

NEW LAW ON CONSUMER PROTECTION

On 20 June 2023, the National Assembly issued a new Law on Consumer Protection, which will replace the Law on Consumer Protection 2010 from 1 July 2024. In this post, we will discuss some key points of the Law on Consumer Protection 2023.

1. Definition of “consumer” remains unclear

1.1. Article 3.1 of the Law on Consumer Protection 2023 defines a consumer to be “*a person who purchases or uses products, goods and services with the aim of consumption for daily needs of individuals, families or organizations, and not for commercial purposes*”. With minor changes (“*not for commercial purposes*”), similar to the Law on Consumer Protection 2010 (see our discussion on the definition of “consumer” under the Law on Consumer Protection 2010 [here](#)), the consumer definition still covers both individual and organisation. This results in the question if a business entity purchases various inputs during its operation, the inputs could be treated either as “consumption purpose” or as “commercial purpose”.

1.2. Interestingly, when drafting the Law on Consumer Protection 2023, the draftsmen propose two options to define consumer. One is to refer to “individual” only, the second option is to keep using the term “person” similar to the Law on Consumer Protection 2010 (see [here](#)). Under the final draft, the second option was adopted without further explanation.

2. List of invalid provisions is extended

2.1. Compared to the Law on Consumer Protection 2010, the Law on Consumer Protection 2023 expands the list of provisions which will be considered invalid if they are included in a contract or general terms and conditions with the customers. Additional invalid provisions include:

2.1.1. Provisions which allow traders to amend prices regularly during the process of providing services without granting the customers the right to terminate the contract;¹

2.1.2. Provisions on remedies which are not favourable to the customers when the contract is violated or terminated;²

2.1.3. Provisions which allow traders to extend the contracts with the customers without stipulating the responsibility for notifying in advance or without a mechanism for consumers to choose to extend or terminate the contract;³

¹ Article 25.7 of the Law on Consumer Protection 2023.

² Article 25.12 of the Law on Consumer Protection 2023.

³ Article 25.13 of the Law on Consumer Protection 2023.

2.1.4. Provisions which stipulate that the consumers must allow traders to collect, store, use the information of the customers as a condition to enter into the customer contract or general terms and conditions;⁴ and

2.1.5. Provisions which are contrary to the principle of goodwill, which leads to an imbalance in the rights and obligations of the parties in a way that is disadvantaged to the consumers.⁵

3. Stricter requirements imposed on traders providing continuous services

3.1. Traders providing continuous services⁶ are subject to certain strict obligations. Specifically,

3.1.1. Under Article 41.1, traders who provide “continuous services” within the territory of Vietnam must publicise information about the legal representative in Vietnam; In the case the trader does not have a legal representative in Vietnam, then it must appoint an authorized representative, and publicise information of such authorized representative; The representative is obliged to perform the requirements on consumer protection. Certain issues may arise from this provision, including:

(a) It is not clear if this provision is applied to traders who have a commercial presence in Vietnam, or if it is also applied to offshore traders who provide goods and services to consumers in Vietnam. If the second interpretation is adopted, then this provision would cause a significant burden to the offshore traders since it requires offshore traders to switch from providing service in the form of mode 1 (cross-border) to mode 4 (presence of natural persons);

(b) It is also not clear if by stipulating “the representative is obliged to perform the requirements on consumer protection”, Article 41.1 means to require the trader and the representative to be jointly liable; and

(c) The term “authorized representative” is not defined so it is not clear if such person must be someone working for the trader or can be appointed via an authorisation contract.

3.1.2. The trader must notify the consumer about (i) the payable fees to be applicable when he/she continues using the service at least seven business days before the expiration of the service term, and (ii) the expiration date of the contract at least seven business days before the expiration of the service term.⁷ Such obligation must be included in the contract with the customer.

⁴ Article 25.14 of the Law on Consumer Protection 2023.

⁵ Article 25.15 of the Law on Consumer Protection 2023.

⁶ “Provision of continuous services” is defined as providing services with a term of 3 months or more, or with an indefinite term (Article 3.6 of the Law on Consumer Protection 2023).

⁷ Article 42.2(dd) and 42.2(e) of the Law on Consumer Protection 2023.

4. Multi-level sales provisions

4.1. The Law on Consumer Protection 2023 provides for a set of obligations imposed particularly on multi-level sales providers. We find this change rather challenging to comply with because:

4.1.1. Except for the obligation as discussed at 4.2, the Law on Consumer Protection 2023 basically repeats Decree 40/2018 on multi-level sales (which is still active), with minor wording changes;⁸ and

4.1.2. Decree 40/2018 applies to all providers of multi-level sales (regardless of whether their clients are considered consumers or not), while the Law on Consumer Protection 2023 only applies to multi-level sales providers in the relationship with their consumers. That is to say, all multi-level sales providers being governed by the Law on Consumer Protection 2023 are also subject to Decree 40/2018. Accordingly, the obligations and operation of multi-level sales providers are double counting.

4.2. The Law on Consumer Protection 2023 requires the trader to recall its goods and return money at the request of the multi-level salesperson (*người tham gia bán hàng đa cấp*) or the consumers if the request is made within 30 days from the date of receiving goods, and the goods still intact with packages, stamps, label, and the expiry date has not passed.⁹ It is not clear why this provision treats the salesperson in the same manner as the consumer. Under Article 3.3 of Decree 40/2018,¹⁰ a salesperson is defined as an individual who participates in multi-level marketing by entering into a contract with a multi-level marketing enterprise.

5. New requirements imposed on the traders

5.1. The Law on Consumer Protection 2023 imposes some new requirements on traders. For example,

5.1.1. compared to the Law on Consumer Protection 2010, a trader is required to provide more information to the consumer. For example, information on reviews of consumers on the trader's products, goods or services or the trader itself (if any);¹¹ information on ingredients, function, and distinct benefits of products, goods and services which are provided specifically for each gender;¹² and the trader's insurance policy (if applicable);¹³ and

⁸ Decree 40 of the Government dated 12 March 2018 regulating framework for multi-level sales, as amended (**Decree 40/2018**).

⁹ Article 45.1(d) of the Law on Consumer Protection 2023.

¹⁰ Decree 40 of the Government dated 12 March 2018 providing framework for multi-level marketing, as amended (**Decree 40/2018**).

¹¹ Article 21.1(c) of the Law on Consumer Protection 2023.

¹² Article 21.6 of the Law on Consumer Protection 2023.

¹³ Article 30.2(a) of the Law on Consumer Protection 2023.

5.1.2. when adopting general terms and conditions, the trader is further required to make sure that the customers have spent a reasonable amount of time studying such terms and conditions before entering into any transaction with the trader.¹⁴ This requirement is quite vague and it is unclear how the trader can prove its compliance with this requirement.

6. New requirements on traders who sell goods not at regular transaction locations

6.1. The Law on Consumer Protection 2023 provides for a new concept of “selling goods not at regular transaction location”, which involves introducing and selling products or goods or supplying services at locations other than fixed locations where products or goods are retailed or services are supplied regularly.¹⁵

6.2. Under the Law on Consumer Protection 2023, traders who sell goods not at regular transaction locations are obliged to, among others,

6.2.1. recall their products, goods and service within 30 days from the date such products, goods or service are/is sold or provided that the packaging labels and stamp (if any) are still intact, and the expiry date has not passed;¹⁶ and

6.2.2. in the case the supply contract is made in writing, the trader must send the contract to the customer. Within three business days from the date of receipt, the customer is entitled to either, perform the contract or to unilaterally terminate the contract. Within such three business days, the trader must not request the customer to make a deposit or payment or perform the contract, unless otherwise allowed at laws.¹⁷

7. New requirements on providers of digital platforms

7.1. The Law on Consumer Protection 2023 provides for new requirements applicable to providers of digital platforms. However, the new law neither defines the term “digital platform” nor “big digital platform”. Under Article 46.2 of the draft version of the Law on E-Transactions 2023,¹⁸ a “digital platform” is defined to be an information system which creates an electronic environment that allows parties to conduct transactions or provide or use products or services or use them to develop products or services.¹⁹ However, under the final version, this provision is abolished. Presumably, “digital platform” providers should include social network provider

¹⁴ Article 27.1 of the Law on Consumer Protection 2023.

¹⁵ Article 3.7(c) of the Law on Consumer Protection 2023.

¹⁶ Article 47.1(dd) of the Law on Consumer Protection 2023.

¹⁷ Article 47.1(g) of the Law on Consumer Protection 2023.

¹⁸ The fourth draft version of the Law On E-Transactions 2023 can be found at [https://vibonline.com.vn/du_thao/du-thao-luat-giao-dich-dien-tu-sua-doi](https://vibonline.com.vn/du-thao/du-thao-luat-giao-dich-dien-tu-sua-doi)

¹⁹ “Nền tảng số là hệ thống thông tin tạo môi trường điện tử cho phép các bên thực hiện giao dịch hoặc cung cấp, sử dụng sản phẩm, dịch vụ hoặc sử dụng để phát triển sản phẩm, dịch vụ.”

(which is mainly regulated under Decree 72/2013²⁰), e-wallet provider (which is mainly regulated under Circular 39/2014²¹) and e-commerce platform (which is mainly regulated under Decree 52/2013²²).

7.2. Providers of digital platforms must not, among others,

7.2.1. limit the right to choose [goods, products, service, provider] of the consumers by prioritizing the selection of products, goods and services among traders operating on the digital platform without publicizing the selection criteria;²³

7.2.2. use measures to prevent the display or display dishonestly results of the customers' feedback and evaluation, unless such feedback and evaluation is against the laws and social ethics;

7.2.3. prevent consumers from removing pre-installed software or applications which do not affect basic technical features to help digital platforms operate normally; or force consumers to install accompanying software or applications on digital platforms. In the latter scenario, it is not clear if this provision is applied if both the digital platform and the software or application are developed by the same trader; and

7.2.4. big digital platform providers set up an advertisement archive that uses algorithms to target specific consumers and groups of consumers.²⁴

8. New provisions on protecting consumers being vulnerable persons

8.1. The Law on Consumer Protection 2023 introduces new provisions to protect consumers being vulnerable persons. Vulnerable persons include senior citizens; persons with disabilities; children; ethnic minority people, people living in ethnic minority and mountainous areas, islands, areas with difficult socio-economic conditions, areas with extremely difficult socio-economic conditions; women who are pregnant or nursing a child under 36 months old; persons suffering from serious diseases; and poor household members.²⁵ The detailed definition of each group is provided under sectoral laws.

8.2. The trader is required to, among others,

²⁰ Decree 72 of the Government dated 15 July 2013 on the management, provision, and usage of Internet services and online information, as amended (**Decree 72/2013**).

²¹ Circular 39 of the State Bank of Vietnam dated 11 December 2014 guiding the intermediary payment services, as amended (**Circular 39/2014**).

²² Decree 52 of the Government dated 19 November 2021 on e-commerce, as amended (**Decree 52/2021**).

²³ Article 10.3(b) of the Law on Consumer Protection 2023.

²⁴ Article 39.4 of the Law on Consumer Protection 2023.

²⁵ Article 8.1 of the Law on Consumer Protection 2023.

- 8.2.1. prioritize vulnerable persons when handling their requests and claims;²⁶
- 8.2.2. compensate the customer if the trader refuses to prioritize or handle their requests and claims or does not handle their request and claims promptly;²⁷ and
- 8.2.3. develop and issue different procedures suitable for each group of consumers being vulnerable persons.²⁸

9. New regulations on influencers

9.1. The Law on Consumer Protection 2023 introduces the term “influencers” and their responding obligations. Influencers are defined to be experts, reputable people, and people who are noticed by society in a specific field according to the Government’s regulations.²⁹ The Law on Consumer Protection 2023 requires the influencers to be transparent about its advertisement activities to avoid the confusion to consumers who tend to purchase by relying on the recommendation of the influencers. Specifically, when an influencer is engaged by a trader to provide information on such trader’s products, goods, or services, he/she must notify the customers of such trader that he/she is sponsored to do so.³⁰

10. Discrepancies between the Law on Consumer Protection 2023 and Decree 13/2023 on personal data

10.1. Compared to old regulations, the Law on Consumer Protection 2023 provides for stricter and more detailed requirements to protect the information of consumers. However, it is not clear how these provisions harmonize with Decree 13/2023 on protecting personal data.³¹ The table below discusses some discrepancies between the Law on Consumer Protection 2023 and Decree 13/2023.

²⁶ Article 8.2(c) of the Law on Consumer Protection 2023.

²⁷ Article 8.2(d) of the Law on Consumer Protection 2023.

²⁸ Article 8.3(dd) of the Law on Consumer Protection 2023.

²⁹ Article 3.9 of the Law on Consumer Protection 2023.

³⁰ Article 22.3(b) of the Law on Consumer Protection 2023.

³¹ Decree 13 of the National Assembly dated 17 April 2023 on protecting personal data (**Decree 13/2023**).

	Law on Consumer Protection 2023	Decree 13/2023	Our comments
Definition of “data of consumers” and “personal data”	10.1.1. Under Article 3.3 of the Law on Consumer Protection 2023, “data of consumer” includes <u>personal information</u> of consumers, information about the process of purchasing and using products, goods and services of consumers and other information related to transactions between consumers and traders.	10.1.2. Under Article 2.1 of Decree 13/2023, “personal data” refers to information in the form of symbols, letters, numbers, images, sounds, or in equivalent form in the electronic environment, which is associated with a specific individual or is used to identify a specific individual. Personal data includes basic personal data and sensitive personal data. 10.1.3. Under Articles 2.2(k) and 2.2(l) of Decree 13/2023, basic personal data includes, among others, personal data which reflect the activities or the activity history of such consumer in cyberspace; and information associated with an individual or used to identify an individual.	10.1.4. The scope of “data of consumers” (under the Law on Consumer Protection 2023) is broader than that of “personal data” (under Decree 13/2023) since “data of consumers” comprises “personal information” and other groups of information of the consumer.
Allocation of responsibilities among	10.1.5. Article 15 of the Law on Consumer Protection 2023 provides	10.1.6. In general, Decree 13/2023 also allows the data controller to	10.1.7. Under the Law on Consumer Protection 2023, it is not clear if the

	Law on Consumer Protection 2023	Decree 13/2023	Our comments
the data controller, data processor and other parties involved in the processing of data	<p>that</p> <p>(a) the traders may, either by themselves or via a third party, collect, store, use, amend, update and delete information of consumers; and</p> <p>(b) the authorization of engaging a third party must be made in writing, under which, the scope and responsibility of each party must be specified.</p>	<p>engage other parties to process data. However, the data controller remains responsible to the data subject for damage caused by the processing of personal data.³²</p>	<p>trader can allocate its obligations to a third party.</p>
The time limit to notify the authorities	<p>10.1.8. Under Article 19.3, in the case the information system is hacked which poses risks to the safety and security of the information of the customer, the trader or the party who stores data must notify the authority <u>within 24 hours</u> upon detecting such incident.</p>	<p>10.1.9. Under Article 23.1, in the case of detecting a violation against regulations on personal data protection, the controller or the party being both the data controller and processor must notify the authority <u>no later than 72 hours</u> upon detecting such violation.</p>	<p>10.1.10. It is likely that the stricter time limit of the Law on Consumer Protection 2023 will prevail.</p>
Processing of data	<p>10.1.11. Article 18.3 indicates that the</p>	<p>10.1.12. Under Article 17, obtaining</p>	<p>10.1.13. Arguably, the trader can rely</p>

³² Articles 3.8 and 38.6 of Decree 13/2023.

	Law on Consumer Protection 2023	Decree 13/2023	Our comments
without the consent of the data subject	<p>trader is not required to obtain consent from the customers if the usage of information of the customer is:</p> <p>(a) to sell or provide products, goods, and services at the request of such customers and the information used must be within the scope of information agreed by the customer; and</p> <p>(b) to perform obligations as prescribed by laws.</p>	<p>consent from the data subject is not required, among others, in the following cases:</p> <p>(a) In the case of an emergency, the personal data must be processed immediately to protect the life and health of the data subject or of the others;</p> <p>(b) The public of personal data is required at laws; and</p> <p>(c) To perform the obligations under the contracts signed with the data subject.</p>	<p>on both provisions to be exempted from the requirement to obtain consent of the customer.</p>

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