

Client Alert

February 2012

Consumer Protection: New Requirements for Standard-Form Contracts

Following the entry into effect of the Law on Consumer Protection last summer, the first implementing guidelines are now being formulated. These guidelines introduce new requirements on standard-form contracts and general terms of trade that may invalidate non-compliant contractual forms based on (i) the form and style of the contract; (ii) a lack of registration; or (iii) noncompliant contents.

The new rules are likely to require institutions dealing with large numbers of consumers through standard-form contracts (see the list at the end of this alert) to revise, or at least reformat, their contracts.

General Requirements:

Decree No. 99¹ states that standard form contracts and general terms of trade must be:

- made in written form;
- in Vietnamese;
- clear and with easy to understand with a minimum font size of 12; and
- on a background which must contrast with the text color.

Registration Requirements:

Additionally, organizations and individuals trading in goods and services listed as essential goods and services by the Government need to register their standard form contracts and general terms of trade with the competent authority. On 13 January 2012 the Prime Minister issued the following list of essential goods and services where standard-form contracts and general terms of trade must be registered:

- Supply of household electricity;
- Supply of household fresh water;
- Pay television;
- Fixed telephone subscribers;
- Post-paid mobile subscribers;
- Internet service;

¹ Decree No. 99/2011/ND-CP dated 27 October 2011 detailing and guiding the implementation of the Law on Consumer Protection.

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- Air transport;
- Railway transport; and
- Apartment sale and management service.

Registration Process:

Upon receiving an application for registration, the competent authority is supposed to examine it in terms of form and content to ensure it contains nothing that would be invalid under the Law on Customer Protection Law (although this is provided as part of the registration process, the Law appears to apply generally). A clause is considered invalid if:

- It (the clause or condition) excludes the statutory liability of the trader;
- It restricts or excludes the right of consumers to lodge a complaint or to institute legal proceedings;
- It allows the trader to unilaterally change contractual conditions previously agreed with the consumer; or the contract fails to specifically set out the rules and regulations on sale of goods or supply of services applicable to consumers when they purchase and/or use such goods or services;
- It allows the trader to unilaterally determine that a consumer has failed to discharge one or more of the consumer's obligations;
- It allows the trader to fix or change the price at the time of delivery of goods or supply of services;
- It allows the trader to give its own interpretation of a contract containing contractual clauses which may be interpreted in different ways;
- It excludes liability of the trader when the trader sells goods or supplies services via a third party;
- It provides that it is mandatory for the consumer to discharge its obligations before the trader has fully discharged its own obligations; or
- It allows the trader to assign rights and obligations to a third party without the consent of the consumer.

Enforcement Measures:

For standard form contracts and general terms of trade not required to be registered, depending on each case, the Ministry or Department of Industry and Trade has the right to request business organizations or individuals to amend or remove contents violating regulations on consumer protection or contents inconsistent with general principles of contract; and business organizations and individuals must do so within ten working days from the receipt of such request. Damages to customers arising from the amendments and removal of violating contents are settled in accordance with the regulations of civil laws.

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