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LEGAL UPDATE

DRAFT LAW ON PROTECTION
OF CONSUMERS' RIGHTS

Early January 2022, the Ministry of Industry and Trade released the Draft Law on the protection of consumers' rights (**Draft Law**) for public comments.

For the past few years, Vietnam has been a member of various international treaties, such as CPTPP, EVFTA, UKVFTA, etc., many of which regulate the members' commitment to policies to protect consumers' rights and benefits. Therefore, it is essential to replace the current Law on Protection of Consumers' Rights with a more updated one to be in line with the common interest of the international treaties.

In this legal update, we will set out specific noteworthy points of the Draft Law.

1. Protection of Vulnerable Consumers

The protection of vulnerable consumers' rights is one of the new regulations introduced by the Draft Law. According to the Draft Law *vulnerable consumers* include elderly persons, disabled persons, children, ethnic minorities and other groups as stated in relevant regulations ¹.

Producers, distributors and service providers will have to comply with the following regulations when providing services or goods to vulnerable consumers:

- Provide policies and warranties on price/ fee priorities and other incentives during their operation;
- Set up suitable mechanisms for consumers' complaints and dispute settlement;
- Not conduct prohibited activities toward vulnerable consumers as prescribed in the relevant laws during the transaction process;

¹For example, the Law on Natural disaster prevention and control 2013.

- Set up suitable mechanisms for fighting discrimination, abuse, and exploitation regarding the collecting, storing and use of vulnerable consumers' personal data; and
- Other incentives, mechanisms and policies as prescribed by relevant laws.

2. Protection of Consumers' Personal Data

To cope with the Vietnamese government's policies on the protection of personal data, the Draft Law also introduces various provisions regulating the consumers' personal data. The Draft Law mentions that all information relating to the consumer includes the consumer's personal data, consumption process information, and other transaction information provided by the consumer, organisation or individual.

Under the Draft Law, some notable points of the obligations of producers, distributors and service providers on the protection of consumers' personal data will be set out hereafter.

2.1 Third Party to Handle the Personal Data

In case the producer, distributor or service provider plans to authorise a third party to collect, store and use the consumer's personal data, the two parties must enter into an agreement which explicitly specifies each party's obligations with regard to complying with the Vietnamese regulation on personal data protection.

2.2 Policies on Protection of the Personal Data

Before or upon the collection of the consumer's personal data, the producer, distributor and



service provider must announce the policies on the protection of the consumer's personal data to the consumer, and ask for the consumer's consent to such policies. Such policies may include but are not limited to the collecting purpose, the scope of usage, storing period, and method for the consumer to adjust their data.

2.3 Collection and Use of the Consumer's Personal Data

Except for specific cases, the trader must first obtain the consumer's consent before collecting their personal data for the trader's purpose. In most cases, the consumers will have the right to decide whether or not their personal data can be used, and to select specific personal data to provide the traders. Therefore, the Producers, distributors and service providers must establish mechanisms for the consumers to exercise such rights.

Under the Draft Decree on the protection of personal data² as released by the Ministry of Public Security, it is worth mentioning that the consumers' consent must be explicit in the form of an agreement containing the signatures of both parties. Moreover, the consumers are allowed to withdraw their consent anytime at their discretion.

3. Prohibited Activities Regarding Consumer Protection

The Draft Law also adds many activities that the producer, distributor and service provider is prohibited to conduct during while providing services or goods to the consumers. Some notable prohibited activities include:

- Failure to compensate, refund or replace products and services provided to the consumer by mistake;
- Intentionally reduce packaging, spare parts, replacement components, promotion products, technical and user manual;

²See our update [GDPR like draft decree on data protection introduced](#).

- Non-compliance with regulations on product manufacturing and trading before providing these to the consumer; and
- Use or take advantage of celebrities or influencers' images, quotes or suggestions to promote trade or encourage consumers to engage without first notifying them that the product is being sponsored

Moreover, the Draft Law sets out several prohibited activities for online intermediary platforms (e.g. e commerce trading platforms) to prevent such platforms' interference in the user experience of consumers via unjust display and subscription on such platforms.

4. Invalid Terms and Conditions of Contracts with the Consumer

In favour of the producers, distributors and service providers, the Draft Law has loosened some of its regulations on the terms and conditions of the contract with the consumer which are considered to be invalid. The producers, distributors and service providers now can unilaterally amend the clauses on general transaction conditions and adjust the price during the course of providing continued services. Accordingly, the producers, distributors and service providers are required to supplement the consumers' right to terminate such a contract regarding the before mentioned.

Another notable point is that the Producers, distributors and service providers are not allowed to unilaterally extend the term of the contract. Instead, they will first need to set up clauses on prior notification or mechanism for the consumer to choose whether they wish to extend or terminate the contract.

5. Conclusion

If adopted, this Draft Law is expected to protect the consumer's rights effectively. Producers, distributors and service providers whose goods or services are provided within Vietnam's territory are recommended to review and revise their consumer policies and contracts for the compliance purpose of this Draft Law.

For more information, please contact:

Thang Nguyen / Special Counsel
thang.nguyen@acsvlegal.com

Cuong Ta / Associate
cuong.ta@acsvlegal.com