

## CLIENT UPDATE 2017 FEBRUARY

### Consumer Protection Quarterly Regional Update: A Snapshot of the Past Year & A Look Ahead

#### Introduction

As the first quarter of 2017 has begun, we are very excited to share with you the significant legal developments in the consumer protection sector recently.

This quarterly update aims to highlight the significant consumer protection - related legal developments in the ASEAN region, as well as in the key economies across the world.

Written as a series of short, easy to digest summaries, we hope this update will help keep you informed of important events in the past year, and set you thinking about the potential opportunities as well as the legal issues in the area of the consumer protection in 2017. We will issue these short regional updates every quarter to help you and your business keep up to speed with the latest developments.

#### ASEAN

#### VIETNAM

##### 1. Law on protection of consumers' rights 2010

On 17 November 2010, the National Assembly issued the Law on Protection of Consumer Rights No. 59/2010/QH12. This Law took effect from 1 July 2011 without having any amendments up to date, replacing the Ordinance on the Protection of Consumers' Interests dated 27 April 1999. Notable regulations are as follows:

The law confirms that consumers' information shall be kept safe and confidential when they participate in transactions, use of goods or services, except where competent state agencies required the information.<sup>1</sup>

Organizations or individuals trading goods and/or services are prohibited to harass consumers through the marketing of goods and/or services contrary to the wishes of consumers 2 (two) or more times or other acts that obstruct or affect normal works or activities of consumers.<sup>2</sup>

Upon detection of defective goods, organizations or individuals manufacturing or importing the goods must suspend circulation of defective goods, inform publicly and recovery of such goods and report the results to the state management agencies on the protection of consumers' interests.<sup>3</sup>

Organizations or individuals trading goods and/or services in the List of essential goods and services issued by the Prime Minister must register standard form contracts and general conditions for transactions with competent state management agencies with respect to protecting the interests of consumers.<sup>4</sup>

The Ordinance only allowed organizations protecting consumers' rights to take legal action upon the consumers' authorization, whereas the Law also grants such organizations the right to take legal action themselves by virtue of public interests.<sup>5</sup>

<sup>1</sup> Law on protection of consumers rights, Article 6.1

<sup>2</sup> Law on protection of consumers rights, Article 10.2

<sup>3</sup> Law on protection of consumers rights, Article 22

<sup>4</sup> Law on protection of consumers rights, Article 19.1

<sup>5</sup> Law on protection of consumers rights, Article 28.1.b

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In general, this Law regulates the rights and obligations of consumers, the liability of organizations or individuals trading goods and/or services to consumers, the liability of social organizations in protecting the interests of consumers; resolving disputes between consumers and organizations or individuals trading goods and/or services, the liability of the State on the protection of consumers' interests.

### **2. Decree No.99/2011/ND-CP detailing and providing guidelines for the implementation of a number of articles of Law on Protection of Consumers' Rights.**

Following the Law on Protection of Consumers' Rights 2010, on 27 October 2011, the Government promulgated Decree No.99/2011/ND-CP detailing and providing guidelines for the implementation of a number of articles of Law on Protection of Consumers' Rights ("**Decree 99**"). Decree 99 took effect from 15 December 2011 and it is still in full force and effect up to date.

Decree 99 provides detailed regulations on protection of consumers' interests in transactions with individuals doing commercial activities independently, regularly, and without registering his/her business activities.

Notably, a person engaged in independent and regular commercial activities not subject to business registration is responsible to exchange goods or take back goods from and refund a consumer when his/her goods fail to meet requirements on quality, quantity or use as earlier informed to the consumer.<sup>6</sup> A market management unit or market or trade center operator is responsible to place, and maintain operation of, scales or measuring devices in the market or trade center for consumers to check the quantity and quality of goods.<sup>7</sup>

Decree 99 provides specific regulations on contract forms and the general transaction conditions listed on the list of goods and services which must be registered as stipulated by the Prime Minister. For example: supply of electricity for residential consumption, clean water for residential consumption, pay television, fixed telephone subscription, postpaid mobile phone subscription, postpaid mobile phone subscription, internet connection, air transport of passengers, rail transport of passengers, purchase and sale of apartments, daily-life services provided by apartment-managing units.<sup>8</sup>

Decree 99 also provides the orders and procedures for settlement of the consumer right protection requests. Upon the submission of valid request on consumer right protection, the competent authorities shall examine and issued a reply within maximum of fifteen (15) working days.<sup>9</sup>

### **3. The administrative sanctions in protection of consumer right**

As one of the enforcement measures on consumer rights and protection regulations, the Government issued Decree No. 185/2013/ND-CP dated 15 November 2013 regulating penalties for administrative violations in commercial activities, production and trading in counterfeit and banned goods, and protection of consumer right ("**Decree 185**"), which took effect from 1 January 2014. On 19 November 2015, the Government issued Decree No. 124/2015/ND-CP ("**Decree 124**") to amend and supplement a number of articles of Decree 185, taking effective from 5 January 2016.

These Decrees stipulate different acts of administrative violations in protection of consumer rights, including the violations against the protection of information of consumers, provision of information on goods or services for consumers, responsibility in withdrawal of the goods with defects, harassing consumers, forcing consumers and other acts relating relationship with customers or consumers.

Accordingly, violations in the consumer's right protection would be subject to the fines up to VND 100,000,000 (equivalent to USD 4,496).

<sup>6</sup> Decree 99, Article 4.4

<sup>7</sup> Decree 99, Article 5.3

<sup>8</sup> Decree 99, Article 8

<sup>9</sup> Decree 99, Article 22.2

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#### 4. **Decision No. 1997/QĐ-TTg on Approval for Development Program of Customer Protection Activities in 2016-2020 period**

Decision No. 1997/QĐ-TTg on Approval for Development Program of Customer Protection Activities in the period of 2016-2020 ratified by the Prime Minister dated 18 October 2016, took effect from 18 October 2016. The main targets of the program are to establish and implement mechanisms, policies, and solutions for supporting consumer protection in Vietnam, enhancing qualifications, capacity and give responsibilities to the State authorities, social organizations and enterprises, and raising consumers' awareness with the aim of reaching some achievements in consumer protection and of contributing to social justice and national sustainable development.

One of the specific targets of the program is to ensure that by 2020, at least 80% consumers' complaints and requests will be received, consulted and assisted by the State regulatory authorities and social organizations on consumer protection, traders and service providers, and the percentage of settlement shall exceed 70% of filed complaints.

Besides, the content of the program focuses on the following main points:

- To plan and initiate Vietnamese Consumer Rights Day
- To circulate and popularize policies and laws on consumer protection
- To train and develop human resources to protect customers' benefits
- To establish nationwide switchboards for consumer consulting
- To establish mediation agencies on consumer protection
- To intensify inspection and assessment of consumer goods and service quality
- To create national consumer protection database
- To implement "Action of Enterprises for the benefit of Consumer" program
- To promote International cooperation in consumer protection
- To stipulate other activities for consumer protection according to the reality and regulations of laws.

#### 5. **Recent activities to control food safety and consumer protection**

Last few months of 2016, Lunar New Year and Spring Festival season in 2017 have been considered as a major period during which violations occur with respect to smuggling and trading in fraudulent products, especially producing and trading of counterfeit goods and substandard goods. This is also the time of greatest food consumption during the year, such activities may adversely affect to economic and social situation, security and people's health.

In recent times, functional authorities from the central to local levels have intensified to implement certain measures to control food safety and consumer protection through written guidelines, for example:

- ) On 12 October 2016, Ministry of Industry and Trade issued Plan No. 9701/KH-BCT on organization of consumers' rights in Vietnam in 2017 in which activities in favour of consumers are encouraged to organize and carry out throughout 2017. The activities in response to Consumers' Rights Day in Vietnam will be held in March 2017 with a title: "Enterprises for Consumers".
- ) On 2 November 2016, through issuing Official Dispatch No. 7058/ATTP-KH guiding the implementation of project plan for food safety in 2016, Food Safety Department of the Ministry of Health proposed targets to be achieved in 2016, for example:
  - ✓ 80% of facilities of producing, trading and processing food inspected would meet requirements on hygiene and food safety
  - ✓ 70% of producers, processors, trader and consumers of food would have proper knowledge and practice on food safety.
  - ✓ Over 85% of food service facilities managed by Province/City and facilities of producing and trading of food managed by Health Sector would be certified for food safety.

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- ) On 17 November 2016, the National Steering Committee against smuggling, trade fraud and counterfeit goods issued Plan No. 358/ KH-BCĐ389 on the major time against trade fraud and counterfeit goods before, during and after Lunar New Year 2017 with the purpose of strengthening inspections and controlling the market to promptly detect, prevent, handle smuggle and illegal transportation of goods across borders, producing and trading fake and substandard goods.
  
- ) On 20 January 2017, in Hanoi, the Competition Management Department (MOIT) held a ceremony to launch the program “Enterprises to act in response to Consumer Rights Day in Vietnam” which have been carried out nationally until the end of March 2017.

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### Key Contacts



**Vu Thi Que**

Partner,  
Technology, Media &  
Telecommunications,  
Consumer Protection

T +84 8 3821 2382  
F +84 8 3520 8206  
[que.vu@rajahtannlct.com](mailto:que.vu@rajahtannlct.com)



**Chau Huy Quang**

Managing Partner,  
Technology, Media &  
Telecommunications,  
Consumer Protection

D (08) 6232 0751  
F (65) 6428 2204  
[quang.chau@rajahtannlct.com](mailto:quang.chau@rajahtannlct.com)

#### RAJAH & TANNLCT LAWYERS

*Ho Chi Minh City Office*  
Saigon Centre, Level 13, Unit 2&3  
65 Le Loi Boulevard, District 1, HCMC, Vietnam  
T +84 8 3821 2382 / +84 8 3821 2673  
F +84 8 3520 8206

*Hanoi Office*  
Lotte Center Hanoi - East Tower,  
Level 30, Unit 3003,  
54 Lieu Giai St., Ba Dinh Dist., Hanoi, Vietnam  
T +84 4 3267 6127 F +84 4 3267 6128  
[www.rajahtannlct.com](http://www.rajahtannlct.com)

#### **ASEAN Economic Community Portal**

With the launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

## Our regional presence



## Our regional contacts

**RAJAH & TANN** | *Singapore*

**Rajah & Tann Singapore LLP**  
 9 Battery Road #25-01  
 Straits Trading Building  
 Singapore 049910  
 T +65 6535 3600 F +65 6225 9630  
 sg.rajahtannasia.com

**R&T SOK & HENG** | *Cambodia*

**R&T Sok&Heng Law Office**  
 Vattanac Capital Office Tower, Level 17, No. 66  
 PreahMonivong Boulevard, Sangkat Wat Phnom  
 Khan Daun Penh, 12202 Phnom Penh, Cambodia  
 T +855 23 963 112 / 113 F +855 963 116  
 kh.rajahtannasia.com  
*\*in association with Rajah & Tann Singapore LLP*

**RAJAH & TANN REPRESENTATIVE OFFICE** | *China*

**Rajah & Tann Singapore LLP  
 Shanghai Representative Office**  
 Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle Road  
 Shanghai 200021, People's Republic of China  
 T +86 21 6120 8818 F +86 21 6120 8820  
 cn.rajahtannasia.com

**RAJAH & TANN NK LEGAL** | *Myanmar*

**Rajah & Tann NK Legal Myanmar Company Limited**  
 Myanmar Centre Tower 1, Floor 07, Unit 08,  
 192 Kaba Aye Pagoda Road, Bahan Township,  
 Yangon, Myanmar  
 T +95 9 73040763 / +95 1 657902 / +95 1 657903  
 F +95 1 9665537  
 mm.rajahtannasia.com

**ASSEGAF HAMZAH & PARTNERS** | *Indonesia*

**AssegafHamzah& Partners**

*Jakarta Office*

MenaraRajawali 16th Floor  
Jalan DR. Ide AnakAgungGdeAgung Lot #5.1  
Kawasan Mega Kuningan, Jakarta 12950, Indonesia  
T +62 21 2555 7800 F +62 21 2555 7899  
www.ahp.co.id

*Surabaya Office*

PakuwonCenter, SuperblokTunjungan City  
Lantai 11, Unit 08  
JalanEmbong Malang No. 1, 3, 5, Surabaya 60261, Indonesia  
T +62 31 5116 4550 F +62 31 5116 4560

*\* AssegafHamzah& Partners is an independent law firm in Indonesia and a member of the Rajah & Tann Asia network.*

**CHRISTOPHER & LEE ONG** | *Malaysia*

**Christopher & Lee Ong**

Level 22, Axiata Tower, No. 9 JalanStesenSentral 5,  
Kuala Lumpur Sentral, 50470 Kuala Lumpur, Malaysia  
T +60 3 2273 1919 F +60 3 2273 8310  
www.christopherleeong.com

*\*in association with Rajah & Tann Singapore LLP*

**RAJAH & TANN** | *Thailand*

**Rajah & Tann (Thailand) Limited**

973 President Tower, 12th Floor, Units 12A-12F  
Ploenchit Road, Lumpini, Pathumwan  
Bangkok 10330, Thailand  
T +66 2 656 1991 F +66 2 656 0833  
th.rajahtannasia.com

**RAJAH & TANN** | *Lao PDR*

**Rajah & Tann (Laos) Sole Co., Ltd.**

Phonexay Village, 23 Singha Road, House Number 046/2  
Unit 4, Saysettha District, Vientiane Capital, Lao PDR  
T +856 21 454 239 F +856 21 285 261  
la.rajahtannasia.com

**RAJAH & TANN LCT LAWYERS** | *Vietnam*

**Rajah & Tann LCT Lawyers**

*Ho Chi Minh City Office*

Saigon Centre, Level 13, Unit 2&3  
65 Le Loi Boulevard, District 1, HCMC, Vietnam  
T +84 8 3821 2382 / +84 8 3821 2673 F +84 8 3520 8206

*Hanoi Office*

LotteCenter Hanoi - East Tower, Level 30, Unit 3003,  
54 Lieu Giai St., Ba Dinh Dist., Hanoi, Vietnam  
T +84 4 3267 6127 F +84 4 3267 6128  
www.rajahtannlct.com

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