ECONOMIC SCIENCES

ENHANCING CONSUMER PROTECTION RESPONSIBILITY OF BUSINESS ORGANIZATIONS IN VIETNAM

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Faced with the enormous changes in the economic context under the impact of the 4.0 industrial revolution and deep integration into new-generation free trade agreements, it has required state management agencies to perfect legal documents to ensure the consistency of the legal system. In response to that requirement, the Party and the State have set out the task of amending and supplementing the Law on Consumer Rights Protection. In performing the assigned tasks, the Ministry of Industry and Trade has coordinated with localities, ministries, branches, domestic and foreign agencies to draft and submit to the Government and the National Assembly for approval the Law on Consumer Rights Protection in 2023.

On June 20, 2023, the National Assembly promulgated the Law on Consumer Rights Protection. The Law added many contents such as: i) supplementing regulations on the responsibility of business organizations and individuals in providing transparent information on the composition, functions, and distinct benefits of products, goods, and services provided specifically for each gender to ensure equal relations between men and women; ii) supplementing regulations on the responsibility to receive, resolve, and support the resolution of consumer feedback, requests, and complaints at business organizations and individuals, state management agencies on consumer rights protection, and social organizations participating in consumer rights protection to facilitate the exercise of consumers' right to complain and denounce; iii) Complete regulations to create special conditions for consumers and social organizations when filing lawsuits in court, such as: civil cases on consumer rights protection with a transaction value of less than 100 million VND will be resolved under simplified procedures without having to meet the conditions prescribed in the Civil Procedure Code; consumers file civil lawsuits to protect their legitimate rights and interests, social organizations participating in consumer rights protection representing consumers under authorization to file civil lawsuits on consumer rights protection do not have to pay advance court fees; and social organizations participating in consumer rights protection file civil lawsuits on consumer rights protection for the public interest do not have to pay advance court fees or pay court fees. Along with that, for the first time, the Law on Consumer Rights Protection 2023 has mentioned the role of consumers in shaping consumption trends, contributing and having an important impact on the country's economic development momentum through policies that identify consumer rights protection in conjunction with promoting responsible business practices, diversifying modern distribution channels, and building an independent and self-reliant economy.

Retail organizations and individuals are one of the important entities that have many interactions with many consumers. Therefore, understanding the responsibilities and providing solutions to increase the law enforcement of retail organizations and individuals will contribute significantly to the results of protecting consumer rights in Vietnam.

1. Some basic issues about retail organizations and individuals

Distribution and retail channels for consumer goods often include: Manufacturers (who directly produce products and goods, sometimes the manufacturers are also the ones who sell products and goods to consumers without going through any intermediary distribution channels) and Intermediaries (who are involved in the process of distributing products and goods to consumers. Intermediaries can include brokers; wholesalers; retailers such as convenience stores, convenience stores, department stores, grocery stores, discount stores, specialty stores, company showrooms, consumer cooperatives; retail through traditional market systems, supermarkets, mini supermarkets, specialty supermarkets and general supermarkets, hypermarkets, shopping centers, etc.

Based on the nature of the retail distribution channel, retail systems can be divided into two types: traditional retail systems and modern retail systems. Modern retail systems have typical models such as convenience stores, mini-supermarkets, supermarkets, hypermarkets, department stores, regular department stores, hard discounters, commercial centers, shopping malls, etc. Thus, modern retail systems differ from traditional retail systems in terms of business management methods, store layout, and service style.

In addition, an important, central and decisive subject for the healthy operation and development of the retail market is the consumer. In the common understanding, the consumer is the last person who receives the goods for the purpose of consumption; according to the provisions of the Law on Consumer Protection 2023, the consumer is the person who buys and uses products, goods and services for the purpose of consumption, daily life of individuals, families, agencies, organizations and not for commercial purposes. We need to clearly define the differences and scope of consumers according to the law to ensure the application and use of the law is correct and effective.

2. Some basic responsibilities of retail business organizations in the 2023 consumer protection law

When conducting transactions with consumers at distribution and retail chains, organizations and individuals retailing products, goods and services need to fulfill the following basic responsibilities:

2.1. Responsibility for ensuring safety, measurement, quantity, volume, quality, and uses of products, goods, and services sold and provided to consumers

According to Article 14 of the Law on Consumer Protection 2023, business organizations and individuals are responsible for: - Ensuring the safety, measurement, quantity, volume, quality, and uses of products, goods, and services sold and provided to consumers in accordance with the contents registered, announced, announced, listed, advertised, introduced, contracted, committed, or as prescribed by law.

- Warning about products, goods, and services that are likely to cause insecurity, worryingly affecting the life, health, and property of consumers, and notifications about preventive measures as prescribed by law.

2.2. Responsibility to protect consumer information

In consumer transactions at different channels in the modern retail system, the responsibility to protect consumer information is considered one of the important responsibilities, especially in the context of strong development of consumer transactions in cyberspace as today.

Article 15 of the Law on Consumer Protection 2023 stipulates the responsibility to protect consumer information. Accordingly:

- Business organizations and individuals that collect, store, use, edit, update, or delete consumer information themselves or authorize or hire a third party to collect, store, use, edit, update, or delete consumer information must ensure the safety and security of consumer information in accordance with the provisions of this Law and other relevant legal provisions.

- In cases where business organizations and individuals authorize or hire a third party to collect, store, use, edit, update, or delete consumer information, they must obtain the consent of the consumer. Authorization or hiring of a third party must be made in writing, clearly stating the scope and responsibility of each party in protecting consumer information in accordance with the provisions of this Law and other relevant laws.

- In case consumers conduct transactions through a third party, the third party is responsible for protecting consumer information in accordance with the provisions of this Law and other relevant laws.

In addition, business organizations and individuals are responsible for developing rules for protecting consumer information. Specifically, unless otherwise provided by law, business organizations and individuals that collect, store, and use consumer information must develop rules for protecting information that are generally applicable to consumers with the following contents:

- Purpose of collecting information;
- Scope of information use;
- Duration of information storage;
- Measures to protect information and ensure consumer information security.

These rules must be made public in the form of posting in a visible location at the headquarters, business location and posted on the electronic information page, application software (if any), creating conditions for consumers to access before or at the time of information collection.

In addition, Articles 17, 18 and 19 of the Law on Consumer Protection 2023 also specifically stipulate the responsibilities for notification when collecting and using consumer information and the responsibility to ensure the safety and security of consumer information. Accordingly, business organizations and individuals must ensure the safety and security of consumer information that they collect, store, and use and take measures to prevent the following acts:

- Stealing or illegally accessing information;
- Using information illegally;
- Editing, updating, and deleting information illegally. In case of complaints, requests, and claims from consumers related to information being illegally collected or used for purposes other than those notified, business organizations and individuals must be responsible for receiving and resolving them.

2.3. Responsibility for resolving consumer disputes

Due to the nature of daily transactions, high frequency and related to all types of goods, products, services, consumer transactions in the distribution and retail system are transactions that have the potential to generate many risks of requests, feedback, and complaints from consumers. For this reason, organizations and individuals doing business in the retail industry need to pay special attention to the responsibility of resolving disputes with consumers.

According to the provisions of the Law on Consumer Protection 2023, in case a consumer sends a request for negotiation and related information and documents (if any), the receiving organization or individual must be responsible for receiving and conducting negotiations with the consumer within 07 working days from the date of receipt of the request and notify in writing the negotiation results to the state management agency on consumer rights protection, social organizations participating in consumer rights protection within 05 working days from the date of completion of the negotiation. In case of refusing a consumer's request for negotiation, within 07 working days from the date of receipt of the request for negotiation, the business organization or individual must respond in writing and state the reason.

2.4. Responsibility for warranty of products, goods, components and accessories

For products, goods, components, and accessories purchased in consumer transactions on distribution and retail channels, business organizations and individuals must perform the responsibility of warranty for products, goods, components, and accessories for consumers according to the agreement between the two parties or mandatory warranty according to the provisions of law.

In case of warranty, business organizations and individuals are responsible for:

- Publicly announcing the warranty policy. The warranty policy includes the following main contents: time, duration of application, content, scope, method of warranty implementation and cases of exclusion of warranty liability of business organizations and individuals;

- Accurately and fully perform the warranty responsibility for products, goods, components, and accessories provided by them;

- Provide consumers with a warranty acceptance document or other equivalent form of warranty acceptance, clearly stating the warranty implementation time. The warranty period is not included in the warranty period of products, goods, components and accessories.

In case the business organization or individual replaces components and accessories, the warranty period of those components and accessories shall be recalculated from the time of replacement of components and accessories.

In case the business organization or individual exchanges new products and goods, the warranty period of those products and goods shall be recalculated from the time of replacement of new products and goods;

- Provide consumers with similar products, goods, components and accessories for temporary use or have a suitable settlement form according to the agreement between the consumer and the business organization or individual during the warranty period;

- Exchange similar new products, goods, components, accessories or recall products, goods, components, accessories and refund money to consumers in case the warranty period expires without repair or error correction or in case the product, goods, components, accessories have been warranted 3 times or more within the warranty period but the error is still not corrected;

- Bear the cost of repairing and transporting products, goods, components, accessories from the consumer's residence or the place of use of the product, goods, components, accessories to the warranty location and from the warranty location to the consumer's residence or the place of use of the product, goods, components, accessories;

- Be responsible for the warranty of products, goods, components, accessories for consumers even in cases of authorizing or hiring other organizations or individuals to perform the warranty.

2.5. In addition, business organizations and individuals must comply with the prohibitions prescribed by the Law on Consumer Protection 2023, specifically:

According to Article 10 of the Law on Consumer Protection, in retail transactions, business organizations and individuals are strictly prohibited from performing a number of acts, including:

- Deceiving or confusing consumers by providing false, incomplete, or inaccurate information about one of the following contents: products, goods, and services that business organizations and individuals sell or provide;

- Harassing consumers through direct or indirect contact against the consumer's will to introduce products, goods, services, business organizations and individuals, proposing to enter into contracts or other acts that hinder the normal work and life of consumers;

- Forcing consumers to buy products, goods, and services against the consumer's will through using force, threatening to use force, or other acts of a similar nature;

- Forcing consumers to pay for products, goods and services provided without prior agreement with the consumer;

- Not compensating, refunding or exchanging products, goods and services for consumers due to mistakes made by business organizations and individuals;

- Not compensating, refunding or exchanging products, goods and services for consumers due to products, goods and services not being in accordance with the registration, notification, announcement, listing, advertisement, introduction, contract or commitment of business organizations and individuals;

- Swapping or defrauding products, goods and services when delivering or providing services to consumers;

- Preventing consumers from checking products, goods and services, except in cases where the law provides otherwise.

3. Some recommendations to increase compliance with consumer rights protection laws by retail organizations and individuals

(i). Tăng cường tuyên truyền, hướng dẫn nội dung của Luật Bảo vệ quyền lợi người tiêu dùng năm 2023 và các văn bản hướng dẫn cho các tổ chức cá nhân bán lẻ hiểu rõ trách nhiệm của minh để thực hiện cho đúng quy định.

(ii). Đối với hệ thống cơ quan quản lý nhà nước về bảo vệ quyền lợi người tiêu dùng, cần có sự chung tay cùng hành động của các bộ ngành ở Trung ương cũng như ở các địa phương. Công tác bảo vệ quyền lợi người tiêu dùng không phải là của ngành công thương mà là của tất cả các bộ ngành khác, cụ thể tại điều 75 quy định trách nhiệm của Bộ Công Thương với công tác bảo vệ quyền lợi người tiêu dùng, điều 76 quy định trách nhiệm của các bộ ngành có liên quan đến công tác bảo vệ quyền lợi người tiêu dùng.

(iii). Phát huy mạnh mẽ vai trò giám sát của Trung ương Mặt trận tổ quốc Việt Nam, các tổ chức chính trị xã hội đối với việc thực hiện nhiệm vụ bảo vệ quyền lợi người tiêu dùng của các cơ quan tổ chức, và các doanh nghiệp.

(iv). Cần phát huy hơn nữa chức năng thanh tra, kiểm tra nhằm làm lành mạnh thị trường, hạn chế đến mức tối thiểu việc vi phạm quyền lợi người tiêu dùng của các tổ chức, cá nhân bán lẻ.

(v). Cần kịp thời động viên, khen thưởng, nêu gương các cơ quan, tổ chức, cá nhân bán lẻ có thành tích tốt trong công tác bảo vệ quyền lợi người tiêu dùng đồng thời có các biện pháp xử phạt nghiêm minh tổ chức cá nhân bán lẻ cố tình vi phạm quyền lợi người tiêu dùng.

(vi). Bản thân các tổ chức, cá nhân bán lẻ cần nhận thức sâu sắc rằng việc tuân thủ tốt pháp luật bảo vệ quyền lợi người tiêu dùng là cách tốt nhất để bảo vệ quyền lợi người tiêu dùng, là cách thức nâng cao khả năng cạnh tranh của doanh nghiệp một cách thiết thực nhất, bền vững nhất.

References:

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