

Special Alert

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Vietnam - New Law on the Protection of Consumer's Rights

On 20 June 2023, the National Assembly passed the Law No. 19/2023/QH15 on Protection of Consumers' Rights (the “**2023 LPCR**”), effective from 1 July 2024 and taking place of the Law No. 59/2010/QH12 on the Protection of Consumers' Rights, as amended on 2018 (the “**2010 LPCR**”). Certain main purposes of the 2023 LPCR:

- remedying shortcomings of the 2010 LPCR, such as provisions on responsibilities of business entities for consumers are insufficient and unclear; lack of clarity and consistency in provisions relating to contracts, general terms with consumers, resolution of disputes, etc., so that the implementation thereof faced with certain difficulty and non-effectiveness;
- catching up with the practices that have arisen in the context of the new development in the market, such as e-transactions, cross-border transactions, and sharing services on digital platforms; and
- making consistency between the 2023 LPCR and other relevant laws and regulations and bringing relevant Vietnam's international commitments into the local law.

Certain markable amendments of the 2023 LPCR compared to the 2010 LPCR are discussed below.

Clarification of the application subjects

In accordance with the 2023 LPCR, its application subjects encompass consumers; business entities; Vietnamese Fatherland Front, and social-political organizations; social organizations participating in consumer rights protection; and domestic and foreign agencies, organizations, and individuals involving in the protection of consumers' rights, wherein, the consumer is defined as a person who purchases or uses the products/goods or services for consumption, living purposes of his/her personal, family, agency/organization **but not for trading purposes**. The 2023 LPCR remains the

definition of business entities in the 2010 LPCR, i.e., including a trader under Commercial Law No. 36/2005/QH11 dated 14 June 2005, and individuals doing commercial activities independently and regularly but not required to have a business registration.

The inclusion of foreign agencies, organizations, and individuals involving in the protection of consumers' rights in the scope of the application subjects of the 2023 LPCR is for purpose of protection consumers' rights in cross-border transactions, such as transactions via e-commerce platforms (e.g., Alibaba, Amazon, and Netflix, etc.).

Protection of Consumers' Information

The 2023 LPCR defines that consumers' information comprises consumers' personal information, information about the consumers' purchase and use of products/goods or services, and other information related to transactions between consumers and business entities. In general, the policy and provisions on consumers' information protection policy under the 2023 LPCR are consistent with one of the relevant laws, comprising the Law on Information Technology No. 67/2006/QH11 dated 29 June 2006, as amended in 2017, the Law on Cyberinformation Security No. 86/2015/QH13 date 19 November 2015, and the newly promulgated Decree 13/2023/ND-CP dated 17 April 2023 on Personal Data Protection ("**Decree 13**"), etc.

Accordingly, unless consumers' information has already been made public or is subject to applicable laws, the business entities shall notify, and obtain such consumers' consent as to the purposes and scope of consumer information collecting and using, and the period of storage of the same prior to conducting. In addition, the business entities must set up a relevant mechanism, so that the consumers can select the scope of their information to be provided, as well as express their consent or not consent for collecting and using such information. The business entities can use consumers' information for purposes and scope other than the ones already informed and obtained consumer's consent the cases where (i) having a relevant separate agreement with the consumers; (ii) for providing goods or services as per consumers' requests, and solely in the scope of information as already consented by consumers; and (iii) for performing obligations as prescribed by law.

In consistency with Decree 13, business entities shall strictly secure such information, build up measures to protect them against infringements, and promptly report to the competent authorities in case of the information systems are attacked within twenty-four hours upon detection. In addition, the requests of the consumer in respect of the check, repair, update, or cancelation, etc. of his/her information shall be performed by business entities or by his/herself after the business entities' provision of the mechanism and information.

Commercial promotions through influencers

Commercial promotion through influencers is one of the marketing channels used more and more by business entities because they help business entities conveniently and easily reach potential customers based on the consumers' trust in such influencers. However, due to the absence of a legal

framework governing the behavior and actions of influencers in endorsing products or services for the purpose of promotion thereof, many business entities abused the consumers' trust in such influencers for their business of unqualified/substandard products and services.

To mitigate such abuse by business entities as well as bind influencers with responsibilities in respect of the protection of consumers' rights, the 2023 LPCR defines influencers mean experts, persons who are reputable or are paid attention by society, in particular industries, and fields as prescribed by the Government (Article 3.9), and provides that influencers in the capacity of third parties providing products/ services information shall be responsible for (i) the accuracy and sufficiency of such information; (ii) obtaining evidence from the business entities proving the accuracy, and sufficiency of such information; (iii) taking joint responsibility in case of for providing inaccurate or insufficient information, except for the case that such influencers have relevant evidence for proving that they have done all prescribed measures for checking the accuracy and sufficiency of such information; and (iv) complying with relevant applicable laws. Additionally, prior notification of "sponsored" is required for promotion activities via influencers to consumers.

Protection of consumers' rights in specific transactions

The 2023 LPCR provides specific transactions between consumers and business entities comprising remote transactions, continuous services provision, and direct selling (including door-to-door selling, multi-level selling, and off-premises selling).

In practice, there are hidden risks associated with such specific transactions such as fraudulent activity or scams, unfair contract terms, the pyramid scheme, or aggressive sales tactics. In order to minimize such risks, Articles 37 to 47 of the 2023 LPCR specify the responsibilities of business entities for consumers in respective such specific transactions, in which, the 2023 LPCR especially presses the provision of full information of goods/service, inter alia:

- In remote transactions, business entities are obligated to provide comprehensive details including the parties involved, goods/services, pricing information, payment terms, taxes, and other relevant aspects. When offering services over the telephone, it is essential to provide the name/address of the business entities as well as the purpose of such call in advance. Moreover, business entities are responsible for developing tools and implementing security measures that guarantee consumers receive accurate and complete contract substance before entering into an agreement.

Consumers have the right to discuss and clarify contract terms, confirm their agreement, and review, download, and sign the contract as needed. In particular, if business entities provide inaccurate mandatory information, consumers have the right to negotiate a resolution with the business entities, unilaterally terminate the signed agreement, or request competent authorities to declare the void or cancellation of the contract. Business entities must refund the consumer's payment for the unused goods/services in such cases.

- In continuous service provision, business entities conducting such activities in Vietnam without a legal representative must publicly announce their authorized representative in Vietnam who shall be responsible to comply with the laws of consumer's rights protection. The business entities shall not unilaterally terminate or stop providing services without valid reasons, in case of repairs, or maintenance necessary, the provider must notify the consumer at least three (3) working days in advance. Notably, unless agreed otherwise, consumers must not make any payment before receiving the service.
- In direct selling, business entities have the responsibilities of the public of all necessary information to consumers and shall prepare the mandatory provisions in contracts. Moreover, it is worth noting that in door-to-door selling and off-premises selling, the consumers shall have a grace period (i.e. three (3) days after entering into such an agreement), in which the consumers are entitled to consider and decide to perform such agreement as well as to unilaterally terminate the signed agreement, provided that they have noticed to business entities in advance.

Notably, the 2023 LPCR first specifies business entities in cyberspace, comprising those (i) selling products/goods or providing services via information systems established by themselves or via digital platforms, or (ii) establishing and operating digital platforms, i.e. e-commerce platforms. Both of such entities shall be subject to the responsibilities of the business entities engaging in specific transactions, i.e., remote transactions and continuous service provisions.

In addition to these responsibilities above, the business entities establishing and operating a digital platform shall have to comply with the public, security, and transparent rules of data/information related to the consumers and their experience, and the administrative operation as prescribed in Article 39.3 of the 2023 LPCR, for example (i) designate an authorized representative to handle complaints and coordinate with competent authorities; (ii) develop and publish operational policies for consumers; (iii) provide information about business entities operating in digital platforms if requested by consumers; (iv) allow consumer responses and evaluations of business entities and display such results; and (v) display goods/services information, including mandatory contents shown on goods labels under the laws on goods labels, among other things.

Especially, with regard to big business entities in cyberspace, in addition to such above responsibility, they shall have to (i) establish an archive of ads that use algorithms to target specific consumers; (ii) periodically evaluate content censorship activities, the use of these algorithmic systems and ads to target consumers; and, (iii) periodically evaluate the handle of fake accounts, the use of artificial intelligence, other automatic or partially automatic solutions. However, the 2023 LPCR does not provide criteria to identify a big business entity in cyberspace, which is expected to be addressed in the upcoming decree guiding the implementation of the 2023 LPCR.

The method of dispute settlement

Similar to the 2010 LPCR, the 2023 LPCR provides for four (4) methods of dispute settlement

between traders and consumers, comprising negotiation, mediation, arbitration, and court. Among these methods, in practice, negotiation is always encouraged to resolve such disputes as to the cost and timesaving.

Accordingly, the 2023 LPCR specifies procedures for the negotiation as well as obligations of a business entity in receipt of the request for the negotiation from the consumer in question or from the relevant authorities or social organizations (“**Assistance Bodies**”) under the assistance request in case the business entity refusing to negotiate as requested by the consumer. The business entity is required to either conduct the negotiation or provide a response within a specified timeframe of seven (7) working days from the date of receiving the request of consumers or Assistance Bodies.

However, a consumer’s request for negotiation with the business entity or for assistance from the Assistance Bodies may be rejected in the following cases (i) the consumer does not have full legal abilities without a legal representative; (ii) the request is submitted by a person having no authority; (iii) lack of necessary information for identifying the relevant organization and/or individual or evidence related to the transaction; (iv) the assistance request is out of the scope of competence of the receiving Assistance Body; and (v) the request has been handled by other relevant State competent authority or have been resolved by the Assistance Body before.

The 2023 LPCR has also certain changes associated with the mediation method to align with the respective provisions provided in the Law on Grassroots Conciliation No. 35/2013/QH13 dated 20 June 2013, the Law on Mediation or Dialogue at the Court No. 58/2020/QH14 dated 16 June 2020, Decree No. 22/2017/ND-CP dated 24 February 2017 on commercial mediation, especially the provision of qualification standards for an individual to be recognized as mediator. Under such conditions, a mediator is an individual only who is selected by the mediation organization under relevant laws as mentioned above, or who meets all the following conditions as provided in Article 64.2 of the 2023 LPCR: (i) full civil act capacity; (ii) having good moral qualities, being honest and prestige; (iii) having conciliation skills, good knowledge about relevant laws; (iv) not facing criminal prosecution or not have an unspent conviction; and (v) be recognized, announced, and appointed to resolve cases by the social organizations or the other organizations that have the mediation function according to the provisions of law.

As mentioned above, the 2023 LPCR will take effect from 1 July 2024, however, in accordance with the transitional provision thereof, there are certain exceptions of transactions between business entities with consumers entered into before the effective date of the 2023 LPCR, for that the 2010 LPCR still apply, comprising (i) such transactions which have contents and forms other than ones provided in the 2023 LPCR, but have not been performed, except that parties have relevant amendment agreement, so that transactions’ contents and forms are in compliance with the 2023 LPCR; and (ii) such transactions which have contents and forms other than ones provided in the 2023 LPCR, but are being performed. In addition, regarding the standard form contracts and general transaction conditions which have been published and applied before the effective date of the 2023 LPCR, for ones the registration is not required under the 2023 LPCR, amendment and publication

thereof for compliance with the 2023 LPCR must be completed before 31 December 2024; and for ones the registration is required, such registration shall also be completed before 31 December 2024.

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