

## Client Alert

January 2011

### Consumer Protection Law

Vietnam's National Assembly recently passed a new Consumer Protection Law on 17 November 2010 ("**the Law**"), which will take effect on 1 July 2011 and replace the 1999 Ordinance on Protection of Consumers Rights (the "**Ordinance**").

The Law is comprised of 6 Chapters, which are broken down into 51 Articles. The Law has 21 more Articles than the Ordinance. Most of these additional provisions govern the rights and obligations of consumers; responsibilities of organizations and individuals dealing in goods and/or services; responsibilities of social organizations in consumer protection; and dispute resolution between consumers and organizations.

The Law applies to consumers; organizations and individuals dealing with goods and/or services; agencies, organizations and individuals relating to activities of protection of consumers' rights within the territory of Vietnam. Further, the Law also indicates that organizations and individuals dealing with goods and/or services includes traders under the 2005 Commercial Law<sup>1</sup>, this means the foreign traders/companies conducting business in Vietnam will be subject to the Law.

#### 1. New Prohibited Acts

The Ordinance stipulated four general prohibited acts; the Law, on the other hand, prohibits organizations and/or individuals dealing in goods and/or services, consumers, and social organizations from committing eight acts/activities. These prohibited acts<sup>2</sup> are enumerated as follows:

1. Tricking consumers, making false or misleading advertisements, hiding or providing insufficient, incorrect or wrong information on any of the following content:
  - (a) Goods and/or services provided by organizations and individuals dealing with goods and/or services;
  - (b) The prestige, business capacity of organizations and individuals dealing with goods and/or services;
  - (c) Content, specification of transactions between consumers and organizations and individuals dealing with goods and/or services.

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<sup>1</sup> Article 3.2 (a), the Consumers Protection Law

<sup>2</sup> Article 10, the Consumers Protection Law

2. Harassing consumers when marketing goods and/or services, contradicting consumers' autonomy two times or more, or committing other acts that obstruct and affect the normal work and lives of consumers.
3. Forcing consumers to buy their product or use their service through the following acts:
  - (a) Use of violence, or threats to use violence or other measures causing damage to life, health, honor, prestige, assets of consumers;
  - (b) Exploit natural disasters, diseases, or other difficulties facing consumers, to force consumers to enter into transactions.
4. Conducting trade promotions, transacting directly with persons who do not have civil capacity or have lost civil capacity.
5. Requesting consumers to pay additional charges for goods and/or services already provided without the prior consent of consumers.
6. Abusing consumer protection to violate the State's interests, the lawful rights and interests of other organizations and/or individuals.
7. Exploiting natural disasters, diseases, or other difficulties facing consumers to provide non-quality goods and services.
8. Dealing in non-quality goods and/or services that cause damage/harm to life, health, assets of consumers.

## 2. Decrease Risks for Consumers

The Law also makes third-parties responsible for the provision of information of goods and/or services to consumers. If the third party does not provide correct or sufficient information, it may be held jointly liable for such provision of information.<sup>3</sup>

The Law sets certain parameters regarding contracting with consumers that were not present in the Ordinance.<sup>4</sup> Particularly, if there are any differences in the understanding or interpretation of a contract, the contract must be interpreted in favor of consumers (usually against the drafter of the contract). To further protect consumers' rights, the Law provides circumstances where the terms of a contract and the common transactional conditions are held invalid. For instance, a contractual term that restricts or eliminates a consumer's right to file a complaint or petition against business entities would be held invalid.

With regard to the role of State authorities in consumer protection, the Law affords consumers the right to request the State authorities to protect their rights in case of violation by organizations or individuals dealing in goods and services.<sup>5</sup> Furthermore, the Law also details the role of social

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3 Article 13(c), the Consumers Protection Law

4 Articles 14,15,16,17,18 and 19, the Consumers Protection Law

5 Article 25, the Consumers Protection Law

organizations in consumer protection, such as representing consumers when they file petitions against organizations or individuals dealing in goods and/or services to protect consumer or public interests.<sup>6</sup>

### 3. Increase Responsibility of Organizations or Individuals Dealing in Goods and/or Services

A very important provision of the Law is “*responsibility of recalled defected goods*” in which organizations or individuals dealing in such goods must take all necessary measures to recall them from the market and must notify the public of the defected goods.<sup>7</sup>

For compensation caused by defected goods, the Law clearly states that organizations or individuals dealing with those goods must be held liable for compensation for loss/damage caused by defective goods, even in situations where such organizations or individuals do not know or are not at fault for discovering defects (akin to a strict liability standard), except when the defects cannot be found by technical or scientific means at the time of development of the goods.<sup>8</sup>

### 4. Product Recall Procedure

Under the Law<sup>9</sup>, upon discovery that goods are defective, organizations and individuals in manufacturing and/or importing goods shall be responsible to promptly take all necessary measures to stop supply of the defective goods on the market, to make a public announcement that the goods are defective and about the recall of such goods and to implement the recall of defective goods correctly in terms of the particulars which have been publicly announced. On completion of the recall, they have to report the results to the provincial level State administrative body for consumer protection in the locality where the recall was conducted.

The Law does not provide specific consequences in the case of a failed announcement to the public about the defective goods and failed report to the relevant authorities on the results of recalling defective goods. However, such failure may be regarded as a breach of the Law.

### 5. Dispute Resolution

Under the Ordinance, consumers who wanted to protect their interests in case of disputes had to file a complaint or denunciation against the organization or individual dealing with those goods and/or services. The Law, however, does away with the complaint and denunciation procedure, instead requiring disputes be settled through negotiation, conciliation,

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<sup>6</sup> Article 28, the Consumers Protection Law

<sup>7</sup> Article 22, the Consumers Protection Law

<sup>8</sup> Articles 23 and 24, the Consumers Protection Law

<sup>9</sup> Article 22, the Consumers Protection Law

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arbitration, or court adjudication.<sup>10</sup> For the role of social organizations involved in consumer protection in the case of a dispute, they may still represent consumers in filing petitions against organizations or individuals dealing in goods and/or services. However, this representation of such organizations is not required by the Law, the Law still respects consumers' right to file petitions, by themselves, to protect their interests and rights.

## 6. Handling of Violation of the Law

The Law does not specifically prescribe administrative sanctions and criminal penalties in case of breach to the Law. Generally, the Law only states that depending on the nature and seriousness of the breach, whoever breaches the Law shall be subject to an administrative sanction or criminal prosecution and must pay compensation in accordance with law for any loss or damage caused.<sup>11</sup>

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<sup>10</sup> Chapter 4, the Consumers Protection Law

<sup>11</sup> Article 11, the Consumers Protection Law

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