

Handling conflict of laws in consumer protection

International Experiences & Vietnam

Consumer protection law and overlap with relevant laws in regulatory scope

Consumer protection policy does not comprise a single act but is a complex combination of several relevant legal normative documents, such as law on contracts, marketing, packaging and labelling, advertising and provision of information, measurement and quality, and specific provisions of sectoral regulatory laws (e.g. in the areas of telecommunications, electricity, transportation, and public health, etc) stipulating the protection of the legitimate rights of buyers/users of goods and services (consumers). Whether a nation has passed a specific law on consumer protection or not, it usually have already developed a system of laws and regulations providing for consumer protection of some kind, which include the relevant laws and provisions stated above, to ensure the legitimate rights of the public. Therefore, when such nation adopts and implements a specific law on consumer protection, it is inevitable that there would be an overlap regarding the scope of regulation between this specific law and other parts of the overall consumer protection policy, sometimes leading to conflict of laws. Due to these reasons, legislative and executive bodies are required to consider carefully and takes actions accordingly.

Nevertheless, a common fact is that Consumer Protection Laws provide a higher degree of protection to consumers than other relevant acts do. The reason is that the latter, such as law on contracts, tend to assume that all parties are legally equal in terms of power and information. But in the real markets, invariably, consumers have markedly less information or bargaining power than suppliers. The law, in general, deems the action of a consumer in buying a commodity to be the making of a contract – in theory, a free and rational act. In practice, the legal consequences are attributed to the action by the law with little consideration of what the consumer actually wants or knows. In that case, the protection only makes sense if consumers are fully rational, informed and equal in economic power to suppliers. Therefore, one can say that relevant laws offer an inadequate basis for an equitable legal transaction, and need to be supplemented by consumer protection laws – which provide a higher degree of protection for consumers.

Therefore, in case there is an overlap in terms of regulatory scope between consumer protection laws and other relevant laws, consumer protection laws should prevail.

Besides, there is a common legal theory which has always been followed: Uniform general laws prevail over earlier-enacted special provisions.¹ According to this rule, in case of overlap in regulatory scope, Consumer Protection Law, the general and uniform law on the subject of consumer protection will prevail over specific laws.

¹ An US case law, in this regard, states that: “A later general act may be held to supercede a prior narrower one where the later act purports to deal comprehensively with the subject to which it pertains.” (272B Norman J. Singer, SUTHERLAND STAT. CONST. 5 51.05 at 175 (5th ed. 1992))

International experiences²

This is clearly stated in the consumer protection acts of many countries in the world.³ For example: Article 6 of the Law on Product Liability 1994 of Japan (an important act in the area of consumer protection in Japan) states that: *“unless this Law stipulates otherwise, the determination of suppliers’ liability for damages caused by defected products will be carried out in accordance with the Civil Code”*. Article 10 of the Consumer Contract Law of Japan (also an important act regarding consumer protection in Japan) states that: *“All terms of contract that either limit consumers’ rights or extend consumers’ obligations beyond the regulations of this Law and not in line with public order mentioned in the Civil Code, the Commercial Code and other laws, or unilaterally reduces consumers’ rights...shall be void”*. Section 1, Article 11 of this Law also stipulates that: *“for determining the legal consequences of a contracting offer and offer acceptance, the regulations of the Civil Code and the Commercial Code will be applied as a supplement to this law.”* Section 2, Article 11 of this law clearly stipulates that: *“contract offer and offer acceptance, if stipulated in laws other than the Civil Code and the Commercial Code, the regulations in other laws will be applied.”*

In the Philippines, Article 167 of the Consumer Protection Law of this nation states that: *“This Law will prevail irrespective of any contradictory agreements, however the application of this Law is not to reduce or limit any rights which consumers are entitled to in accordance with the regulations of other laws”*.

In Canada, it is the norm in many states that the Consumer Protection Laws shall prevail over relevant regulations in civil and commercial laws. For instance, the Consumer Protection Law of British Columbia (Canada) clearly states in Article 3 that: *“any refusal or doings that hamper consumers from their rights, benefits, protections according to regulations in this Law are void, unless otherwise explicitly stipulated in this Law”*. Article 261 of the Consumer Protection Law of Quebec (Canada) states that, *“agreements that are meant to escape the application of this law are not allowed”*. Article 262 of this act also states that *“consumers are not allowed to waive themselves from the rights stated in this Law unless otherwise stipulated by this Law”*. This implies that, Consumer Protection Laws will prevail over other regulations in civil laws (especially contract-related regulations) (e.g. in the Law on Sale of Goods of British Columbia or the Civil Law of Quebec).

Moreover, another emerging issue is the pressing need of having laws and regulations to protect consumers in transactions with overseas businessmen (i.e, online shopping by credit card at www.amazon.com). The laws in many countries stipulate that, in the area of consumer protection, there should be no problem in the choice of law in international private law. This is a practice widely applied in Canada, France and many other countries. In ASEAN, Article 4 of the Consumer Protection Law of Malaysia stipulates that: *“This Act remains valid*

² This part is based on a research of the same topic jointly produced by CUTS International and the Vietnam Competition Administration Department (VCAD) – Ministry of Industry and Trade of Vietnam, in August 2008.

³ In general, Consumer Protection Laws limit the freedom to contract, and therefore might stipulate differently from the Civil Code, or the Commercial Code (these two codes are based on the principle of ensuring the freedom to contract).

irrespective of the applicable terms of contract or the determination of applicable laws of other nations before the court, with the intent to evade the application of this Act.”

Vietnam context

Although Vietnam has not yet adopted a complete and separate law on consumer protection, on the country has already had a consumer protection policy since long time ago, including legal normative documents such as the Ordinance on Protection of Consumer Interests issued by the Standing Committee of the National Assembly in 1999, or relevant provisions in the Civil Code, the Penal Code, the Commercial Law, the Law on Public Health Protection, the Environmental Protection Law, the Ordinance on Goods Quality, the Ordinance on Measurement, or the Ordinance on Foods Hygiene and Safety... However, these scattered and incoherent regulations, which are also of too general nature sometimes, cannot ensure the realisation of consumers’ rights most appropriately and sufficiently, or fail to take due consideration of the consumers’ disadvantageous positions in the market.

For example, in terms of warranty, the Civil Code 2005 of Vietnam has specific regulations on warranty obligation, the right of asking for warranty and repair in warranty period, damage compensation during warranty period from Article 445-448. Besides, Article 630 of the Code also stipulated that, *“Individuals, legal entity or other subjects produce or deal in goods of low quality and cause damages to consumers have to compensate”*.

However, these regulations do not well protect “buyers”, typically consumers – who always lack information, not only about goods and services but also about their legitimate rights, relevant legal rules and warranty conditions, and who have less bargaining power. For example, according to Article 445, the warranty obligations of sellers only occur in case of mutual agreement or stipulated by the law. However, real market practices show that suppliers should be bound by warranty obligations even if they only make a public declaration about that. This will help consumers to be protected even when they do not have sufficient knowledge and detailed information about relevant legal regulations, or in case of ignorance or neglect, or even when they cannot negotiate clearly and in details with manufacturers and providers of goods and services.

Vietnam is drafting and preparing for the adoption of a Consumer Protection Law in 2010. At that time, it is highly likely that this law will have overlaps with sectoral regulations or relevant laws in terms of regulatory scope. For instance, regarding the issue of warranty mentioned above, the Consumer Protection Law of Vietnam in the future should have more appropriate and detailed regulations, to sufficiently ensure consumers’ rights. Hence, this overlap should be carefully considered during the law drafting process, to avoid conflicts in the future, in the direction of giving the Consumer Protection Law precedence over other specific laws and regulations.