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CONTACTS



Laysym Sim
Partner

laysym.sim@vdb-loi.com

Laysym is an experienced tax adviser with a degree in management. He has over 15 years of work experience, including with KPMG and DFDL in Cambodia, where he was responsible for relations with the tax authorities. He has advised on tax planning for large property projects, on employee benefits, and has conducted tax due diligence on several major acquisitions in Cambodia. He has worked with a wide variety of clients, focusing particularly on the real estate and transportation industries.



Maxim Kobzev
Senior Counsel

maxim.kobzev@vdb-loi.com

Maxim is counsel with VDB Loi finance team. His practice focuses on cross-border and local project financings, corporate loans, pre-export facilities and restructurings. Maxim advises both borrowers and lenders, commercial banks, corporations and development institutions with particular focus on complex projects in the banking, infrastructure, oil & gas, mining and metals and manufacturing sectors and transactions in the emerging markets.

COVID-19: IMPACT OF THE NEW CONSUMER PROTECTION LAW IN CAMBODIA

With the emergence and spread of COVID-19, the sale of protective masks and antiseptic disinfectant have greatly increased to the extent that it has become difficult to buy them at a reasonable price. Some sellers are taking advantage of the fear caused by the health crisis to increase their revenue. However, is this legal? Does Cambodian law protect consumers against this kind of practice? What do the laws of our neighboring ASEAN countries provide for?

Adoption of the new Consumer Protection Law

The highly anticipated Consumer Protection Law ("CPL") came into force on 2 November 2019. Its main objective is the defense of consumers and their rights, given that consumers are generally in a vulnerable position compared to sellers. The CPL rebalances the consumer-seller relationship and protects consumers against abuses of their weaknesses. Moreover, the CPL aims to ensure fair competition between businesses.

Certain provisions of the CPL seem to have been inspired by the laws of its neighboring countries. Particularly the 1999 Malaysian Consumer Protection Act is clearly the model for the new CPL with many provisions being word by word copied. The 1999 Malaysian Law itself seems to have been inspired by the 1986 New Zealand Fair Trading Act.

Highlights of this note

- ▶ Adoption of the new Consumer Protection Law
- ▶ What you can and cannot say when dealing with consumers
- ▶ When products have defects
- ▶ Taking advantage of vulnerability and disease
- ▶ Increasing prices of Masks and Sanitizer

Before enacting the CPL, international consultants drew up a first draft based on international legislation and then submitted it to the Ministry of Commerce to finalize it together.

What you can and cannot say when dealing with consumers

Pursuant to Article 12 of the CPL, no person carrying out business may make misleading representations when supplying or promoting the supply of goods or services. Under this article, the law provides a list of matters about which false or misleading representations are prohibited: that goods or services are of a particular quality, the quantity provided, that services are provided by certain persons who have special skills, etc.

For instance, a seller is not allowed to

promote masks that filter bacteria and protect against coronavirus when they are only simple surgical masks; or to promote a box of 100 masks when there are only 70.

Looking at the laws of other ASEAN countries, this portion of the Cambodian law has a similar list of prohibited matters compared to 1999 Malaysian Consumer Protection Act.

In addition, the Cambodian law is more complete than the Vietnamese law, which provides only general dispositions, rather than the detail the CPL has. Article 9 of 2014 Myanmar Consumer Protection Law lists some practices that the Cambodian CPL does not mention, such as disparaging other goods or services (e.g. to compare by disparaging remarks masks from a competing seller), advertising goods that are not available (e.g. offer hand sanitizer for sale when it is in fact out of stock), or exaggerating qualities of the goods or services without evidence or with incomplete information (such as to promote masks that protect against coronavirus without proving that they are FFP2 certified – the only effective masks – or without stating that this are only effective for three hours' use).

When products have defects

When consumers purchase goods, they obviously expect that they will not be defective and safe to use. Cambodia has legislated lightly on this matter, making no reference to liability for the sale of defective goods. However, a fine and imprisonment may be imposed under the CPL for aggravating circumstances related to the sale of goods with false product descriptions affecting health and security. The CPL is silent on who is responsible: the manufacturer, the seller or the importer?

In contrast to Cambodia, other countries such as Malaysia, Vietnam, and Myanmar have stipulated who is liable in the event of damage caused by defective goods. Under Malaysian law, the following are liable for damage: the manufacturer, anyone who falsely represents that they are the manufacturer, and the importer. Vietnamese law also provides that the manufacturer and the importer are responsible, as well as the supplier, and specifies that the responsible party can be an organization or an individual. More widely, Myanmar law states that the entrepreneur is liable and specifies that this refers to the individual person or organization carrying out the production, distribution, storage, transportation, sale, reproduction, exportation, importation, or resale of goods, or the provision of services or advertising.

Moreover, outside of ASEAN, Indian law details the behaviors that make someone liable. According to Indian law, the product manufacturer, the service provider, and the product sellers can all be liable.

Taking advantage of vulnerability and disease

Everyone is likely to be a “vulnerable consumer” at some point in their life. Vulnerability can come from physical or mental causes (disability, illness, age, etc.) or from external factors, such as ignorance of the language, lack of information, or simply being worried about an event such as the lightning spread of a disease such as COVID-19. Therefore, this is an essential stake of any consumer protection law and Cambodia took it into account by specifying in Articles 4-18 and 9 of its CPL that it is prohibited to “take advantage of customers, if the suppliers know that the consumers are not in [a]

position to protect their interests or do not have the ability to understand the nature, type, language, effects of an operation, or other issues related to that operation”.

This is indeed an essential matter, as other ASEAN countries, such as Malaysia, Vietnam, and Myanmar have all mentioned it in their laws in more or less detail. For instance, Vietnam prohibits sellers from taking advantage of disease to force a trade, which definitely speaks to the current coronavirus situation.

Increasing prices of Masks and Sanitizer

We can link this last point to the particular practice of increasing a product's price because of an external disaster such as the global spread of a virus. In the CPL, there is no specific mention regarding this practice, but general Cambodian laws may also apply to this issue.

As USA does, Malaysian Law specify that the consumer will not be liable to pay to the supplier more than the “reasonable price”. More protectively, USA have adopted Anti-price Gouging Laws to prevent merchants from increasing prices during a crisis. Some States set a percentage (around 10% to 20%) above which the merchant cannot increase the price.

A further question arises regarding the protection of disadvantaged consumers: What about standard contracts and general trading conditions? Referring to the CPL, we observe that this practice is absolutely unregulated in Cambodia. In contrast, Vietnam devotes Article 16 of its 2010 Law on protection of consumers' rights to this topic and states that contracts that have general trading conditions that, for example, exclude the responsibility of the seller or allow the seller to unilaterally change the terms and conditions, are invalid.



CONTACT

No. 33, Street 294 (corner of Street 29), Sangkat Tonle Bassac
Khan Chamkarmorn, Phnom Penh 120101
T: +855 23 964 430~434
F: +855 23 964 154