

**INSIGHT**

**PROTECTION OF CONSUMER RIGHTS AND INTERESTS LAW**

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**Introduction**

Law no. 12/88/M of 13 June (Defense of the Consumer) has had a crucial role in granting a proper legal protection to the rights and interests of the consumer, further creating the Consumer Council, a public institute dedicated to the protection of consumer’s rights and interests. With the rapid evolution of the economy in Macau, the previous legal framework needed an adequate modernization, by reflecting recent developments (such as the purpose of enhancing cooperation with Mainland China and the European Union) and duly mitigate any consumer-related disputes.

**As such, the Legislative Assembly is currently discussing a legislative proposal, encompassing all the referred features. We summarize and compare below the two instruments:**

	Law no. 12/88/M	Legislative Proposal
Scope	Applicable to the consumer, the person to whom goods and services are offered to for private use, by a natural or legal person who carries out an economic activity.	Applicable to legal relationships pertaining to the provision of goods and services, between merchants and consumers. The Law will not include the legal relationships pertaining to gambling, health services, legal services, accounting and auditing, education and financial services related to securities or goods or services which price fluctuates in accordance with the financial market.
Consumer	Any person to whom goods and services are offered to, for private use.	Refers solely to natural persons, to whom goods and services are offered to, for private use.
Merchant	The law does not provide for a definition. However, the Macau Commercial Code defines Merchant as a natural or legal person who, on their behalf or by themselves or through third parties, exercise a commercial enterprise, as well as companies who adopts one of the commercial types, as prescribed by law.	A natural or legal person that exercises a commercial, industrial, artisanal, or professional activity, with the purpose of obtaining benefits and that consists of providing goods and services to the consumer. This definition encompasses more persons, as the classic concept of ‘merchant’ may not include certain persons whose activity is not independent of its person (e.g. artisans, liberal professions, etc).

<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>INFORMATION</b></p>	<p>The consumer has the right to obtain information on the essential characteristics of the goods and services, in order to be able to make a conscient and rational decision on the purchase of these goods and services.</p> <p>The manufacturer, importer, distributor, packer, retailer, or service provider have the concurrent duty to inform, so that every single person of the chain is able to fulfill the duty to inform the ultimate consumer. No language requirement seems to be imposed.</p>	<p>The consumer has the right to obtain all necessary information, in a clear, exact and adequate form, regarding the goods and services, including information on the merchant, the characteristics, price and conditions of payment of the good or service, the benefits or discounts, among others. Concurrently, the merchant, as well as the manufacturer, importer, distributor and other suppliers, have the respective duty to inform. The main idea is that every single person of this chain, up to the consumer, is duly informed. The merchant may only refuse to disclose information by alleging it is a trade secret, and duly justifying the claims. The law proposal also requires that the information (such as instructions manuals) be provided in Chinese, Portuguese or English, if it concerns an imported product.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>HEALTH AND SAFETY</b></p>	<p>It is prohibited to provide goods or services that, under normal or foreseeable conditions, pose a danger to the health or safety of the consumer.</p>	<p>The consumer has the right to be provided goods and services that are in compliance with health and safety criteria. The merchant shall not provide goods or services that are harmful to the health and safety of the consumer, such as goods and services that, under normal or reasonable conditions of use, implicate unacceptable risks.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>QUALITY OF GOODS AND SERVICES</b></p>	<p>There is no express provision regarding the quality of the goods and services.</p>	<p>It is expressly foreseen that the consumer has the right to have quality goods and services. The merchant shall assure that the goods and services that it provides are able to satisfy the purposes for which they were intended, and produce all effects attributed to it, in accordance with the legitimate expectations of the consumer.</p>

<b>ECONOMIC INTERESTS</b>	The consumer has the right of equality and loyalty in the transaction, which may translate into proper post-sale assistance and protection against aggressive methods of sale that may undermine the consumer’s conscient decisions.	The merchant shall assure to the consumer proper post-sale assistance. Additionally, the merchant shall not make the provision of goods and services dependent on the mandatory purchase of certain goods or services. Moreover, the Consumer Council may investigate and intervene, in the event the prices of the goods or services are in a situation of high fluctuation or are unjustifiably high.
<b>PROOF OF PURCHASE</b>	There is no express provision regarding the issuance of a proof of purchase.	The merchant shall provide, when requested by the consumer, a receipt which shall serve the purpose of proof of purchase, that shall indicate in a clear manner the main information that identifies the merchant and the good or service provided.
<b>INDEMNITY</b>	The consumer has the right to obtain an indemnity for the damages caused by a defective good or service, by deficient assistance, or for any breach of the supply contract.	The consumer has the right to obtain an indemnity for the damages incurred from the defective good or service. In other words, the right to indemnity exists whenever the consumer acquired a defective good or service, or whenever the defects have caused physical or equity loss.
<b>OTHER RIGHTS</b>	The consumer has the right to manifest its position and opinion in any legislative proceedings that may affect its rights or interests.	The consumer has the right to manifest its position and opinion in any legislative proceedings that may affect its rights or interests. Furthermore, all contractual clauses that exclude or restricts the consumer’s rights under the Law proposal are null.
<b>UNFAIR COMMERCIAL PRACTICES</b>	The consumer has the right to be protected against unfair commercial practices. However, the law does not define or exemplify unfair commercial practices.	All misleading or aggressive commercial practices are strictly prohibited. The proposal also exemplifies situations that may constitute misleading or aggressive commercial practices, which facilitates the enforcement of the law and imposition of sanctions. Moreover, if the consumer finds itself before an unfair commercial practice, it may demand that the clause be void or maintain the contract, where it is not affected by the void clause.

<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>CONTRACTS</b></p>	<p>The law does not provide for special regimes. The provision of goods and services shall comply with the general framework (Macau Civil Code).</p>	<p>The Law proposal foresees a specific regime for different contracts:</p> <ul style="list-style-type: none"> <li>• Contract for the provision of consumer goods;</li> <li>• Contract for the provision of services to the consumer;</li> <li>• Distance contracts;</li> <li>• Pre-payment contracts.</li> </ul> <p>The main goal is to provide a more rigorous criteria of conformity of such goods and services to the specific contracts. Only in the absence of specific regulation shall the parties resort to the general framework (Macau Civil Code).</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>DISPUTE RESOLUTION</b></p>	<p>The consumer has the right to be exempt from costs in proceedings related to claims for losses and damages arising from breaches of consumer laws and regulations, provided that the value of the matter does not exceed MOP\$ 100.000,00.</p>	<p>The parties may opt for institutionalized mediation (instead of judicial resolution) whenever the value of the dispute is inferior to MOP\$ 100.00,00. The institutionalized mediation will be provided by the Consumer Council, being free of charge for the parties. In the event of provision of public services, the dispute may be submitted as necessary arbitration before the Consumer Council, whereby the merchants shall be obliged to participate in the arbitration.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>CONSUMER COUNCIL</b></p>	<p>Created the Consumer Council.</p>	<p>Strengthens the Consumer Council's competences. For instance, the Consumer Council has the competence to supervise and impose sanctions to merchants who breaches the provisions of the law</p>

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