SyCip Salazar Hernandez & Gatmaitan

Republic Act No. 11765: An Act Affording More Protection to Consumers of Financial Products and Services

May 30, 2022

Financial Products and Services Consumer Protection Act

On May 06, 2022, Republic Act (RA) No. 11765, or the Financial Products and Services Consumer Protection Act, was signed into law. It aims to provide more protection to consumers of financial products and services against abusive and fraudulent practices by strengthening the powers of financial regulators, laying down the duties and responsibilities of financial service providers, and providing financial consumers with additional rights and remedies. The law applies to financial products such as deposit, credit, insurance, pre-need and health maintenance organization (HMO) products, securities, investments, payments, remittances, and other similar products and services, including digital financial products.

Expanded powers of financial regulators

Under RA No. 11765, financial regulators, namely, the *Bangko Sentral ng Pilipinas* (BSP), Securities and Exchange Commission (SEC), Insurance Commission (IC), and the Cooperative Development Authority (CDA) were given broad powers to formulate their own standards and rules to implement the law. Among these powers is to determine the reasonableness of interest and charges that financial service providers may collect on financial products and services. These regulators may restrain financial service providers from collecting excessive or unreasonable fees and order the suspension of the latter's operations. They may also conduct surveillance on-site or off-site to ascertain compliance with the law.

These financial regulators are also mandated to provide a complaints-handling mechanism such as mediation, conciliation, or other modes of alternative dispute resolution to address consumer grievances. In line with this, the BSP and the SEC were empowered to adjudicate actions where the claim is solely for the payment of a sum of money not exceeding P10,000,000.00. Moreover, they are given the authority to institute an independent civil action on behalf of aggrieved financial consumers for violation of this law and its implementing rules and regulations.

Duties of financial service providers

The board of directors and the members of senior management of financial service providers are mandated to provide means to identify, measure, monitor, control, and manage consumer protection risks. They shall also continuously evaluate financial products and services and ensure that they are appropriate to the needs, understanding, and capacity of their markets and their clients. For purposes of extending credit, the evaluation should also include measures to prevent over-indebtedness. Moreover, financial service providers are expected to adopt a cooling-off policy, if determined by the BSP, SEC, IC, or CDA to be necessary, to allow clients to consider the costs and risks of a financial product or service free from pressure from their sales teams.

They shall also have internal policies and procedures in setting prices that take into consideration the principle of reasonable pricing.

Part of the transparency and disclosure obligations of financial service providers is to give sufficient product disclosure to the client before availing of a financial product or service. In their advertising materials, they shall disclose the contact information of their consumer assistance unit providing consumer assistance and must furthermore disclose that they are regulated, identifying the relevant financial regulator.

Protection to financial consumers

The law provides that, while financial service providers have the right to select their clients, consumers cannot be discriminated against based on race, age, financial capacity, ethnicity, origin, gender, disability, health condition, sexual orientation, religious affiliation, or political affiliation. In the case of bundling of products, where financial consumers are obliged to purchase another product as a pre-condition for availing of a financial product or service, they shall have the option to choose the provider of such product.

During the cooling-off period, a consumer may cancel the contract without penalty. For borrowers, RA No. 11765 grants them the right to prepay a loan or other credit accommodation, just as in Title IV of the Consumer Act, which has been repealed by RA. 11765. Unlike in the Consumer Act however, fees and costs may now be charged to the borrower for such pre-payment, provided these are disclosed.

Furthermore, under RA No. 11765, the data of clients must be protected and their privacy respected, consistent with the Data Privacy Act.

Comment

This law codifies and strengthens existing regulations on consumer protection in the financial sector, and enhances the enforcement powers of regulators. It also addresses the inadequacy of transparency mechanism and price controls in existing legislation, which are being exploited by unscrupulous financial service providers With its passage, it is hoped that the selling of fraudulent or overpriced financial products will be curbed more effectively.

SyCipLaw's Banking, Finance and Securities

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