

Consumer Rights Protection Law in Vietnam

Background

On 15 November 2010, the National Assembly passed the Law on Protection of Consumers' Rights ("**Law 59**") to replace the 1999 Ordinance on Protection of Consumers' Rights ("**Ordinance**"), effective from 1 July 2011. On 27 October 2011, the Government issued Decree No. 99/2011/ND-CP ("**Decree 99**") detailing and guiding the implementation of a number of articles of Law 59.

The new legal provisions broaden the legal framework for the protection of consumers and provides for additional responsibilities and obligations owed by traders (and other third parties) to consumers.

We set out below the key provisions of the new legislation.

Overview

PROTECTION OF CONSUMERS' INFORMATION

Personal information protection and data privacy are concepts still relatively new in Vietnam with a lack of specific regulation in this area. The protection that does exist was previously to be found across several pieces of legislation. Law 59 now specifically deals with the confidentiality of consumers' personal data and private information, with obligations placed on traders who collect such information. These obligations include notifying consumers about why the information is being collected, ensuring the safety, accuracy and completeness of the information and not transferring this information to other parties without the consumer's consent.

PROHIBITED ACTS OF TRADERS

Law 59 specifically prohibits traders from carrying out aggressive sales techniques or engaging in behavior that amounts to harassment of consumers or taking advantage of consumers. Acts that traders

are specifically prohibited from engaging in include:

- cheating or misleading consumers through advertising or providing false information about the product or the trader;
- harassing a consumer by marketing goods or services contrary to the wishes of the consumer on two or more occasions;
- coercing a consumer through threatening behaviour or profiteering; and
- requiring a consumer to pay for goods or services which the consumer did not order.

LIABILITY OF THIRD PARTIES IN PROVIDING INFORMATION TO CONSUMERS

Law 59 introduces new obligations on third parties who provide information about products to consumers (such as media organisations through their advertising services) and sets out the potential liability of those third parties. The law places an obligation on these third parties to ensure the information supplied to consumers about a product is complete and accurate information and to request the trader provides the same. The third party will be jointly liable for inaccurate information where that third party failed to take adequate steps to ensure the accuracy of the information. Media owners and media service providers may also be liable as such third parties and additionally have an obligation to block a trader from using its services where inaccurate information is being presented about a product.

WARRANTIES

An obligation is placed on traders to pass onto consumers, and fully observe, any warranty that is available for goods, components or spare parts. The trader has an obligation to exchange goods or offer a refund during the warranty period where the warranty has been called on more than three times

but the fault remains unresolved.

DEFECTIVE GOODS

On discovery that the goods are defective a trader must promptly take all necessary measures to stop the supply of the defective goods on the market and must make a public announcement that the goods are defective. Traders (which can include a manufacturer, importer or supplier) are liable to pay compensation for loss and damage if the goods which they supply are defective and cause loss of life or damage, including where they were unaware of the defect (except if the defect was undiscoverable by scientific or technical standards when the trader supplied the goods). Law 59 sets out the procedures that must be followed for a recall of goods.

SETTLEMENT OF CONSUMERS' COMPLAINTS

Law 59 allows a consumer and trader to negotiate or mediate to settle any dispute (except where the dispute causes loss and damage to the interests of the State or to a number of consumers, in which case negotiation or mediation is not permitted). Additionally, the parties may use arbitration or file a court claim. Where an arbitration clause is contained in a trader's standard form contract a consumer may still choose another method of dispute resolution notwithstanding the arbitration clause.

The consumer is not obliged to deposit court fees and charges in advance, a factor likely to encourage consumers to pursue a claim in court in cases in which the amount in dispute is considerable. The burden of proof now lies with the traders to prove that they were not at fault.

STANDARD FORM OF CONTRACTS & TYPES OF CONTRACTS

Law 59 provides that any clause that seeks to exclude the statutory liability of the trader, or restricts the rights of consumers to complain, or allows a trader to unilaterally change the price, shall be deemed invalid. Consumers must be given sufficient time to study the terms and conditions in a trader's standard form contract or general trading conditions.

Decree 99 contains detailed provisions on standard form consumer contracts such as a requirement that the language is Vietnamese and the font size is at least 12 pt. Certain standard form contracts relating to essential goods and services as set out in Decision No. 02/2012/QĐ-TTg issued on 13 January 2012

(which include contracts relating to the supply of electricity, water, telephone, internet, rail transport, purchase and sale of apartments) must be registered with the Ministry of Industry and Commerce (if such contracts are used in two or more provinces) or with the local Department of Industry and Trade (if the contracts are only used in that local city or province). The registration must be completed within 90 days from 1 March 2012. Standard form contracts that do not involve essential goods and services are not required to be registered.

Decree 99 also provides guidance on "special forms of contracts entered into with consumers". This includes a "*Distance Contract*", meaning a contract concluded between a consumer and trader via an electronic device or telephone. Such contracts must contain certain specified information (such as price, delivery costs and quality of the goods) and, if it does not contain this information, can be terminated by the consumer within a certain time period. The consumer may also receive a refund. Other special transactions which are regulated include a "*Door-to-door sale*", with a requirement on the trader to leave the home of the consumer if the consumer does not want to enter into the transaction. The consumer is provided with a 'cooling-off' period during which the consumer may terminate the contract.

Conclusion

The new law on consumer protection is welcome unifying and bolstering as it does consumer rights and protection when previously the rights that did exist were to be found over a series of laws and regulations.

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