



## **Why We Need To Revise Consumer Protection Law With Amendment?**

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### **Abstract**

Implement Resolution No. 17/2021/QH15 dated July 27, 2021 of the National Assembly on adjusting the Law and Ordinance Development Program in 2021 and the Law and Ordinance Development Program in 2022, the Law on Protection of Rights. Consumers (amended) have been included in the law-making program of the National Assembly with progress submitted to the National Assembly for its first opinion at the 4th session (October 2022) and passed at the 5th session (October 22, 2022).

On August 24, 2021, the Prime Minister issued Decision No. 1427/QĐ-TTg on assignment of agency in charge of drafting and deadlines for submission of additional law, ordinance, and resolution projects. The Law and Ordinance Development Program in 2021 and the Law Development Program in 2022, in which the Ministry of Industry and Trade is assigned to assume the prime responsibility for coordinating with relevant ministries and branches in formulating the draft Law on Consumer Protection (modify).

The Ministry of Industry and Trade would like to submit to the Government the draft Law on Consumer Protection (amended) with contents discussed in this paper.

**Key words:** modification, Law on Consumer protection, amendment.

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### **1. Introduction**

**THE NECESSARY ISSUES OF CONSUMER RIGHTS PROTECTION LAW (AMENDED)**

The Law on Protection of Consumer Rights was approved by the 12th National Assembly of the Socialist Republic of Vietnam, 8th session on November 17, 2010 and took effect from July 1, 2011. Hereinafter referred to as the Law on Protection of Consumer Rights 2010). During nearly 12 years of implementation, the provisions of the Law on Consumer Protection and its guiding documents have contributed to drastic changes, and at the same time, created solid frameworks and foundations for continue to build the development of consumer rights protection in Vietnam.

However, there is an urgent need to promptly institutionalize the Party's viewpoints and policies at the 13th National Congress of Deputies, the 2013 Constitution; to match the change of socio-economic context, the trend of international integration; On the basis of identifying limitations and inadequacies after 12 years of promulgation, the implementation of current regulations shows that the Law on Protection of Consumer Rights 2010 needs to be amended and supplemented with specific reasons. Such as Political and legal grounds:

#### 1.1. Political base

- 10-year socio-economic development strategy 2021-2030;
- Report on assessment of results of implementation of socio-economic development tasks for the five years from 2016 to 2020 and directions and tasks of socio-economic development for five years from 2021 to 2025;

## 2. Literature review

Article 5. State policies on protection of human rights consumption

1. Create favorable conditions for consumers and organizations and individuals in society to fully exercise their rights and promote the initiative in activities protection of the interests of consumers.
2. Encourage and support organizations and individuals to develop and apply business science, technology and innovation to protect the interests of consumers.

Next we analyze previous studies:

**Table 1 - Previous studies**

Authors	Year	Content, results
Association of Southeast Asian Nations (ASEAN)	2014	A robust consumer credit market is one where consumers have ready access to innovative loan products that meet their needs and desires. In such a market, lenders need reasonably stable and predictable laws and regulations to enable them to enforce loan repayments. In some cases, they may require effective systems to enable them to enforce any loan security such as a mortgage over a borrower's house or other property. If there are no stable and effective laws, it may increase the risks of operating a lending business, leading to higher costs that would be passed on to consumers as higher interest rates and charges
Nguyen Trong Diep, Dinh Tran Ngoc Huy, Le Huong Hoa	2021	On the basis of information, data, assessments and comments presented in the final reports of the ministries, branches and organizations at the central level, the People's Committees of the provinces and cities directly under the Central Government; opinions of the business community, social organizations participating in consumer protection work and from the process of law enforcement to protect consumers' interests nationwide, authors stated that the correction amending and supplementing the Law on Protection of Consumer Rights is to respond in a timely manner to the objective requirements of the practice of protecting consumer rights in Vietnam; improve the responsibilities and roles of agencies and organizations in protecting consumer interests; to create mechanisms and policies to promote the effective participation of social organizations and related subjects in the protection of consumers' interests; perfecting methods

		of settling disputes between consumers and business organizations and individuals
<b>Chawla &amp; Kumar</b>	<b>2021</b>	A thorough analysis of the two newly enacted laws, i.e., the Consumer Protection Act, 2019 and Consumer Protection (E-commerce) Rules, 2020 and literature review support analysis of 290 online consumers answering the research questions and achieving research objectives. The significant findings are that a secure and reliable system is essential for e-business firms to work successfully; cash on delivery is the priority option for online shopping; website information and effective customer care services build a customer's trust. The new regulations are arguably strong enough to protect and safeguard online consumers' rights and boost India's e-commerce growth. Besides factors such as security, privacy, warranty, customer service, and website information, laws governing consumer rights protection in e-commerce influence customers' trust. Growing e-commerce looks promising with a robust legal framework and consumer protection measures. The findings contribute to the body of knowledge on e-commerce and consumer rights protection by elucidating the key factors that affect customer trust and loyalty and offering an informative perspective on e-consumer protection in the Indian context with broader implications
<b>Cseres &amp; Reyna</b>	<b>2021</b>	assesses how state aid law and consumer protection rules interact in EU law and what lessons these interactions can provide for managing the current economic crisis in a way that takes equal account of consumer interests as required by the horizontal consumer protection clauses of the TFEU.

(source: author synthesis)

And Le, K. & Nguyen, M (2021) also stated it is supporting for education and confirmed by (DTN Huy , 2015; N Thi Hang et al, 2021; NT Hoa, DTN Huy, T Van Trung, 2021).

### 3. Methodology

Authors mainly use experience, observations and qualitative analysis with synthesis and inductive methods.

Beside, dialectical materialism method also used.

### 4. Main findings

#### 4.1 Why we need to revise Consumer Protection Law

- Some current regulations are only suitable for "traditional" transactions, business-consumption, without taking into account the business model with new elements, in terms of digital transformation.

- There is no mechanism to call for the whole society to participate in consumer protection work, especially there is no appropriate mechanism to establish and create conditions for social organizations to participate in consumer protection. Use professional and effective activities.

- Some consumer protection responsibilities of enterprises are no longer relevant and adequate due to the emergence of new consumer groups or new consumer behavior.

- Many new acts of infringing on consumer rights have appeared but have not been added to the section on prohibited acts or obligations of relevant entities.
- The role and responsibility of consumers in promoting the trend of sustainable production and consumption has not been clearly demonstrated.

## **4.2 BASIC OUTLOOK AND CONTENTS OF THE DRAFT CONSUMER RIGHTS PROTECTION LAW (AMENDED)**

### 1. Layout

The Law on Protection of Consumer Rights 2010 has the structure of 51 Articles and 06 Chapters. Compared with the Law on Protection of Consumer Rights in 2010, the draft Law on Protection of Consumer Rights (amended) retains 08 Articles, amends 43 Articles and adds 29 new Articles. 08 The remaining provisions are Articles 8, 20, 27, 39, 42, 44, 45, 51 of the Law on Protection of Consumer Rights 2010 (equivalent to Articles 13, 28, 47, 67, 70, 72), 73, 80 of the Draft).

After amending and supplementing, it is expected that the Law on Protection of Consumer Rights (amended) will have the layout of 07 Chapters and 80 Articles, specifically:

### 4.2 Viewpoints on the drafting of the Law on Protection of Consumer Rights (amended)

- Affirming that protecting consumers' interests is a common responsibility of the whole society and protecting consumers is protecting the sacred rights of each citizen.
- Continue to protect the weakness of consumers in transactions with business organizations and individuals. The nature of the relationship between consumers and businesses is a kind of private relationship, the laws of most countries give the parties in the contractual relationship a freedom of agreement and state intervention in the relationship. These relationships are relatively limited. However, if the parties are allowed to have unlimited freedom, the contract will become a means for the stronger party to overwhelm the weaker party and cause great damage to the common interests of society. Consumers are always the party that lacks information, especially information and knowledge related to product specifications. In addition, ordinary consumers rarely have the opportunity to negotiate and negotiate in relation to business organizations and individuals. Therefore, state intervention in these private relations will contribute to stabilizing social order, protecting the common interests of society and to a certain extent creating a balance in civil exchanges.
- Step by step equipping with consumer knowledge and skills to form the initiative of consumers.
- Ensuring the balance in civil transactions between consumers and organizations and individuals doing business and production, protecting the legitimate rights and interests of consumers, and at the same time ensuring legitimate rights and interests. of genuine business organizations and individuals. Accordingly, regulations need to be developed in the direction of helping to prevent and limit violations of business organizations and individuals, but also encourage and protect genuine business organizations and individuals.
- Promote the socialization of consumer rights protection.
- Strengthen the protection of consumers' interests in cyberspace and cross-border transactions.
- Inheriting and developing current regulations, selectively referencing international experiences suitable to conditions in Vietnam.

#### 4.2.1. Chapter 1: General provisions (18 Articles)

This Chapter provides for: Scope of regulation; Subjects of application; Explanation of words; Principles of consumer protection; The State's policy on protecting the interests of consumers; Protect the interests of vulnerable consumers; Responsibility to protect consumer information;

Consumer information protection policy; Notice when collecting consumer information; Use of consumer information; Ensuring safety and security of consumer information; Check, update, correct, transfer or destroy consumer information; Protect the interests of consumers in transactions with individuals conducting independent commercial activities, often without having to register for business; Consumer rights; Obligations of consumers; Prohibited acts; Handling violations of the law on consumer protection; Consumer Rights Day.

#### 4.2.2. Chapter 2: Responsibilities of organizations and individuals trading goods and services towards consumers (17 Articles)

This Chapter provides for: Responsibilities to ensure the safety and quality of products and services provided to consumers; Responsibilities of business organizations and individuals in providing information about products, services, model contracts and general transaction conditions to consumers; Responsibilities of third parties in providing information about products and services to consumers; Contracts entered into with consumers, general trading conditions; Explain contracts entered into with consumers, general transaction conditions; Terms of the contract entered into with consumers, general trading conditions are not valid; Execution of contract according to form; Implementation of general trading conditions; Control contract according to form, general trading conditions; Responsibility to provide proof of transactions; Warranty responsibility for products, components and accessories; Responsibility for receiving and handling consumer complaints, requests and complaints; Liability for defective products; Liability to recall defective products; Liability to compensate for damage caused by defective products; Exemption from liability for damage caused by defective products; Request state management agencies to handle violations of the law related to consumer protection.

#### 4.2.3. Chapter 3: Protection of consumers' interests in specific transactions with business organizations and individuals (11 Articles)

This Chapter provides for: Specific transactions between consumers and business organizations and individuals; Responsibilities of business organizations and individuals in transactions from communes with consumers; Concluding contracts in remote sales; Responsibilities of organizations and individuals doing business with consumers in transactions in cyberspace; Responsibilities of organizations and individuals providing services continuously; Contract for continuous service provision; Responsibilities of door-to-door sales organizations and individuals; Door-to-door sales contract; Responsibilities of organizations and individuals selling multi-level goods; Contract for participation in multi-level sale; Responsibilities of business organizations and individuals in the activities of selling products and providing services at locations other than regular retail or service introduction.

#### 4.2.4. Chapter 4: Activities of social organizations participating in protecting consumers' interests (5 Articles)

This Chapter provides for: Social organizations participating in the protection of consumers' interests; Contents participating in protecting consumer interests of social organizations; Perform tasks assigned by state management agencies; Powers of social organizations participating in protecting consumer interests; Obligations of social organizations participating in protecting the interests of consumers.

#### 4.2.5. Chapter 5: Settlement of disputes between consumers and business organizations and individuals (22 Articles)

This Chapter prescribes: Methods of dispute settlement between consumers and business organizations and individuals; International cooperation in dispute settlement between consumers and business organizations and individuals; Responsibility to provide information

in the process of settling disputes between consumers and business organizations and individuals; Negotiate; Order and procedures for organizing negotiations at the state management agency in charge of protecting the interests of consumers consumer interests before negotiation and during the negotiation process; Refuse request to organize negotiation; Negotiation results; Reconcile; Principles of conciliation; Organize mediation; Mediator; Mediation results; Implement and recognize the successful mediation results; Validity of the full-time clause; Order and procedures for dispute settlement at arbitration; The burden of proof; Civil cases on protecting consumer interests; Court fees and charges for civil cases on protection of consumers' interests; Notification of information on civil cases on consumer protection; Notify court judgments and decisions on settlement of civil cases on protection of consumers' interests;

## 5. Discussion and conclusion

### **According to Article 7. Consumer information protection responsibilities:**

A. During the course of operation, business organizations and individuals perform work of collection, storage and use of consumer information must comply with applicable laws and regulations/provisions of this Law and relevant laws on information protection.

B. In case the business organization or individual authorizes or hires a third party collecting, storing and using consumer information, business organizations and individuals doing Businesses are still responsible for protecting consumer information. Fit power of attorney or lease agreement between the two parties must be in writing and must clearly define the responsibilities of each party in the implementation of the provisions of This Law and relevant laws on information protection.

C. Within the scope of authorized or hired work specified in Clause 2 of this Article, business organizations and individuals are not required to comply with regulations in Articles 9 and 10 of this Law. If you do the collection yourself, storing and using information of consumers, business organizations and individuals must comply with the provisions of this Law and relevant laws.

To perform the tasks assigned by the National Assembly and the Government, on September 15, 2021, the Minister of Industry and Trade established a Drafting Committee and Editorial Team of the draft Law on Consumer Protection (amended) (Decision No. Decree No. 2143/QĐ-BCT) includes members who are representatives of agencies, ministries, sectors, universities, research institutes, media and press agencies and related agencies and units. .

In order to serve the process of amending the Law on Consumer Protection, the Ministry of Industry and Trade has coordinated with related parties to conduct many research reports summarizing the implementation of the Law on Protection of Consumer Rights 2010. and review the provisions of the law on consumer protection, summarizing international experience in the field of consumer protection, specifically:

- Report summarizing 10 years of implementation of the Law on Protection of Consumer Rights;
- Report on the issue of legal conflicts between the Law on Protection of Consumer Rights and a number of specialized laws;
- Recall research report on defective products – Australian experience and lessons for Vietnam;
- Research reports on the implementation of responsibilities of business organizations and individuals in accordance with the law on consumer protection;
- Research report on model contract control, general trading conditions – Australian experience and lessons for Vietnam;

- Research report on the mechanism to support the operation of social organizations participating in the protection of consumers' interests;
- Research report proposing a mechanism to settle cross-border consumer disputes between Vietnam and some ASEAN countries;
- Report on international experience research on some issues in consumer protection law – Lessons learned for Vietnam.

In addition, the Ministry of Industry and Trade has hosted seminars and talks with foreign experts, and organized activities to exchange and share experiences in effective law enforcement and protection of rights and interests. consumers with a number of countries in the world and in the ASEAN region.

Complying with the provisions of Article 57 of the Law on Promulgation of Legal Documents in 2015, the Ministry of Industry and Trade has conducted many concurrent consultation activities on the Draft Law on Protection of Consumer Rights (amended). and related documents. Specifically:

- Submit and post the Draft Law on Protection of Consumer Rights (amended) and related documents on the portal of the Government and the Ministry of Industry and Trade (from January 10, 2022 to March 30). 2022).
- Send written opinions from all Ministries, ministerial-level agencies, Governmental agencies, People's Committees of provinces and centrally run cities and a number of other agencies.
- Coordinating with the Vietnam Consumer Protection Association to organize a workshop to collect opinions from the Departments of Industry and Trade, the Consumer Protection Association of the provinces, cities and relevant organizations and individuals.
- Coordinating with the Vietnam Chamber of Commerce and Industry to organize workshops to collect opinions directly from the business community in Hanoi and Ho Chi Minh City. Ho Chi Minh.
- Organize consultation with experts, researchers, lawyers and lecturers of domestic universities.
- Coordinating with e-commerce platforms and online business platforms to publish the Draft Law on Consumer Rights Protection (amended) and related documents to consult widely with consumers.
- Coordinating with radio and television stations to provide information on basic amendments of the Draft Law on Consumer Protection (amended) to consumers.

As of April 2022, the Ministry of Industry and Trade has received comments from 21/22 ministries, ministerial-level agencies, 54/63 People's Committees of provinces and centrally run cities, and many comments from the public. law firms, businesses, consumer protection associations, international organizations and many domestic and foreign individuals and organizations.

The comments have been seriously studied and absorbed by the drafting agency in order to revise and complete the Law Project Dossier.

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