

MECHANISMS FOR CONSUMER DISPUTE RESOLUTION AND REDRESS

Fostering the development of effective, low cost ways for consumers to resolve their disputes and obtain monetary compensation for losses sustained is a key consumer policy objective. The particular features of consumer disputes require tailored mechanisms, and cannot be dealt together with other commercial/civil disputes. Especially, these mechanisms should meet the following basic requirements:

- accessible for all consumers (especially those at the provincial and district, commune levels);
- speedy (no delay)
- simple (to be understandable and usable by people of all backgrounds and education levels)
- cost-efficient; and
- proportionate to the economic value at stake.

Most countries in the world with a consumer protection law have built up a consumer dispute settlement system of their own, in line with the aforementioned principles. These systems may vary significantly in terms of structure, organization, etc but they often comprise of at least one of the following mechanisms:

Internal Complaints Handling

An effective process for businesses to handle consumer complaints internally can help alleviate the need for external resolution procedures, saving both consumers and businesses valuable time and money.

From a business perspective, ensuring that disputes can be handled internally offers many advantages, by enhancing consumer satisfaction and loyalty, and avoiding more costly and time-consuming external dispute resolution procedures. From a consumer perspective, direct recourse to the company is also usually the most advantageous way to solve a dispute. Consumers are generally more interested in concrete solutions to their problems, by obtaining delivery, repair, replacement, or refund of a product or service they have purchased, than in asserting their legal rights. In terms of time, expense, and ease of use, obtaining such solutions through internal processes, where possible, is preferable to recourse to external mechanisms. In addition, attempting to resolve disputes directly with the business is often a pre-requisite to being able to use third party mechanisms for dispute resolution and redress including payment cardholder protection schemes, and alternative disputes resolution services. As with other informal mechanisms, however, recourse to internal complaints handling processes will not be effective in cases where consumers have been the victims of illegitimate businesses or fraudsters.

Alternative Dispute Resolution (ADR)

Where efforts to resolve disputes directly with businesses fail, alternative dispute resolution (ADR) can offer consumers a quick, effective and cheap way to obtain a remedy without the burden and expense of taking formal legal action. There are a wide variety of ADR mechanisms. Some of the most common forms are mediation, conciliation, assisted negotiation, and arbitration. Although there is not full consensus - in the academic or business fields - on the precise definitions of these terms, they can be broadly categorised into consensual versus

adjudicative processes. Mediation, conciliation, and assisted negotiation are all consensual processes whereby a neutral third party facilitates communication between the parties to help them reach agreement. Arbitration is an adjudicative process whereby a neutral third party gathers information from both parties and makes a decision that is often intended to be legally binding and final. Arbitration is more formal or “court-like” than consensual ADR mechanisms, with parties agreeing (either before or after the dispute arises) to be bound by the final decision of the third-party arbitrator. In consensual ADR schemes, on the other hand, decisions are agreed upon by the parties themselves rather than imposed by the third party.

Small Claims Procedures

Recognising that the regular court system is often beyond the reach of average consumers with low value claims, a significant number of countries in the world have introduced simplified court procedures for small claims. These procedures are designed as informal alternatives to traditional civil court proceedings, allowing individuals to resolve disputes and obtain redress at a cost and burden not disproportionate to the amount of their claim. Being independent, binding and enforceable, small claims procedures offer consumers the main benefits of the judicial system without the high costs, delay and procedural complexities procedures associated with the regular courts.

There are many different forms of court procedures to resolve small consumer claims. The procedures are broadly organised here into three different categories: separate courts or tribunals of limited jurisdiction; modified procedures in ordinary courts; and other types of simplified procedures.

Separate courts or tribunals of limited jurisdiction. In some countries, small consumer claims are resolved by separate courts or tribunals of very limited jurisdiction, designed to provide individuals with an accessible form of justice for day-to-day legal matters. In other countries, these tribunals or courts are specialised for consumer disputes, while in others they handle all minor legal matters both civil and criminal. The distinguishing characteristic of these courts and tribunals is that they only resolve minor legal matters, are usually not courts of record, and usually operate under less formal procedures than the higher courts irrespective of the type of case being heard.

Modified procedures for small claims in ordinary courts. In a number of countries, small consumer claims are resolved by courts of first instance operating under simplified and/or accelerated procedures. Very often, these courts have a separate division or section to handle small claims.

Other types of simplified procedures. In a few countries there are special procedures provided by the regular courts, which may only be used for a particular type of claim. These procedures are not usually tailored towards consumer disputes. For example, in Austria, there are summary proceedings available for debt repayment orders for amounts not exceeding a certain threshold.

In some countries, as an alternative, or addition, to small claims procedures, there are state run alternative dispute resolution bodies (such as consumer complaints boards or ombudsman schemes) which operate outside the ordinary civil court system to serve the same function as judicial small claims procedures.

In all countries using this type of mechanism, small claims courts have jurisdiction to adjudicate most types of commercial consumer disputes relating to goods and services. All countries set

threshold limits on the monetary value of the claim that may be filed under simplified proceedings, these limits vary greatly by country. In some countries threshold limits vary according to the nature of the dispute.

Private Collective Action Lawsuits

In some countries, there is a procedure available for legal action to be filed by groups of private individuals who have each suffered similar harm as a result of the actions of the same defendant. Typically associated with the class action lawsuit in the United States, in recent years, this type of action has been gaining in popularity in other countries in the world as a consumer protection mechanism (albeit often in a more limited form). Collective action can be particularly useful in cases where large numbers of consumers have each suffered small losses. It offers an avenue for redress to consumers who, due to the low value of the claim, would not be willing to undertake the burden and cost of legal action individually. It should be noted that collective action lawsuits differ from country to country both in form and in name.

Legal Actions by Consumer Organisations

In some countries, the rights of consumers to take private legal action are supplemented by rights provided to consumer organisations to file lawsuits on behalf of a consumer or, more frequently, a group of consumers. Like private collective action lawsuits, actions by consumer organisations are particularly useful in cases of widespread consumer harm, providing a mechanism to prevent or remedy wrongful conduct by a defendant that may otherwise go unchecked.

Actions in the collective interest of consumers: In these types of actions, the consumer organisation takes the action in its own name on behalf of the “collective interests of consumers.” This type of action is taken to vindicate the general consumer interest, without any showing of actual harm to individual consumers. It is regarded as an important mechanism to correct market failures, where the collective harm that is caused by defendant’s action is more than the sum of the individual losses involved.

Government-obtained Redress

Another rather popular mechanism of consumer protection in the world involves the grant of statutory authority to government officials to bring legal actions to protect consumers. The organisational forms for these government consumer protection bodies vary between various countries, from consumer ombudsman offices, to independent commissions, to directorates or divisions within a ministerial branch of the government.

Government consumer protection agencies have at their disposal – either directly or via the courts – a number of types of remedies with which to address marketplace infractions. They can be broadly characterised as conduct remedies and monetary remedies. Conduct remedies can involve injunctions, cease-and-desist orders and related measures. Typically this type of remedy is aimed at directly preventing certain types of conduct that breach the law. In unusual circumstances, conduct remedies may impose affirmative conduct obligations, usually requiring a party to disclose information to clarify the products or services for the consumer.

Monetary remedies can take a variety of forms, including fines or civil penalties, which are intended to deter infractions of the law, and disgorgement orders, which deprive a wrongdoer of the profits of the unlawful activity. The proceeds of both of these remedies end up back in government treasuries. Another type of monetary remedy is an order for monetary redress.

Conclusion

It may be concluded that there exist a large variety of measures and mechanisms to settle disputes and offer redress to the consumers, depending on the characteristics and level of development of respective countries with regard to law, administrative procedures, judicial system, politics and ideology, as well as socio-economic issues. This is the core in building an effective consumer protection policy.

The limited scope of this article do not allow one to critically analyse the pros and cons as well as other specific issues related to each mechanism. However, during the process of drafting a law on consumer protection for Vietnam, such critical analysis and research is required. Similarly, we need to learn from the experiences of other countries with regard to each mechanism, so that we can come up with the optimal solution for Vietnam.