

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Finally, and although the New Consumers Bill sets forth some regulation to the distance contracts, it seems however that the proposed regulation fails to address the core of the problems that distance contracts primarily rise, notably in case of cross border transactions. Questions like what are the applicable laws and regulations to govern the distance contract, which will be the country of competent jurisdiction, or if a website belonging to a foreign entity promoting marketing activities targeting Macau SAR consumers shall be subject to the Macau SAR laws and jurisdiction, remain without answer in the New Consumers Bill. In this regard, the works and publications that have been made by the International Chamber of Commerce (the e- terms) and UNCITRAL (the model law for e-commerce), could be a good source of inspiration for the Macau SAR legislator to design suitable solutions to address such specific questions and other questions with the same level of importance.

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