

## **Major Issues in Drafting a Law on Consumer Protection for Vietnam**

In 1999, the Standing Committee of Vietnam National Assembly issued the Ordinance on the Protection of Consumer Interests (hereinafter referred to as “the Ordinance”). The Ordinance stipulated the rights and obligations of consumers, the obligations of manufacturers and providers of goods and services; and outlined the mechanisms for State administration of consumer protection issues, as well as mechanisms for handling consumer claims and complaints, etc. Subsequently, on October 2<sup>nd</sup>, 2001, the Government of Vietnam issued the Decree 69/2001/ND-CP which guided the implementation of the Ordinance. Until very recently, these two documents, in addition to some provisions of various laws and regulations (such as in the Civil Code, the Commercial Law, etc) constitute the basic legal framework for consumer protection in Vietnam. In April 2008, the Government issued the Decree 55/2008/ND-CP, which replaces the Decree 69. And most recently, a Law on Consumer Protection has been put onto the agenda of the Vietnam National Assembly Session XII, for promulgation. It is anticipated that this law be adopted by the National Assembly in October 2010. The Vietnam Competition Administration Department (Ministry of Industry and Trade) was assigned to take charge and cooperate with relevant State agencies in drafting the Law.

### ***Has the market changed since 1999?***

Considerable changes have occurred on the Vietnamese marketplace ever since the Ordinance was promulgated in 1999. As a result of a number of factors including technological change, deregulation and competition reform and decreasing barriers to international trade, consumers are faced with a broader range of products and services from a greater variety of sources.

Competition reforms and deregulation have presented consumers with choices in telecommunications, transportation, banking, insurance and other areas, where previously the only choice was a government-owned monopoly, bringing Vietnamese consumers the right to choose among various types of goods and services, with quality and competitive prices. In addition to traditional goods and services, innovations in science and technologies have also brought the consumers many new products such as computers, broad-band Internet, flat screen TV or cable television, etc.

Not only are the products themselves complex, but the pricing structures for such products are often highly sophisticated, and so are the means of transaction and shipping. The development of e-commerce and on-line trading has also opened up opportunities for consumers to obtain goods and services from businesses from around the globe sitting at home, not having to go to shops and supermarkets any longer.

Within this environment, healthy competition will generally enhance consumer welfare, providing the price/quality of products and services that consumers want, and innovation. However, besides those advantages, consumers also have to face up against new challenges.

For example, as choices and competition increases, consumers face the challenge of how to exercise choice wisely. They must compare increasingly sophisticated products and services,

often in new technology areas where it is difficult for them to judge the quality of what they are buying. Trading via the Internet has introduced not only a new range of traders, products, and prices, but also the challenge of dealing with traders in the online environment, in particular, how to deal with online traders when things go wrong.

Also, as consumers are exposed to more choices, they are potentially exposed to more unscrupulous traders, for example the plethora of scams disseminated via the internet or email, or those illegal pyramid selling schemes. Nevertheless, while there is a tendency to consider these as new issues, in fact, there are some striking similarities between the issues faced by consumers today and during the period of initial reforms and transformation to market-based system of the Vietnamese economy in the 1980s. This means that, while the core values of the consumer protection policy that we have pursued since 1999 still remain, we are in need of stronger legal tools, with wider, more comprehensive and modern regulatory scope and above all, useful and innovative tools to inform and support each individual consumer. Faced with such needs, what a law on consumer protection law be?

### ***Basic ingredients of a Law on Consumer Protection of Vietnam***

Such core provisions of the Ordinance 1999 as the legitimate rights and obligations of consumers, manufacturers and providers of goods and services; the fundamental principles of State administration and consumer complaints handling; still retain their value till date and in the future; and therefore needs to be preserved. Besides, the upcoming law on consumer protection of Vietnam should add or amend existing regulations in such directions as:

- (1) A clearer and more precise definition of ‘consumer’;
- (2) Provisions with wide regulatory scope, flexibility and adaptability, on abusive practices to consumers’ legitimate rights and interests – In such a continuously changing market, simple existing regulations on abusive practices to consumers’ rights (such as manufacturing and trading banned, fake or unsafe goods, providing untruthful information, misleading advertisement and other deceptive practices) are outdated. Meanwhile, new regulations, if too detailed and rigid, will create difficulties for law implementation and would also become outdated quickly. For instance, the law can contain a number of provisions which relate directly to fair trading and consumer protection in the marketplace including:
  - Prohibitions on misleading and deceptive conduct in trade or commerce;
  - Prohibitions on harassment or coercion in connection with the supply or possible supply of goods or services;
  - Product safety and product information standards and enforcement of such standards;
  - Liability of manufacturers and importers for defective goods;
  - Non-exclusionary implied conditions and warranties in consumer transactions;

- Prohibitions on unconscionable conduct<sup>1</sup> in consumer transactions; and
- Prohibitions on the contravention of industry codes of conduct which have been prescribed by regulation.

(3) An effective law implementation and dispute settlement mechanism – A recognisable shortcoming of the Ordinance 1999 is that it neither provides for the establishment of a separate and specialised law enforcement body in this field (and instead only establishes several general principles on handling disputes and consumer claims) nor establishes specific sanctions and fines to prevent violations. Decree 55/2008/NĐ-CP, in replacement of Decree 69, partly resolved this problem but undrastically. The future law on consumer protection of Vietnam should propose for the setting up of a separate law enforcement system from the central to local levels (on the principle of high decentralisation to the grassroots levels and maximised utilisation of existing mechanisms and human resources) which is powerful and independent, with sufficient resources, political and social support, and can work well with other relevant institutions. Furthermore, we need a built-in dispute settlement mechanism, spreading from the central to grassroots levels. Consumer complaints and claims should be handled away from the current judicial (court) system, which is overloaded, lacks the necessary expertise, and which is inherently unfriendly with the largely ill-informed and unorganised consumers. This redressal system should be equipped with simplified, expedited and inexpensive redressal procedures so that consumers can get to know about it, develop confidence in it and use it more frequently. Specific provisions on fines and sanctions in the law are also essential. Due to the absence of such provisions, our current regulations on consumer protection are just slogans, and manufacturers and providers of goods and services tend to ignore their obligations to consumers, making this a distinctive feature of the Vietnamese culture of doing business. Therefore, this aspect is extremely necessary for the law to be a good and effective one. However, the fines and remedies added should have sufficient deterrent effects to ensure effectiveness while avoid overlapping with other legal documents. World experiences show that, despite several discrepancies, the laws on consumer protection of most countries have fines and sanctions as an important part, sometimes as a separate chapter, which lists all administrative, civil and penal measures.

(4) Civil society organisations (CSOs) on consumer protection – The important role of CSOs in a consumer protection regime is undeniable. Through these organisations, the consumers' right to representation can be exercised, consumers' voice on socio-

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<sup>1</sup> Unconscionable conducts basically involves the exploitation by a stronger party of a weaker party. Claims of unconscionable conducts can be established under the following situations: (i) where the stronger party knows or ought to know, that the weaker party did not fully understand the transaction; (ii) where there is no real opportunity for the weaker party to bargain; (iii) when a contract is grossly one-sided; (iv) excessive terms and prices; and (v) using powerful positions to impose unreasonable conditions. While handling consumer complaints or claims, the court or the dispute settlement agency may have regard to: (i) the relative bargaining strengths of the parties; (ii) the consumer's ability to understand the documentation; (iii) whether undue influence or pressure, or unfair tactics were used; (iv) whether the conditions imposed went beyond what was needed for the supplier's legitimate interests; and (v) the amount the consumer would have to pay for equivalent goods or services elsewhere.

economic and policy issues affecting their lives can be heard and considered during law-making and implementation processes. CSOs can represent each consumer in claims, to seek redressal with the court or other relevant State agencies. These organisations can also act as informal channel to resolve consumers' queries and complaints, or to help them negotiate and reach an agreement with enterprises. Finally, these organisations can act as watchdog of how effectively and stringently the law on consumer protection is being enforced, in order to help improving the social administration system in each country. Due to these reasons, many consumer protection laws in the world contain provisions on the legal standing, the role and power of consumer associations. These associations should have: (i) the right to act on behalf of one or several individuals (whether they are members of the organisation or not) to make complaints to State agencies about damages or harms inflicted by bad quality or unsafe products, or by other practices violating the fundamental rights and benefits of consumers in transactions with producers, sellers or service providers; (ii) the right to advocate to State agencies about necessary measures to ensure the realisation of the legitimate rights and interests of the consumers, or the elimination of violations, in order to increase consumers' welfare; and (iii) the right to complain about those practices by governmental agencies violating the legitimate rights and benefits of consumers or going against the law on consumer protection, etc. Besides, the law should also establish functionable mechanisms for cooperation between these associations and State agencies, as well as mechanisms for governmental support so that these organisations carry out their functions and targets. The experiences of India, where a Consumer Welfare Fund is in place to support relevant activities, projects of consumer associations, can be a good reference point in this regard.