

# Highlights of the new Decree on protection of consumers' rights

On 16 May 2024, the Government issued Decree No. 55/2024/ND-CP ("Decree 55") detailing implementation of a number of articles of Law on Protection of Consumer Rights No. 19/ 2023/QH15 passed by the National Assembly on 20 June 2023 ("CRPL 2023"). Decree 55 will take effect on 1 July 2024 and will replace Decree No. 99/2011/ND-CP dated 27 October 2011, as amended by Decree No. 03/2023/ND-CP dated 10 February 2023 ("Decree 99"), detailing and providing guidelines for implementation of a number of articles of Law on Protection of Consumers' Rights No. 59/2010/QH12 passed by the National Assembly on 17 November 2010 as amended by Law No. 35/2018/QH14 passed by the National Assembly on 20 November 2018 ("CRPL 2010").

Within the scope of this article, we only summarize some notable contents of Decree 55 compared with the current laws as follows:

## 1. Some new definitions

### (a) Concept of "Influential Persons"

The CRPL 2023 defines "Influential Persons" as experts, reputable people, and people who get social attention in specific fields, industries, and occupations according to the Government regulations.

Decree 55 specifically stipulates the following three cases to be considered "Influential Persons":

(i) People with qualifications, expertise, and experience in specific fields and occupations, recognized by competent agencies or organizations;

- (ii) Typical people, with many merits and contributions, prestigious in the society, specific fields and professions, recognized by competent agencies and organizations;
- (iii) People who are noticed by society, have a significant number of people interested and followed in the media, or have accounts that are eligible to participate in advertising and business programs on digital platforms.

According to the provisions of the CRPL 2023, if business organizations or individuals sponsor the above subjects to use these persons' images, advices and recommendations to promote trade, encourage the purchase and use of their products, goods and services, not only business organizations and individuals but also Influential Persons must have the responsibility to publicly open and notify to consumers in advance about that sponsorship.

#### (b) Concept of "Large Digital Platform"

Decree 55 has provided specific criteria to identify Large Digital Platforms as prescribed in the CRPL 2023. Accordingly, digital platforms for electronic transactions that are established and operated to serve business activities in cyber space will be considered a Large Digital Platform if it meets one of the following criteria:

- (i) There are at least 3,000,000 user accounts operating annually in Vietnam according to the provisions of law on electronic transactions; or
- (ii) It is a large- or very large-scale intermediary digital platform for electronic transactions in accordance with the laws on electronic transactions.

According to Decree 55, if the digital platform meets one of the above criteria, the organization establishing and operating the Large Digital Platform will have the following obligations:

- (i) Making publicly available the criteria for determining the

priority of displaying products, goods, and services (if there is a search function), and in case the displayed content is paid or sponsored content, it must be publicly available in the search results for products, goods, and services. The development and announcement of the application of criteria to determine the priority of displaying products, goods and services when using the search function must comply with relevant laws;

(ii) Maintaining an online reporting account and providing information and data as requested by competent State agencies (information that may be required includes: establishing an advertising archive with using algorithms to target consumers, censoring content, removing feedback and reviews about organizations and individuals selling products, goods, services, etc.); and

(iii) Providing information and data mentioned in points i. and ii. above, in online form to the electronic information portal of the State management agency on protecting consumer rights directly under the Ministry of Industry and Trade (i.e. the National Competition Committee (“NCC”)) within 05 working days from the date of request for reporting and taking full responsibility for the accuracy and integrity of the information and data provided and information and data’ compliance with the laws on protecting consumer rights.

## **2. Model Contract, General Trading Conditions (“GTCs”)**

(a) Formality of Model Contracts and GTCs:

Contracts entered into with consumers, Model Contracts, and GTCs must fully meet the legal requirements that Decree 55 has more reasonably stipulated, including:

(i) The Vietnamese language requirement under Decree 99 is remained, but now the parties can agree to use other languages according to the provisions of Article 23.2 of the CRPL 2023.

(ii) The minimum font size requirement of 12 is only mandatory in the case of paper documents and guided in more detail by

using Times New Roman font or equivalent size.

(b) Registration of Model Contracts and GTCs

(i) Registration time:

Decree 55 maintains the requirement that before using Model Contracts and GTCs in the List of products, goods and services subject to registration issued and amended by the Prime Minister of Government to enter into agreements with consumers, organizations and individuals doing business must register with the State management agency on protecting consumer rights according to the regulations; but add:

- Model Contracts and GTCs may be only used to enter into agreements with or apply to consumers when registration is completed; and
- In the case where the consumer makes payment before entering into a Model contract/GTCs or makes a deposit, escrow, or other measures to ensure the performance of other obligations related to the execution of a Model Contract/GTCs, the business organization or individual will must complete the registration and publication of the Model Contract/GTCs before implementing the payment or above-mentioned measures.

(ii) Post-registration obligations:

According to Decree 55, business organizations and individuals with Model Contracts/GTCs subject to registration have a number of new obligations after registering Model Contracts/GTCs such as:

- Publicly displaying the notice of registration completion and the completely-registered Model Contract/GTCs in a visible location at the headquarters, business location and posting on the electronic information portal and application software (if any) during the entire period of application of that Model Contract/GTCs;
- Submitting a report on the registration and application

situation of Model Contract/GTCs to the competent authority before January 31 every year. The report must be prepared according to Form No. 01 in the appendix to Decree 55.

(iii) Cancellation of or amendment to the registered Model Contract/GTCs:

We note that according to Decree 55, after completing registration, the Model Contract/GTCs can still be requested by the State agency on its own or at the request of consumers or social organizations participating in protection of consumers' rights to cancel or amend all or part of such Model Contract/GTCs at any time if it is discovered that the Model Contract/GTCs violate(s) the laws on protection of consumers' rights, and business organizations and individuals will have to:

- amend or cancel the violating content within 30 days from the date of receiving the request from the State management agency on protection of consumers' rights; except in complicated cases, it may be extended for a maximum of 90 days according to the decision of the State management agency on protection of consumers' rights.
- within 05 working days from the date of completion of amending and cancelling the above-mentioned violating content, publicly displaying the Model Contract/GTCs that has amended and cancelled the violating content at an easy-to-see location at the headquarters, business location and on the electronic information portal, application software (if any) and must notify the consumers who has entered into the contract to apply the new GTC and re-execute the Model Contract if so requested by the consumers; and
- re-register the Model Contract/GTCs and publishing after completing the re-registration procedure as in the case of the first registration.

This is a new point of the CRPL 2023 and Decree 55. According to the old provisions of CRPL 2010 and Decree 99, the request

to cancel or amend the Model Contracts/GTCs only applies to Model Contracts/GTCs that are not required to be registered.

### **3. Handling of Defective Products and Goods (“Defective Products”)**

#### **(a) Stop providing Defective Products**

Decree 55 clearly stipulates the time-limit for stopping the supply of Defective Products; Accordingly, unless otherwise required by law, business organizations and individuals must immediately take necessary measures to stop the supply of Defective Products on the market within 24 hours from the time of discovery of Defective Products or receipt of a request from a competent State management agency (instead of “timely” according to the CRPL 2010);

#### **(b) Public disclosure about Defective Products and the recall of Defective Products**

Within 3 working days for Defective Products of group A (i.e. products and goods that can cause damage to the life and health of consumers) or 5 working days for Defective Products of group B (i.e. products and goods that are likely to cause damage to the consumer’s property) from the time of discovering a Defective Product or receiving a recall request from a competent State management agency, business organizations and individuals must carry out responsibilities to publicly disclose and notify of the Defective Products and recall them according to the provisions of the CRPL 2023. In the case where the laws have other provisions on the time-limit for carrying out responsibilities to publicly disclose and notify of the Defective Product and recall that Defective Product, business organizations and individuals shall do so according to the other prescribed time-limits.

#### **(c) Report on the recall of Defective Product**

Before carrying out and unless otherwise required by law,

within 5 working days from the end of the recall of Defective Product(s) or from the date of receiving the request for reporting from the State management agency on protection of consumers' rights and relevant State management agencies, business organizations and individuals must submit reports respectively according to Form No. 8 and Form No. 9 accompanying Decree 55 to the State management agency on protection of consumers' rights and relevant State management agencies (The CRPL 2010 does not require reporting before carrying out, but only requires to report the results after completing the recall of Defective Products and also does not provide a reporting form as well as the deadline for submitting reports).

In addition, in the case where the recall of Defective Products is conducted in the area of 2 or more provinces and central-run cities, business organizations and individuals must send a recall report to the NCC and relevant State management agency at the Central level to check and monitor as already provided in the CRPL 2010; and at the same time, to the State management agency in charge of protecting consumer rights at the provincial level (i.e. the provincial Department of Industry and Trade) and the provincial specialized agency of the locality where the recall is carried out so that these agencies coordinate to inspect and monitor the recall in their locality.

#### (d) Determination of specific Defective Product group

According to Decree 55, the required Defective Product recall program will depend on the determination of the Defective Product group. Specific Defective Product groups will be determined by the business organization or individual that will accurately self-determine the Defective Product group and take full responsibility for it.

The determination of specific Defective Product group can be relied on one or more of the following bases or sources of

information and data:

- (i) Notices and warnings from competent authorities of countries and territories;
- (ii) Notices and warnings of international organizations of which Vietnam is a member country;
- (iii) Court judgments and decisions;
- (iv) Information and warnings from specialized State management agencies;
- (v) The competent authority's decision to recall Defective Products that is still valid;
- (vi) Business organization or individual's determination of specific Defective Product group;
- (vii) Other sources of information and data that the State management agency in charge of protection of consumers' rights and relevant State management agencies can prove as authentic or have sufficient scientific basis.

However, in the cases where there are grounds to believe that business organizations and individuals' determination of specific Defective Products group is inappropriate, the State management agency in charge of protection of consumers' rights and relevant State management authorities have the right to request business organizations and individuals to make appropriate adjustments to carry out the responsibility of recalling Defective Products properly according to the re-determined group of Defective Products and in accordance with the provisions of the laws.

#### **4. Process for exchanging and returning Products, Goods and Services in Remote Transactions**

Decree 55 stipulates new responsibilities of business organizations and individuals in remote transactions. Accordingly:

- (a) In the case where these organizations and individuals provide information about the process of exchanging and

returning products, goods or services, the following information must be included:

- (i) Specific time-limits during which consumers are allowed to make exchanges and returns;
- (ii) Steps and deadlines for each step in the process;
- (iii) Contact information of the unit responsible for handling in the case where consumers feedback or complain about the implementation of this process.

(b) In the case where these organizations and individuals provide information about the process of receiving and resolving consumers' feedback, requests, and complaints, the following information must be included:

- (i) Methods of receiving feedback, requests and complaints from consumers;
- (ii) Steps and deadlines for each step in the process;
- (iii) Cases prioritized to be received and resolved;
- (iv) Guidelines on information and documents that need to be provided for the reception and resolution process (if any).

## **5. Disclosure of Online Seller Information Violating Consumers' Rights**

Decree 55 has new regulations on publishing and removing consumer warning information in cyberspace transactions. Specifically:

(a) The list of organizations and individuals doing business in cyberspace that violate the law on protecting consumers' rights is publicly available on mass media, displayed at headquarters, and posted on the electronic information portal of ministries, ministerial-level agencies, and provincial-level People's Committees within 30 days.

(b) Publicly available content includes:

(i) Name and address of organizations and individuals doing

business in cyberspace that violate the laws on protection of consumers' rights;

(ii) Acts and areas of violation;

(iii) Issuing agency; number, date, month, year of decision on dealing with violations of the laws on protection of consumers' rights./.

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