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REPORT 1

REVIEW, SYSTEMATIZE CURRENT REGULATIONS ON CONSUMER PROTECTION

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UPGRADING VIETNAMESE CONSUMER PROTECTION LEGISLATION

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INTRODUCTION

In term of effects of legal regulations on consumer protection, the current legislation system of Viet Nam has a lot of regulations with purpose of effect to consumer protection, including the constitutional law – Constitution, general laws such as Civil Code, Penal Code, legal documents on enterprises, investment, commerce, competition, legal documents regulated specific sectors (health, medicine, banking, tourism... and legal documents regulated only consumer protection issues.

Based on the formality of consumer protection, regulations on consumer protection shall be divided into:

- Regulations which identify consumers' rights.
- Regulations which stipulate commercial acts to prevent practices violating consumers' rights, consisting of: (i) Group of regulations which prevent unfair competition practices related to manufacturing, supplying goods and services and notifying to consumers, ensuring the right to be supplied goods and services with standard, quality, quantity and reasonable prices as well as the capacity of selection for consumers; (ii) Group of regulations which regulate consumer contract to protect negotiation right and capacity of consumers when involving in contract relation with suppliers (iii) Group of regulations on product liability which stipulate issues related to the liability of suppliers for damages against consumers in the process of using goods or services.
- Regulations on mechanism of claim, complaint, denunciation, infringement resolution and consumers' right recovery in infringement cases.

Based on the adjustment scope of regulations, the system of regulations on consumer protection shall be divided into:

- General legal regulations which recognize and protect consumers' rights;
- Specific regulations on consumer protection;
- Regulations on controlling market access and regulating the operation of organizations, individuals which manufacturing and supplying goods and services in the market. These regulations consist of general and sectoral regulations.
- Regulations on mechanism of of claim, complaint, denunciation, infringement resolution and consumers' right recovery in infringement cases.

In order to fully systematize related regulations and their roles in consumer protection, the review in this report will be directed to the second classification. Analysis of regulations will, however, tie with their effects when recognizing consumers' rights, the formality to regulate commercial acts in order to prevent unfair competition practices which violating consumers' rights, and the mechanisms which is established by current regulations to protect

consumers. Assessment of effects of current regulations on consumer protection to support for the general purpose of the report which is to recommend basic contents of the Draft Law on Consumer Protection to be submitted to the National Assembly.

I. GENERAL REGULATIONS RECOGNIZING AND PROTECTING CONSUMERS

1.1. Constitution 1992 (amending 2001)

Constitution is a basic law in the legal system. In the Constitution 1992 (amending 2001), apart from basic regulations on politic mechanism, economic... organization of the State of Viet Nam Socialist Republic, there is 01 Article regulating consumer protection policy, accordingly, *"All illegal production or business activities, all acts that undermine the national economy, harm the legitimate interests of the State, collectives and citizens shall be strictly punished in accordance with the law. **The State adopts policies aimed at protecting the interests of producers and consumers**"* (Article 28). This regulation is an important foundation for other ones adjusting business as well as consumer protection in the legal documents under the Constitution.

In the aspect of consumer protection, the recognition consumer protection policy in the greatest authorized legal document – the Constitution – proves the important role of consumer protection task and thus, it is the foundation to form a detailed legal mechanism to protect consumers actively and effectively.

1.2. Civil Code

In the legal system, the Civil Code is the most common law regulating relations, transactions in the civil life, in which the relationship between consumers and manufacturers, suppliers of goods and services.

The Civil Code 2005 (previously the Civil Code 1995) has a lot of significant regulations related to the field of contract law and redress out of the contract to be applied for transactions between business, manufacturing organizations, individuals and consumers. In particular:

- Contract liability: Article 407 (Standardized contracts); Article 409 (Interpretation of civil contracts); Article 410 (Invalid civil contracts); Article 430 (Quality of objects for sale and purchase); Article 435-437 (Liability for handing over objects); Article 442 (Obligation to provide information and use instructions); Article 443-444 (Security of ownership rights, security of the quality of objects for sale and purchase); Article 445-448 (Warranty).

+ *About standardized contracts, the Civil Code 2005 stipulates: In cases where a standardized contract contains ambiguous provisions, the offeror of the standardized contract shall bear adverse consequences of the interpretation of such provisions. In cases where a*

standardized contract contains provisions exempting the liability of the offeror of the standardized contract, while increasing the responsibility or abolishing legitimate interests of the other party, such provisions shall not be valid, unless otherwise agreed upon. (Article 407). In cases where the advantageous party includes in the contract the contents unfavorable for the disadvantageous party, the interpretation of the contract must be made along the direction of benefiting the disadvantageous party (Article 409);

+ About obligation of providing information and use instructions: *The seller is obliged to provide necessary information on the property for purchase and sale, and instructions on the use of such property; if the seller fails to perform this obligation, the purchaser shall be entitled to request the seller to perform it; if the seller still declines to perform it, the purchaser shall be entitled to cancel the contract and demand compensation for damage (Article 442);*

+ About liability of security of quality of objects for sale and purchase: *The seller must secure the use value or properties of an object for purchase and sale; if after the purchase, the purchaser discovers a defect that devaluates or reduces the use value of the object already purchased, he/she/it must promptly notify the seller of the defect upon the detection thereof and is entitled to request the seller to repair or change the defective or devalued object and compensate for damage, unless otherwise agreed upon. (Article 444);*

+ About liability of warranty: *The seller shall have the obligation to provide warranty for a sold object for a period of time called warranty time limit, if the warranty is agreed upon by the parties or provided for by law. The warranty time limit shall be counted from the time the purchaser has the obligation to receive the object. Within the warranty time limit, if the purchaser discovers a defect in the purchased object, he/she/it shall be entitled to request the seller to repair it free of charge, reduce its price, exchange the defective object for another one, or return the object and get back the money. The seller must repair the object and secure that the object meets all the quality standards or has all the properties as committed. The seller shall bear the expenses for repair and transportation of the object to the place of repair and from the place of repair to the place of residence or the head- office of the purchaser. The purchaser shall be entitled to request the seller to complete the repair within the time limit agreed upon by the parties or within a reasonable period of time; if the seller cannot repair or complete the repair within such time limit, the purchaser shall be entitled to demand a price reduction, an exchange of the defective object for another one, or return the object and get back the money (Article 445-447).*

- **Liability to compensate for damages out of the contract** apply for cases that consumers are to be damaged from the process of using goods, can be applied according to the regulation of the Civil Code 2005 under Article 604 (Grounds for liability to compensate for damage), Article 605 (Principles to compensate for damage), Article 606 (Prescription for

complaint) and Article 608-612 (Determination for damage). **Article 630 of the Civil Code 2005 stipulates clearly** that compensation for damage caused by infringement upon consumers' interests is as follows: "*Individuals, legal persons or other subjects that undertake production and business without ensuring the quality standards of goods, thus causing damage to any consumer, shall have to compensate*".

- **Assessment with regards of consumer protection:** Via the adjustment the relationship between seller and purchaser, regulations in the Civil Code determine basic liabilities of the seller of security of consumers' interests, including liability of instruction and information provision, liability of security of quality of goods, product liability (liability of defectives discovered after the purchase, liability of warranty), liability of damage compensation. Regulations are all along direction to consumers' interests, especially, warranty liability is stipulated relatively in detailed. However, in the framework of a common law, these regulations have not yet been adequate and cannot be applied for all cases, thus less of feasibility (for example, it is not any object for sale and purchase to be the object for warranty). Moreover, regulations in the Civil Code are defined upon the principle of free agreement and the default regulations on liability above are only applied when there is no agreement between parties, thus, these regulations couldn't, basically, restricted the problem that the seller (advantagous party) brings forward imposed conditions to consumers. Besides, liability of subjects in the consecutive phases of manufacturing, distributing, supplying to consumers is not made clear. Issues related to consumer protection in this Law are also not to be stipulated sufficiently.

1.3. Criminal Code 1999

Penal Code 1999 provides for a system of penalties (fine, non-custodial reform, imprisonment, etc) applicable for **individuals** that infringe consumers' interests, focusing on some following offences:

+ *Manufacturing and/or trading in faked goods* (Article 156)¹; manufacturing and/or trading in fake goods being food, foodstuffs, curative medicines, preventive medicines

¹ Those who make and/or trade in fake goods of the same volume of real goods worth between thirty million VND and one hundred and fifty million VND of up to thirty million VND causing serious consequences, or have been administratively sanctioned for acts defined in this Article or in any of Articles 154, 155, 157, 158, and 161 of this Code or have been sentenced for one of these offenses, not yet entitled to criminal record remission but repeat the violations, shall be sentenced between six months to five years of imprisonment. Committing the crimes in one of the following circumstances, the offenders shall be sentenced between three years and then years of imprisonment: a) In an organized manner; b) Being of professional nature; c) Dangerous recidivism; d) Abusing positions and/or powers; d) Abusing name of agency, organization; e) fake goods of the same volume of real goods worth between one hundred and fifty million VND and five hundred million VND; g) Gaining big illicit profits; h) Causing serious consequences. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment: a) fake goods of the same volume of real goods worth more than five hundred million VND; b) Gaining very big illicit profits; c) Gaining very great illicit profits. The offenders may also be subject to a fine of between three million dong and thirty million dong, the confiscation of part or whole of property, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.

(Article 157); manufacturing and/or trading in fake goods being animal feeds, fertilizers, veterinary drugs, plant protection drugs, plant varieties, animal breeds (Article 158);

+ *Deceiving customers* (Article 162): Those who, in goods purchase or sale, trickily weigh, measure, calculate or fraudulently exchange goods or employ other deceitful ploys, causing serious loss to customers, or who have already been administratively sanctioned for such acts or been sentenced for such offenses and not yet entitled to criminal record remission but repeat their violations, shall be subject to warning, **a fine of between five million dong and fifty million dong, non-custodial reform for up to three years or a prison term of between three months and three years**. Committing the crimes more than once or gaining big illicit profits, the offenders shall be sentenced to **between two and seven years of imprisonment**. The offenders may also be subject to **a fine of between three million dong and thirty million Dongs**.

+ Counterfeiting stamps and/or tickets, trading in counterfeit stamps and/or tickets (Article 164): Those who make and/or trade in counterfeit stamps and/or tickets of all kinds in great quantity or who have already been administratively sanctioned for such acts or have already been sentenced

for such offenses, have not yet been entitled to criminal record remission but repeat their violations, shall be subject to **a fine of between five million dong and fifty million dong or sentenced to between six months and three years of imprisonment**. Committing the crimes in one of the following circumstances, the offenders shall be sentenced to between two and seven years of imprisonment: a) In an organized manner; b) Abusing positions and/or powers; c) Big illicit profits are gained; d) Dangerous recidivism. The offenders may also be subject to a fine of between three million dong and thirty million dong, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.

+ *Making false advertisements* (Article 168): Those who falsely advertise goods and/or services, causing serious consequences, or who have been administratively sanctioned for such act or already sentenced for such offense and not yet entitled to the criminal record remission but continue to commit it, shall be subject to a fine of between ten million dong and one hundred million dong, non-custodial reform for up to three years or to a prison term of between six months and three years. The offenders may also be subject to a fine of between five million dong and fifty million dong, to a ban from practicing certain occupations or doing certain jobs for one to five years.

From consumer protection aspect, the establishment of penalties applicable for unfair trade practices which cause or threat to cause damage to the consumers' interests as above shows the strict punishment for infringements of consumers' interests. These regulations are useful to handle and deter offenders. However, these regulations are not effective in recovering infringed interests of consumers.

II. SPECIALIZED REGULATIONS ON PROTECTION OF CUSTOMER'S INTERESTS

Legal regulations exclusively for Protection of Customer's Interests are currently stipulated in Protection of Customer's Interests and Decree No 55/2008/NĐ-CP guiding the implementation of Protection of Customer's Interests.

Contents of Protection of Customer's Interests in these regulations are reflected in following aspects:

2.1. Clarification of the definition of "Consumer"

"Consumer shall mean the buyer, the user of the goods, services for the own consumption purpose of the individual, household or organization_" (Article 1 Protection of Customer's Interests, 1999). This article means that, consumer is not a generic, abstract concept but is defined and specified in certain circumstances.

2.2. Regulations on fundamental rights of consumer

According to Protection of Customer's Interests 1999, consumer has following rights:

- right to select the goods or services;
- right to obtain right information or guidance necessary for the consumption purpose relating to the quality, the prices, the direction for use of goods or services;
- right to obtain safety of life, of health and of environment shall be protected during the course of using the goods or services;
- right to be provided with necessary knowledge on consumption;
- right to claim for compensation, when the goods or the services fail to meet the standard of quality, the declared quantity and price or the contract signed;
- right to lodge a complaint or denouncement, a petition according to the regulations of the law concerning the production, business of prohibited goods, fake goods; of goods, services which do not meet the standard of quality, quantity and in case of false information and advertisement.
- right to contribute opinions in relation to the planning and the adoption of the policies or the laws relating to the protection of the consumer's interests, right to request the organizations/ individuals engaging in goods or services production/ business activities to fulfill their responsibilities concerning the protection of the consumer's interests, to request that organizations/ individuals engaging in production/ business activities ensure the standard, quality of goods concerning the essential needs on food, clothing, housing, transportation, education, health care, environment protection and of other registered, declared goods and services.

- right to establish organization to in accordance with the law. Consumer directly or through his representatives to protect his legitimate rights and interests.

In comparison with 8 fundamental rights stipulated in United Nations Guidelines in 1985 on Protection of Customer's Interests, the above 8 rights are not much different.

Besides, Protection of Customer's Interests Ordinance also regulates some customer's responsibilities including: protecting himself in utilizing goods, services; following exactly the method, instruction for use of goods, services; not using the goods or services which shall cause adverse effect to the environment, against the fine custom, cause harm to the life and health of himself and the community; discovery, denouncing of dishonest actions on standard, measuring, quality, good labeling, price and other tricky maneuvers of organizations, individuals in production, business of goods, services, which cause damage to himself and the community, in accordance with the law.

2.3. Regulations on responsibilities of organizations/individuals carrying out production/business activities

According to Protection of Customer's Interests Ordinance 1999, organizations/individuals carrying out production/ business activities having business shall have following responsibilities:

- register, declare the standard of the quality applicable for their goods, services according to the regulations of the law (if they are registered organization, individuals carrying out production/business activities) and strictly carry out commitments with consumers;
- Regularly examine the safety, quality of goods, services, implement correct weigh, measure;
- ensure exact and true information, advertisement on their goods, services;
- post up the price of goods, services;
- declare the conditions, the duration, the location of the warranty and provide clear instructions relating to the use of goods, service to the consumer;
- resolve the complaint launched by the consumer on their goods, services which do not comply with the declared standard, quality, quantity, price or with the contract signed;
- carry out warranty of their goods, services for the customer;
- Collect, study, take into account comments and contributions of consumer;
- Refund, compensate against the damage for the consumer in accordance with the law.

2.4. Regulations dealing with complaint and denouncement and settlement of the breaches to protect the interests of consumers

This is a new provision in Decree No 55/2008/NĐ-CP of 24/4/2008 providing details in implementation of Protection of Customer's Interests Ordinance 1999. According to regulations of this Decree, once detecting the infringement of his/her legitimate rights, and interests, consumer or his/her legal representative should complaint to the organizations, individuals who trade in services, goods, sold goods or supplied services or other organizations, individuals responsible for goods and services in accordance with the law. The organizations, individuals who trade in services, goods once receive the consumer's complaint should provide the receipt of complaint and proceed to settle the complaint for consumer. The receipt of complaint can be demonstrated in the form of document or email, and should clearly present the complaint of the consumer, request for complaint settlement and particular time for complaint settlement. The organizations, individuals who trade in services, goods are responsible for complaint settlement for consumer within 7 working days since the receipt of the complaint (where the objects of complaints are goods, services which cause damage to health, life of consumer or in other emergency cases, deadline for complaint settlement will be within 3 days after the receipt of the complaint).

Where the consumer and organizations, individuals cannot reach an agreement by direct complaint settlement process, parties can bring the case to competent state management agencies for settlement (Provincial Department of Industry and Trade or Viet Nam Competition Administration Department. During the conciliation, the conciliation agencies have following authorities and responsibilities: Request parties to the complaint to participate in the conciliation; Request relevant parties to provide necessary information; Confirm the minute of conciliation; Ensure the confidential information during the conciliation process.

According to the provisions of the Decree, consumer is entitled to withdraw the complaint during the process of the complaint settlement. In all cases, the consumer is entitled to bring the case to the competent court at any time during the complaint settlement process to request for protection of legitimate right and interest in accordance with the law.

Evaluation of current specialized regulations on consumer protection: It is easily recognized that the above regulations only can recognize rights of consumers and determination of responsibilities of agencies, organization, individuals in regards to consumer protection, lack practical measures to ensure the implementation of these responsibilities, therefore these regulations can only act for communication, information, awareness raising on consumer protection. The issuance of Decree 55/2008/NĐ-CP regulating the complaint mechanism and complaint settlement for consumer is one of measures to improve this situation. However, this is only a legal document guiding the implementation of Ordinance on Protection of Customer's Interests; therefore it only covers the scope of this Ordinance.

Although the complaint mechanism is regulated in details, business establishments will not subject to any penalties if they fail to implement these regulations.

III. LEGISLATIONS ON CONTROLLING MARKET ACCESS AND REGULATING THE OPERATIONS OF INDIVIDUALS AND ORGANIZATIONS MANUFACTURING, SUPPLYING GOODS, SERVICES

Legislations on controlling market access and regulating the operations of individuals and organizations that manufacture or supply goods or services create a legal ground to ensure that any goods or service delivered to consumers has a certain person responsible for quality, quantity and price as well as equal responsibility. All goods and services supplied on the market have to meet certain requirements based on characteristics and using objectives, possibility to affect healthy, safety and other interest of consumers. Those legislations make an legal order on market and good impacts on protecting consumers, as follows:

3.1. Provisions of Law on Enterprises and Law on Investment

Law on Enterprises is a code providing rights and obligations, establishment, operation, management of an enterprise-this is a main and basic subject manufacturing and supplying goods and services for consumers. By providing free rights of an enterprise to do business, Law on Enterprises also stipulates conditional business areas: “*Enterprises will be entitled to conduct business activities that are subject to certain conditions as required*” (Article 7 (2) of the Law on Enterprise in 2005). Law on Enterprise also provides that enterprises are prohibited to conduct business activities “*if they cause harmful impacts to national defense, security, social order and safety, historical traditions, culture, ethics, good moral and customs of Vietnam, health of people and environment*” (Article 7 (3)). Article 9 of the Law stipulates obligations of an enterprise by stating that: “*an enterprise shall ensure and be responsible for quality of goods and services in accordance with standards registered and declared*” (Article 9 (5)).

Regarding business and investment conditions, one of the conditional areas as identified under the Law on Investment is “the area impacting on public health” (Article 29 (1) (c)). As it depends on investors and sizes of investment, the establishment of investment projects will be registered or evaluated. This is a administrative measure to ensure the projects are subject to conditions provided by laws and one of the beneficiaries is, as analyzed, to protect consumers in society².

From the point of protecting consumers, the mechanisms set out under Law on Enterprise and Law on Investment are relatively specific through identifying a liable person and mechanism, ensuring inputs conditions of manufacturers and service suppliers. From the

² Based on each sector, the specific conditions of investment and business are set out in specialized legislations. The roles of those legislations to protect consumers will be analyzed in the Part IV of this Report.

view of inputs, those provisions are fundamental and the actual promotion of good impacts should depend on specific legislations.

3.2. Provisions of Law on Commerce

Law on Commerce has a wider scope of subjects than Law on Enterprises, because traders under the former include enterprises and individuals conducting business activities. The Law on Commerce regulates purchasing and selling goods, supplying services, investment, commercial promotion and other activities for interests of traders by setting out provisions on payment, price, transferring risks, rights and obligations of parties, forms of organizations, etc. Those regulations ensure at the highest level the rights and obligations of each party in trading and consumers could be a party or subject of these activities. The main contents of those provisions include:

- One of the principles in trading activities set out in the Law on Commerce is the principle to protect legitimate rights of consumers. Article 9 of the Law on Commerce provides that: “Traders conducting commercial activities are obliged to provide consumers with sufficient and truthful information on goods and/or services they trade in or provide and take responsibility for the accuracy of such information. Traders conducting commercial activities must be responsible for the quality and lawfulness of goods and/or services they trade in or provide”.

- With the recognition of above principle, within its scope, the Law on Commerce sets out commercial activities having direct impacts on consumers. They include sales promotion, advertisement, receiving and transferring goods, supplying services, price, commercial conditions of business, guarantee, as follows:

- + Regarding sale promotion in commercial activities: Under Article 88 of the Law on Commerce, it provides that: “Sale promotion means activities of commercial promotion conducted by traders to promote the purchase and sale of goods or the provision of services by offering certain benefits to customers”. The sale promotion has direct impacts to clients through they will utilize benefits brought by traders (certain goods or services) and clients are promoted to purchase goods or services. To avoid the abuses of sale promotion, the Law on Commerce provides obligations that traders have to “to strictly adhere to the sale promotion program already announced, and to fulfill their commitments with customers” (Article 96); to publicly notify all information on sale promotion activities to customers in respect of price, conditions of participating and using advantages from promotion. If sale promotion under types of prize and value of each prize traders must declare the price of goods and services; if sale promotion under discount, traders declare publicly level of discount in comparison with normal price; specific interests clients might receive by other forms of sale promotion and costs may be born by clients (Article 97). Executing obligations of informing allows customers themselves to analyze the actual benefits of sale promotion and they have right

choice when using goods and services. Furthermore, the Law on Commerce prohibits traders for “conducting sale promotion for goods and services banned from business; goods and services subject to business restrictions; goods not yet permitted for circulation; and services not yet permitted for provision; using, for sale promotion purpose, goods and services which are banned from business; goods and services subject to business restrictions; goods not yet permitted for circulation; and services not yet permitted for provision; conducting sale promotion for alcohol and beer, or using alcohol and beer for sale promotion targeted at under-18 people; conducting sale promotion for, or using cigarette or alcohol of an alcoholic volume of 30⁰ or higher for sale promotion in any form; conducting untruthful or misleading sale promotion for goods and services so as to deceive customers; and conducting sale promotion for selling inferior-quality goods, causing harms to the environment, human health and other public interests (Article 100). These provisions ensure consumers not being affected to their interests when they participate in sale promotion program.

+ Regarding commercial advertisement: the Law on Commerce prohibits advertisements for goods and services which are banned or restricted from business or banned from advertisement by the State; advertisements containing untruthful information on any of the following contents: quantity, quality, price, utility, design, origin, category, packing, service mode and warranty duration of goods or services (Article 109). Moreover, the banned or restricted goods could cause harmful impacts to health and safety of consumers; the goods or services which are not permitted in circulation may not meet requirements of quality. The prohibition of these goods and services could contribute to limiting provisions to consumers when they are not permitted so that it helps to protect basic interests of consumers.

Regarding business conditions in commercial activity: Law on Commerce provides: “For goods subject to business restrictions and goods subject to conditional business, the purchase and sale thereof shall be effected only when goods and the goods purchasing and selling parties fully meet the conditions provided for by law”(Article 25 (2); for services subject to business restrictions and services subject to conditional business, the supply shall be provided only when these services and parties involved in the provision thereof fully satisfy the conditions defined by law (Article 76 (2). Based on the List of banned, restricted and conditional business goods or services provided in Decree No 59/2006/ND-CP, it shows that one of the legal grounds to identify banned, restricted and conditional business goods or services is their impacts on health, safety and reputation to human, particularly consumers³. Depending on each commodity or service and its impacts, it can be considered as a banned or restricted commodity or service or applying controlled measures to ensure the compliance of conditions and safety to consumers.

³ Apart from other requirements of national defense, historical culture, etc.

+ Regarding price, the Law on Commerce provides the principle to set price (Article 52 and 86). Accordingly, if there is no agreement on price, measure and indication for price of goods or services, the price will be calculated according to price of goods and services at the same conditions.

+ Regarding the delivery and reception of goods: Article 44 of the Law on Commerce provides that: “where it is agreed by the parties that the purchaser or the purchaser’s representative shall examine the goods before the delivery, the seller must ensure that the purchaser or the purchaser’s representative shall be given conditions for conducting such examination. The seller shall be liable for defects of goods already examined by the purchaser or the purchaser’s representative if the defects of the goods cannot be detected in the course of examination through common measures and the seller knew or should have known such defects but failed to notify them to the purchaser”.

+ Regarding obligations to guarantee goods: Article 49 of the Law on Commerce provides that: “where goods are purchased and sold under warranty, the seller shall have to provide warranty for such goods according to the agreed contents and duration; the seller must fulfill the warranty obligation as soon as the practical situation permits; the seller must bear all warranty expenses unless otherwise agreed.

Assessments from the view of protecting consumers: The Law on Commerce set out relatively all activities of traders, in which it provides prevention on unfair commerce such as untrue information, hiding information, supplying unqualified goods and services, etc by regulating basic obligations of traders. By large, the provisions under the Law on Commerce have been developed on equal treatments between traders in commercial activities-but do not meet requirements of consumers as a weaker party.

3.3. Provision of Law on Competition

Law on Competition in 2004 provides the right to compete and principles of competition. Accordingly, the Article 4 provides that: “the competition will be based on a true principle, not violating to the State interests, public interests, legitimate rights and interests of enterprises and consumers. The Law also provides competitive limitations (Article 9), market dominations, prohibited monopoly (Article 13 and 14) and other monitoring measures for dominated or monopolized enterprises. Moreover, the Law on Competition also provides procedures to handle cases of violating competitive legislations and administrative measures.

From the view of consumers, through provisions to ensure fair competition environment, the competitive legislations contribute to promote individuals and organizations for providing the best goods and services to consumers with reasonable prices, preventing the violations of consumer interests under unfair competition, monopoly or other competitive limitations.

3.4. Legal regulations on price

According to the Price Ordinance dated by 10 May 2002 by the Standing Committee, the State manage prices on the principle of respecting the right to set prices and to compete in prices of production and/or business organizations and individuals strictly according to the law; and the State shall employ necessary measures to stabilize prices and protect the legitimate rights and interests of production and/or business organizations and individuals, of the consumers, and the interests of the State (Article 2). In the scope of the State administration of prices, the State shall adopt necessary policies and measures to affect the demand-supply relationships in order to **stabilized the market prices for important and essential commodities and services**, to control inflation, stabilize the socio-economic situation, protect the legitimate rights and interests of production and/or business organizations and individuals, of consumers and the interests of State, contributing to the promotion and investment and development (Article 5). Price – stabilizing measures that shall be employed include the following: adjusting the supply and demand of home-made goods and export – import goods, commodities between regions, localities in the country; purchasing or selling out reserve commodities; controlling goods in stock; setting the ceiling and floor prices and price framework; controlling price components; subsidizing prices of farm products when the market prices fall too low, causing damages to producers; subsidizing other important and essential commodities and services (Article 6). The State shall set the prices through specific price levels, standard price levels, price framework, ceiling and floor prices for the following: land, water surface, important natural resources; State properties sold or leased; monopoly commodities and services; commodities and services important for the national policies and people’s welfares (Article 7). In addition, the Ordinance also stipulates anti-dumping; inspection and dealing with dumping prices; responsibilities of business organizations and individuals in **posting up prices in a clear and no-confusion manner** (Article 29); and forbidden price-setting acts include the following: colluding with other production and/or business organizations and individuals for price monopoly alignment, causing damages to legitimate interests of other production and/or business organizations and individuals, of the consumers, and the interests of the State; dumping goods and services; fabricating and/or spreading groundless news on price increase or decrease, causing damages to legitimate interests of other production and/or business organizations and individuals, of the consumers and the interests of the State; fixing wrong prices in order to deceive consumers or their partners being production and/or business organizations and individuals; increasing or decreasing prices falsely by changing the quantity, quality, locations for delivery and reception of goods and/or services; taking advantages of natural disasters, enemy sabotage and/or other abnormal circumstances for speculation to increase prices and/or impose unreasonable prices (Article 28).

Assessment from the perspectives of consumer protection: The most important impact of the mentioned – above regulations in consumer protection reflects in interfering administrative measures in order to ensure the price stability of essential commodities and services, thus safeguarding consumers’ rights to have their fundamental demands met and avoiding the abuse of supply rights of essential commodities and services to increase prices and block consumers’ accesses.

3.5. Legal regulations on advertisement

According to the Advertising Ordinance No. 39/2001/UBTVQH10, advertising means ‘*introducing business activities, goods and services to consumers*’. Legal regulations on advertising regulates activities of organizations and individuals conducting business in advertising services with different purposes such as to ensure the cultural and civilized values in advertising activities, the solemnity of the national emblem, the political security and social order, etc. And one of the important purposes of legal regulations on advertising is to protect consumers as the direct subject of advertising activities.

In terms consumer protection, advertising regulations raise two fundamental issues that are **ensuring that information advertising goods and services must be true** and avoiding advertising that offends the honour and reputation of their competitors. The impacts of such administration are to ensure the **recognizability** of the true quality of goods and services and therefore guarantee **rights of the true choice** of consumers.

+ According to Article 5 of the Advertising Ordinance, some of the prohibited advertising activities are ‘misleading advertising’ (clause 4); and ‘advertising products and goods which are not yet permitted to be circulated, or services which are not yet permitted to be provided at the time of the advertisement’ (clauses 7); and ‘advertising goods and services which the laws prohibit to be traded or advertised’ (clause 8).

+ **In terms of contents of advertisements**, Article 6.2 stipulates: ‘Information advertising business activities, goods and services must be true, accurate and clear, and must not cause loss and damage to producers, business persons and consumers’.

+ **In terms of forms of advertisements**, one of the most essential requirements is ‘clear, easily comprehensible’ and ‘forms of advertisements must include signs which distinguish the advertised information from information which is not an advertisement in order not to confuse producers, business persons and consumers’ (clause 2 and 3, Article 7). Moreover, in order to prevent any abuse of advertising information to consumers about goods and services that are of poor quality and fail to meet standards, and to ensure the implementations of quality regulations for business activities, goods and services, point a clause 1 Article 15 of the Ordinance sets out one of conditions applicable for advertising business activities, goods and services as follows: ‘*There must be a certificate of goods quality from the State management body for goods quality in order to advertise goods which*

are on the list of requiring quality inspection or the list requiring a certificate of quality; where an entity declares its own quality criteria, there must be a letter of such declaration; if goods are the subject of the intellectual property rights, there must be a certificate relating to such’.

Assessment from the perspective of consumer protection: when manage an important commercial activity like advertising activities, laws on advertising play an important role to guarantee that advertising information towards consumers are true and clear, thus ensuring their opportunities of choices of goods and services. Advertising laws function to prevent one type of the unhealthy commercial acts affecting consumers’ interests – that is causing confusions for consumers. Moreover, advertising laws also require to distinguish advertising information from non-advertising information, but have no regulations on the level of the truth of advertising and non-advertising information, resulting in an interpretation that advertising permits to exaggerate the functions and usages of products, goods and services, which causes difficulties to consumers in dealing with such information to choose goods and services.

3.6. Legal regulations on standards and regulations of consumer protection

In efforts to establish a system of standards and technical regulations as a management tool and to ensure the minimum requirements for products, goods, services, processes, environment and other subjects, forming a basis for organizations and individuals to define requirements that must be complied in their performance, the National Assembly of the Socialist Republic of Vietnam issued the Law on Standards and Technical Regulations on 29 June 2006. On the 1st August 2007, the Government adopted Decree No. 127/2007/ND-CP detailing the implementation of a number of articles of the Law on Standards and Technical Regulations.

The 2006 Law on Standards and Technical Regulations clearly stipulates responsibilities of production and/or business organizations and individuals in terms of standards and technical regulations, in which organizations and individuals are obliged: to announce standards applicable to products, goods, services, processes and environment; to announce products, goods, services, processes and environment conformable with relevant technical regulations; to ensure conformity of products, goods, services, processes and environment with announced technical regulations and standards.

(i) According to definitions in the Law on Standards and Technical Regulations, standards and regulations can be interpreted generally as technical characteristics and management requirements applied for products, goods, services, processes, environment and other objects in socio-economic activities in order to assess the quality and effectiveness of these objects.

+ Standards mean regulations on technical characteristics and management requirements used as standard for classifying and appraising products, goods, services, processes, environment and other objects in socio-economic activities with a view of improving the quality and effectiveness of these objects. In Vietnam, there are two standard systems that are the manufacturer standards (symbolized as TCCS) formulated by organizations and the national standards (symbolized as TCVN) evaluated and announced by the Ministry of Science and Technology.

+ Technical regulations mean regulations on the limits of technical characteristics and management requirements which products, goods, services, processes, environment and other objects in socio-economic activities must comply with in order to ensure safety, hygiene and human health; to protect animals, plants and the environment; to safeguard national interests and security, consumer interests and other essential requirements.

(ii) The Law on Standards and Technical Regulations also provides a mechanism of assessment and announcement of conformity with standards and technical regulations. According to this mechanism, when products, goods, services, etc. are certified to be standard – conformable and technical regulation – conformable, organizations and individuals shall be announced and certified the conformity of standards and technical regulations.

In order to develop the Law on Standards and Technical Regulations, Decree No. 175/2007/ND-CP provides specific guidelines of implementation of this Law. According to the Decree, the first three objects of activities in terms of standards and technical regulations include: ‘(1) home – made products and goods; import – export products and goods; (2) Services in the following fields: commerce; post and telex; information technology; construction; education and training; labours and vocational training; finance; banking; health; tourism; culture and entertainment; gymnastics and sport; traffic and transportation; science and technology; standards, measures and quality; safety and security; agriculture and agricultural development; aquatic products; resources and environment; and other services emerging in the socio-economic development process which need to have standards and technical regulations to be formulated and applied; (3) Processes of production, exploitation, processing, preservation, transportation, use, operation, warranty, maintainance, recycle, destroy, quality administration of products and goods, and other processes in socio-economic activities which need to formulate and apply standards and technical regulations ...’ (Article 2 of the Decree). Based on these objects, one of the main purposes of activities in standards and technical regulations is to ensure that goods and services supplied to consumers must meet certain requirements, thus safeguarding the interests of consumers. With the system of standards and technical regulations and the mechanism of assessment, recognition and announcement of the conformity with standards and technical regulations, consumers can recognize the quality of products, goods and services that they are using; producers and suppliers of goods and services for consumers shall be bound by requirements to ensure the

quality of their provided goods and services. This also is an important tool for State administrative agencies to control the quality of products, goods and services in circulations on the market.

Assessment from the perspectives of consumer protection: Provisions on standards and technical regulations play an important role in ensuring that provided goods and services to consumers have met minimum requirements in order to prevent any damages to health of consumers; and at the same time providing consumers with information about the quality of goods and services that they are using in order to make choices suitable with their demands. The application of provisions on standards and technical regulations prevents any activities cheating consumers at the quality and functions of products, goods and services as goods in circulations on the market have to be recognized and announced as standard conformable and technical regulation conformable.

Based on the provisions of the Law on Standards and Technical Regulations, the system of legal normative documents on standards and technical regulations have been completing, including the transition from compulsory standards to regulations and reviews of Vietnam standards in order to transfer to national standards.

3.7. Legal regulations on quality

Before, the State management of goods quality was conducted under provisions of the 1999 Ordinance on quality of goods. Since 1/7/2008, the 2007 Law on quality of products and goods officially comes into effect, replacing the above Ordinance. The promulgation of Law on quality of products and goods is an important milestone in the completion of laws on goods quality in particular and laws on consumer protection in general. This Law stipulates rights and obligations of production and/or business organizations and individuals, product and goods users, and organizations and individuals **involving in product and goods quality management**. For instance, according to this Law, **producers** are obliged: to comply with conditions to safeguard the quality of their products; to present information on the goods quality on labels, packings and attached documents in line with legal regulations on goods labels; to accurately inform the quality of products and goods; to warn about any potential possibilities of causing damages by their goods and preventions for dealers and consumers; to inform requirements of transportation, storage, maintenance and use of products and goods; to provide information on warranty and its implementation of products and goods for buyers and consumers; to fix, return or change new goods, take back disable goods when dealers and consumers return them; to timely stop production and inform related parties and deploy remedies once discovering that products and goods cause unsafety or fail to meet published applicable standards and relevant technical regulations; to take back and deal with disqualified products and goods, etc.

According to this Law, consumers enjoy the following rights: **to be provided with true information on the safety and quality**, guidelines on transportation, storage, maintenance and use of products and goods; to provide with information on goods warranty, goods possibilities of causing unsafety and its prevention when receiving notification from producers and/or importers; to request dealers to fix, return money or change new products, and take back disable products; to receive compensations according to the laws; to request production and/or business organizations and individuals to realize their responsibilities of protecting consumers according to legal regulations on consumer protection; to request consumer protection agencies to support in protecting their legitimate rights according to legal regulations on consumer protection. **Consumer rights protection agencies have the following rights and obligations:** to represent consumers in protecting their legitimate rights and interests when receive complaints and responses about goods quality that is inconformed with published applicable standards, relevant technical regulations, quantitative information printed on labels or fails to meet the contractual quality; to receive information related to production and/or business organizations and individuals whose goods are inconformed, and the level of inconformity of goods comparing to published applicable standards, relevant technical regulations, and provide these information to the public medias and take responsibility over their provided information in line with the laws; to propose examination and inspection agencies, competent State agencies to settle or resolve violations of production and/or business organizations and individuals of the quality of products and goods; to lodge complaints and lawsuits on quality of products and goods which cause damages to consumers; to provide guidelines and consultancy about consumer rights and interests related to quality of products and goods.

Besides standards and technical regulations, guarantee requirements of quality of products and goods in circulations on the markets may also include: goods on the list of being or not yet being permitted to be circulated, its origins, sources, expiry date, raw materials and safeness. Based on these factors, the Law on quality of products and goods **prohibit supplies of disqualified goods, providing wrong information or hiding information** which may cause damages to consumers. The prohibited activities may be listed as follows: (i) productions, imports and trades of products and goods that are prohibited to be circulated by the State; (ii) productions, exports, imports, trades, exchanges, marketing of products and goods that fail to guarantee relevant technical regulations; (iii) exports, imports and trades of goods that have unclear origins; (iv) exports, imports, trades, exchanges and marketing of products and goods that are out of date; (v) uses of food and medicine products that fail to ensure the quality or out of date for charities or offerings for people to use; (vi) intentionally provision of wrong or fake results of tests, examinations, appraisals, verifications and certifications of quality of products and goods; (vii) forgery or illegal uses of standard and technical regulation conformity marks and other marks on quality of products and goods;

(viii) replacement, fraudulent exchanges, increases and/or decreases of components or additives, mixtures of impurities which degrading quality of products and goods in comparison with announced standards and relevant technical regulations; (ix) False information, advertisements or deceitful activities about quality of products and goods, its origins and sources; (x) information disguisements about unsafety possibilities of products and goods for human, animals, plants, properties and environment; (xi) production and processings of products and goods by raw materials and materials that are prohibited to be used for productions and processings of these products and goods. These prohibited activities all belong to unfair commercial acts that are harmful to consumers in terms of quality.

Assessments from the perspectives of consumer protection: Guarantees of quality of provided goods is one of fundamental requirements in consumer protection. Despite stipulating responsibilities to safeguard the quality from suppliers, the Law on quality of products and goods also sets up a mechanism to ensure information on goods quality for consumers through prescribing responsibilities in providing true information on quality, warning unsafety possibilities, etc. in order to ensure that consumers have full information on quality and are able to make their suitable choices.

3.8. Legal regulations on measurements

The Ordinance on Measurement 1999 and guideline documents prescribe measuring devices to be used to serve the purposes of goods and service quantification in trade and payment which needs to be measured (Article 11); Organizations and individuals that produce and/or trade in quantitatively pre-packed goods shall have to ensure the correct quanta of the pre-packed goods (Article 20); The quantities of pre-packed goods must be clearly inscribed on their packings. The differences between the actual goods quantities and those inscribed on the packings must not exceed the permitted limit (Article 21). Moreover, Article 3 of the Ordinance on Measurement also prescribes that: ‘All organizations and individuals have the right to lodge their complaints and individuals have the right to make denunciations against acts of violating the legislation on measurement ... The competent State agencies shall have to promptly settle complaints, denunciations and proposals according to the provisions of law’.

To guide the implementation of the Ordinance on Measurement, the Government issued Decree No. 06/2002/ND-CP dated January 14, 2002 regulating in details the Ordinance on Measurement. Within its functions and competences, the Ministry of Science, Technology and Environment (now is the Ministry of Science and Technology) also promulgated the following documents: Decision No. 30/2002/QD-BKHCMNT dated May 17, 2002 issuing ‘regulation on metrology for goods quantitatively pre-packed by weight or volume’; Decision No. 31/2002/QD-BKHCMNT dated May 17, 2002 by the Minister of Science, Technology and Environment issuing ‘regulation on metrology for measures in retail sale’; Decision No. 61/2002/QD-BKHCMNT dated August 9, 2002 by the Minister of Science, Technology and

Environment promulgating ‘the list of pre-packed goods subject to State management over measurement’.

Assessments from the perspectives of consumer protection: The mentioned above provisions function to prevent cheating acts in measurement – one of unfair commercial acts causing damages to consumer interests, which are very popular nowadays.

3.8. Legal regulations on trademarks⁴

According to general conceptions among countries, trademark is an important information tool from producers and dealers to consumers. With the function as an information transmitting tool, trademarks play an important role towards decisions on whether to buy or use of consumers. Therefore, trademark is also an important advertising and marketing tool. Full and true inscriptions on trademarks play an important role in consumer protection. Being aware of the importance of trademarks, our laws have promulgated initial provisions on inscription on trademarks. On 30/8/1999, the Prime Minister adopted Decision No. 178/1999/QĐ-TTg dated 30/08/1999 on Labelling domestically circulated goods as well as export and import goods. At present, these regulations are replaced by new provisions in Decree No. 89/2006/ND-CP dated 30/9/2006 by the Government on trademarks. According to this Decree, “*goods label*” means written, printed, drawn or photocopied words, drawings or images which are struck, printed, pinned, cast, embossed or carved directly on goods or their commercial packings or on other materials attached to goods or their commercial packings. Labeling of goods means the presentation of necessary and principle contents about goods on their labels in order to help consumers identify the goods and serve as the basis for purchasers to select, consume and use such goods; and for manufacturers and traders to advertise their goods; and for functional agencies to conduct inspection and supervision. According to the above Decree, all domestically circulated goods as well as exported and imported goods must have labels presented under the provisions of this Decree, except for goods which do not require labels⁵. Trademarks must represent the following contents: a) Name of goods; b)

⁴ See “**Labelling and its implications for consumers**” - a speech by Markos KYPRIANOU - European Commissioner for Health and Consumer Protection at the Conference on Consumer Policy Perspectives, Luxembourg, 2 May 2005). The legal contents of European countries focus on labelling such as: food labelling (that consists of the following main contents: ingredients, origins, ethic labelling, nutritious labelling); ‘safety labelling of products’ (according to the Directive on General Product Safety: producers and dealers must provide full information to consumers in order to enable them to evaluate potential risks and challenges from products). The laws also clearly prescribe uses of chemicals in products in order to ensure clear information of the safety of products (whether products with or without toxins, what are the toxins, whether they cause allergy or are inflammable or explosive, etc.).

⁵ For instance, goods which are raw and fresh foodstuff, unpacked processed foodstuff for sale directly to consumers; unpacked fuels or materials (agricultural, aquatic or mineral), construction materials (bricks, tiles, lime, sand, rock, cement, colored earth, mortar, commercial concrete mixtures), scraps (discharged from production and business) for direct sale to consumers as agreed upon; in case of foreign organizations or individuals that import Vietnamese goods request the labeling of goods as stipulated in contracts for goods sale and purchase and take responsibility for their requests, exporting organizations or individuals shall comply with such requests as contracted, provided that such requests do not lead to misunderstanding of the substance of the goods and violate the laws of Vietnam and importing countries; goods in the domains of security and defense;

Name and address of organization or individual responsible for goods; c) origin of goods. Moreover, depending on each group of goods, contents of labels must meet specific requirements. The Decree divides goods into 50 fundamental groups of goods⁶ such as food, foodstuff, drinks, cigarettes, medicines for human use, cosmetics, children's toys, leather and footwear products, electric and electronic products, informatic equipments, cars, mopeds, motorcycles, detergents, etc. To realize these provisions of the above Decree, ministries have issued documents providing guidelines on implementation, including Circular No. 09/2007/TT-BKHCN dated 06/04/2007 guiding the implementation of some provisions of Decree No. 89/2006/ND-CP dated 30/8/2006 by the Government on trademarks (supplemented by Circular No. 14/2007/TT-BKHCN dated 25/07/2007).

The 2005 Law on Intellectual Property prohibits producers and businessmen to conduct 'unhealthy competition' acts including the following: *'a) Using commercial indications that cause confusion as to business entities or business activities or commercial source of goods and services; b) Using commercial indications that cause confusion as to the origin, production method, feature, quality, quantity or other characteristics of goods and services; or as to the conditions for provision of goods and services; c) Using a mark being protected in a country which is a party under which provisions, the representative or agent of the mark owner is prohibited from using the mark, if the user was a representative or agent of the mark owner and such use was neither consented to by the mark owner or justified; d) Registering or possessing the right to use or using a domain name identical with or confusingly similar to a protected trade name or mark of another person, or a geographical indication that one does not have the right to use, for the purpose of possessing the domain name, benefiting from or prejudicing reputation and goodwill of the respective mark, trade name and geographical indication'* (Article 130 clause 1).

goods which are radioactive substances, goods used in emergency circumstances to overcome disaster consequences, epidemics; means of transport by rail, water or air, and goods which are confiscated by state agencies and put up for auction or liquidation shall be subjected to separate regulations. Specialized management ministries shall assume the prime responsibility for, and coordinate with the Ministry of Science and Technology in, issuing regulations on labeling of goods specified in this Clause.

⁶ (1) Food; (2) Foodstuffs; (3) Drinks (excluding alcohol); (4) Alcohol; (5) Cigarettes; (6) Food additives; (7) Medicines for human use; (8) Vaccines, biologicals for human use; (9) Pharmaceutical materials; (10) Medical supplies and equipment; (11) Cosmetics; (12) Chemicals for domestic human use; (13) Feeds; (14) Veterinary drugs, vaccines and biologicals for animal health; (15) Veterinary drugs, biologicals for use in fishery; (16) Plant protection drugs; (17) Plant seeds; (18) Animal seeds; (19) Aquatic seeds; (20) Children's toys; (21) Textile, garment, leather and footwear products; (22) Plastic and rubber products; (23) Paper, cardboard, carton; (24) Teaching and learning aids; (25) Political, economic, cultural, scientific, educational and art publications; (26) Musical instruments; (27) Sport and physical training tools; (28) Wood furniture; (29) Porcelain, ceramic and glass products; (30) Fine arts and handicrafts; (31) Domestic metal appliances; (32) Gold, silver, gems; (33) Labor protection, fire prevention and fight equipment; (34) Electric and electronic products; (35) Informatic, communication, post and telecommunications equipment; (36) Machines, mechanical equipment; (37) Measuring and testing machines, equipment and devices; (38) Metallurgical products; (39) Fishing gear; (40) Cars; (41) Mopeds, motorcycles; (42) Special-use vehicles; (43) Bicycles; (44) Spare parts of means of transport; (45) Construction and interior decoration materials; (46) Petroleum products; (47) Detergents; (48) Chemicals; (49) Fertilizers; (50) Industrial explosives.

Assessments from the perspectives of consumer protection: The above provisions on trademarks are important methods to provide information on goods to consumers and also crucial basis to bind suppliers' responsibility over inscribed information on the marks. Compliance with these provisions helps prevent false information, hiding information or confusing information to consumers.

IV. LEGAL REGULATIONS ON CONTROL OF MARKET ADHERENCES AND ACTIVITIES OF ORGANIZATIONS AND INDIVIDUALS WHO TRADE GOODS AND SERVICES

Within the current legal system, regulating provisions at the sector level are diversified and cover specific issues within each sectors such as health, foods, transportation, construction, insurance, tourism, banking, stocks, telecommunication, etc. in which there are provisions with direct influence on the rights and interests of consumers in respective sectors.

This part of the report shall focus on reviewing provisions regulating the following sectors: foods, health, medicines, banking, electricity, telecommunication, stocks and tourism.

4.1. Legislations on Sanitary and food safety

Under the Ordinance on Sanitary and Food Safety dated 26 July 2003, foods business is a conditional sector. The individuals and organizations doing business on foods are responsible for sanitary and foods safety on products manufactured by them. For instance, individuals or organizations manufacturing live or fresh foods have to ensure conditions of raising and planting without connecting with polluted environment; to process rubbishes in accordance with laws on environment protection; to ensure foods not at unsanitary condition, preserved in sanitary condition an separated from chemicals and other diseases; to be responsible for the origin of foods. The foods processing enterprises shall carry out all measures to prevent foods from not being dusty or infected to human, animal or plant; ensure processing procedures are complied with laws on sanitary and food safety; only be allowed to use additive or supplement or nutritional elements in the List approved by the Ministry of Health⁷. The cover or package of foods shall ensure sanitary and quality in the periods of guaranteed date and convenient to print trade marks. When foods preserved by radiation are circulated in market, it should declare in the package of these products. Individuals and enterprises are allowed to trade foods preserved by radiation within the List of permitted products having levels of radiation in accordance with laws and regulations⁸. Foods with alternative genes or elements of foods having gene changed should be declared on the cover or package in Vietnamese, etc.⁹

⁷ This List is adopted by the Ministry of Health.

⁸ This List is adopted by the Ministry of Health.

⁹ The management and using of foods with changed gene are conducted under Government regulations.

In order to implement the above Ordinance, the Government has enacted Decree No 163/ND- CP dated 7/9/2004 guiding the implementation of some articles of the Ordinance on Sanitary and Food Safety; Decree No 45/2005/ND-CP providing penalties of administrative violations in health. The Prime Minister has enacted some decisions, directives on sanitary and foods safety, including Decision No 48/2005/ QD-TTg dated 8/3/2005 on the establishment of the Inter-Agency Steering Committee on Sanitary and Foods Safety, the Directive No 37/2005/CT-TTg dated 28/10/2005 on strengthening managements of chemicals and anti-biotic for manufacturing and trading foods, Directive No 30/2005/CT-TTg dated 26/9/2005 on strengthening the managements of slaughter for foods safety and sanitary, Decision No.154/2006/QD-TTg dated 30/06/2006 on approving the Project of State Management on Pharmaceuticals and food safety and Cosmetics period 2006-2015; Decision No 43/2006/QD-TTg dated 20/02/2006 on approving the Action Plan for Ensuring Sanitary and Food Safety to 2015; the Directive No 06/2007/CT-TTg dated 28/03/2007 on implementing some emergency measures for ensuring sanitary and food safety; Decision No 43/2006/QD-TTg dated 20/02/2006 of the Prime Minister on approving the National Program for Food Safety and Sanitary for period 2006-2010. Ministries and agencies (particularly Ministry of Health), under its functions and duties have enacted more than 30 legal normative documents for guiding implementation.¹⁰

The assessment from protecting consumers: Foods is a kind of crucial commodity and used with a large number, in wide scope and regularly for all consumers as well as having impacts on health, life and possibility of development of human and therefore, it needs to stipulate special requirements on protection of consumers. The regulations on safety and sanitary to protect the interests of consumers through imposing strict conditions of manufacturing, processing and preserving foods as well as informing mechanisms to consumers are very important. Regulations on sanitary and food safety protect interests of consumers by regulating strictly conditions of manufacturing, processing, preserving and responsibility to inform consumers about supplied foods.

4.2. Legislations on Health and Pharmacy

There has been a long attention on protecting patients and drug users in relation with people working on health or clinics and pharmacy. The first legislation providing this issues and still having effectiveness is the Law on Protection of People Health dated 36 June 1989. Pursuant to this Law, patients have the right to be treated or cured at clinics or hospitals where they reside or work or study; the patients have the right to choose doctors, clinics or hospitals or to go abroad for treatment under provisions of the Council of Ministers.

In case of emergency, patients are treated at any clinics or hospitals (hereafter called the “establishments”). Such establishments have to receive and treat all emergency cases

¹⁰ Please see the List of Legal Normative Documents.

(Article 23). Doctors must meet certain requirements so that they could conduct their careers, be responsible for treatment and prescription and guiding disease prevention. They have to keep secrets relating to patients or their privacy if they know. It prohibits irresponsible behaviors of doctors in emergency cases, treatments so that it could affect to health of patients (Article 24 and 25). The surgery shall be agreed by patients or his/her relatives, guarders or it needs an approval from the leaders of establishments (Article 28). Herbal doctors when conducting their careers have to graduate from medical schools or inherited by his or her traditional treatment measures from their families and licensed by the Ministry of Health or Department of Health. They also are responsible to treat and guide patients to disease prevention; or have good morals and responsibility to treat patients. The new method of treatment have to be examined and approved by the Ministry of Health or Department of Health and the Association for National Health Tradition so that it could be applied for patients (Article 35 and 36).

Regarding treatment and prevention drugs, the Law on Protection of People's Health provides conditions on manufacturing and circulation, exportation, importation of drugs and drug materials; the management of poison drugs, addictive or drugs and the issues to put drugs into circulation.

Regarding health and pharmacy, the Standing Committee of National Assembly enacted the Ordinance on Private Medical and Pharmaceutical Practice dated 25 February 2003. This Ordinance stipulates the conditions of conducting private medical and pharmaceutical practice. Accordingly, the heads of the traditional-medicine or -pharmacy establishments, pharmaceutical, vaccine or medical bio-product establishments must have private medical or pharmaceutical practice certificates; for enterprises trading in pharmaceuticals, vaccines and/or medical bio-products, the heads or professional managers thereof must have private medical or pharmaceutical practice certificates; traditional-medicine or pharmacy establishments, pharmaceutical, vaccine and/or medical bio-product establishments and enterprises manufacturing medical equipment must have certificates of eligibility for private medical or pharmaceutical practice (Article 4). Persons who are granted certificates of private practice of medicine, traditional medicine and pharmacy, pharmaceutical, vaccines or medical bio-products must satisfy all the conditions of diplomas, professional practice and ethics, health and other requirements. These conditions must be compatible with the forms of conducting medical or pharmaceutical practice, not falling within prohibited forms and these leaders only practice within permitted forms (Article 9). The private medical practitioners who could be individuals or organizations are strictly forbidden to apply new professional techniques, use new medicines while doing medical examinations and treatments to patients that have not been permitted by the Health Ministry yet; to make advertisements beyond their professional qualifications and practice scopes inscribed in the private medical practice eligibility certificates; to advertise in contravention

of laws (Article 20 and 25); to make publicly available price; to receive payments in accordance with listed price; and to make compensation in accordance with the laws.

Recently, to manage special consumption goods, which are drugs and other pharmaceuticals, the Pharmaceutical Law has been passed by the National Assembly on 14 June 2005. This Law provides drug trade; drug registration, drug marketing; utilization of drug; provision of drugs; drug information and drug advertising; clinical trial of drugs; management of narcotic drugs, psychotropic drugs, precursors used for producing drugs and radioactive drugs; drug quality standards and drug quality control in Viet Nam.

According to this Law, the State has policy to manage pharmaceutical prices based on the principle that the enterprise manufacturing, importing and exporting or trading pharmaceuticals themselves determine, compete for and are responsible for the prices in accordance with the laws and regulations; make use of measures to stabilize drug prices on the market with the purpose to meet the needs of protection of health care of people. The provisions in detail the management of drug prices are regulated by the Government and in accordance with declaring prices of pharmaceuticals before trading. The establishments must ensure that drug prices are not higher than the drug prices in the regional countries having similar medical and commercial conditions with Viet Nam and are responsible to the law for the declared prices; the wholesale prices of drugs and retail prices of drugs shall be publicly and clearly posted up; the State competent authorities shall make public the drug prices which have been reported; regularly disclose the maximum prices of drugs paid by the State budget and health insurance (Article 5). The Law prohibits the establishments (enterprises) from conducting drug trade and pharmaceutical practice without certificate of satisfaction of drug trading conditions or pharmaceutical practice; from trading in drugs of unclear origin, counterfeit drugs, substandard drugs, expired drugs, drugs in the banned list of import, drugs for clinical trials, drugs which are not permitted for marketing, sample drugs used for registration or for promotion to physicians; from Providing wrong information on drugs, falsely advertising drugs, causing confusions to consumers; from abusing the advantages of drug trading monopoly to earn illegitimate profits, dumping drugs, raising drug prices contrary to law provisions; and from Taking advantages of giving drug prescriptions to earn illegitimate profits, etc (Article 9).

The Law on Pharmaceuticals also provides particular conditions relating to trading, manufacturing, importing and exporting drugs in order to supply drugs to consumers; and it ensures requirements of quality, reasonable price and possibility to control drugs that have been supplied. Particularly, the drug trading is a line of business subject to conditions. Organs, organizations, individuals trading in drugs shall have certificates of satisfaction of drug trading conditions (Article 11). The manufacture of drugs must be in full compliance with the registered manufacturing processes and the registered standards of drug quality; and report to the State competent bodies about changes in manufacturing processes. The

establishments must have sufficient technical facilities and professional staffs fully meeting the requirements of the drug quality control and management of drugs manufactured by the establishments; must keep drug samples of each batch at least one year since its expiry date; must keep manufacturing documents and other relevant documents which are needed for the examination and assessment of the whole drug manufacturing process according to law provisions; monitor the quality of their drugs on the market and recall drugs in compliance with provisions of this Law; register drugs; report drug prices prior to marketing the drugs and must compensate for damage of drug users in cases where damage is caused at fault of drug manufacturing establishments (article 16).

For importation and exportation, the enterprises must satisfy the quality standards only, monitor and be responsible for the quality of drugs, exported or imported enterprises which are currently moving on the market; and compensate for any damage drug users caused at fault of drug exporting, importing enterprises (Article 19). Moreover, drugs with registration numbers in Viet Nam are allowed to be imported without any limits in terms of quantity, excluding vaccines, medical bio-products and those belonging to the list of strictly controlled drugs and other drugs without registration numbers in Viet Nam are allowed to be imported with limited quantities in special circumstances. The drug wholesalers oblige to ensure storage of drugs strictly complying with conditions written on drug labels; to keep drug packages intact, make no changes to drug packages and drug labels. No modifications to drug labels or packages which have been registered shall be made unless otherwise authorized to do so by the concerned drug manufacturing establishments and approved by the Ministry of Health; to ensure that delivery, storage of drugs shall be conducted by the pharmaceutical professional persons; to keep relevant documents and receipts of each drug batch for at least one year from the expiry date of drugs; to post up wholesale prices of drugs and comply with other provisions concerning the management of drug prices; to compensate drug users for any damage caused at fault of establishments of drug wholesale; and to comply with provisions of good practices regarding storage, distribution of drugs, drug recall and other relevant law provisions (Article 23). For drug retailers, they have to check prescriptions before selling drugs; to write clearly drug names and contents on drug packages if retailed drugs are not contained in the outer packages of the drugs; to sell exactly the prescribed drugs, in the case of substituting the prescribed drugs, drug retailers have to write clearly the name, content, strength, amount, route of administration on the prescription form and be responsible for such drug substitution. The Law also provides that the owner of the establishments of drug retail have to post up the time of drug sale; to post up a retail price on each product, excluding cases in which retail prices have been printed on products; not to sell drug above the posted retail price; to be responsible to the law for all activities of the establishment, including authorized activities. Drug retailers, owners of establishments of drug retail shall compensate drug users

for any damage caused at fault of the said drug retailers, owners of establishments of drug retail (Article 29).

In addition, the Law provides management mechanisms for drug storage conditions, registration number, number of production batch, date of manufacture, drug shelf-life, supplying drugs in pharmacy and clinics or hospitals (Article 37); drug information shall aim to instruct health professionals and drug users how to use drugs in a rational and safe manner; the establishments are responsible for monitoring adverse drug reactions (Article 51). Regarding drug advertisements, Article 52 and 53 of the Law prohibit to use material interests, to make use of names or reputations of organizations, individuals, or any kinds of correspondence, or results of clinical trials that have not been approved by the Ministry of Health and similar forms to advertise drugs. Prescription-only drugs shall not be advertised to the public in any forms.

From assessment of protecting consumers, the medical and pharmaceutical regulations focus on protecting legitimate interests of consumers by setting out strictly conditions that medical practitioners and establishments must comply when supplying drugs and services to patients and special requirements for providing information to consumers.

4.3. Provisions of Insurances

The Law on Insurance Business dated 9 December 2000 protects interests of individuals or organizations participating in insurance by following regulations: prohibition on providing untruthful information or advertisement on insurance contents, operation scope and terms, which cause harms to the legitimate rights and interests of the insurance buyers (Article 10); The Law reserves 46 Articles (excluding Article from 12 to 57) to regulate specialized kinds of contracts for insurances relating to: forms, contents of contracts and times for arising insurance liability. The Law also provides “the provisions on exclusion of insurance liability. The insurance enterprises shall have to clearly explain them to the insurance buyers when the contracts are made, etc. None-application of provisions on exclusion of insurance liability when the insurance buyers breach laws unintentionally or have plausible reasons for the late notification of the occurrence of the insured events to the insurance enterprises (Article 16); shall explain to the insurance buyer the insurance conditions and provisions; the rights and obligations of the insurance buyers; and shall explain in writing the reasons for declining to pay the insurance money or the indemnity (Article 17). When entering into insurance contracts, the insurance enterprises have the responsibility to fully supply information on the insurance contracts, explain insurance conditions and terms to the insurance buyers, etc. The insurance enterprises shall have to keep confidential the information supplied by the insurance buyers (Article 19). Regarding the explanation of insurance contracts, the Law on Insurance Business provides: “where an insurance contract contains ambiguous clauses, such clauses shall be interpreted in favor of the insurance buyer” (Article 21). In addition, this Part also provides specialized issues of insurance contracts such

as rights and obligations of parties, responsibility to provide information, changes in risk levels of insurance, invalid contracts, termination of insurance contracts and legal consequences of terminating insurance contracts, re-insurance, periods to require insurance payments or indemnity, grounds for requiring to pay insurance or indemnity, limitations of insurance liability, etc. Under Articles 74, 75 and 76, the Law provides the transference of insurance contracts in case of losing possibility to make payment; the insurance enterprise is split up, separated, consolidated, merged or dissolved. Those provisions are meaningful to protect legitimate rights of the insurance buyers in connection to insurance enterprises. In addition, the Law on Insurance Business provides conditions of insurance business, prudential measures for insurance enterprises to control risks at the highest level in order to avoid impacts to customers.

To implement the Law on Insurance Business, the Government has enacted the Decree No 42/2001/ND-CP guiding the implementation of the Law on Insurance Business. The Ministry of Finance enacted the Circular 71/2001/TT-BTC and Circular 98/2004/TT-BTC guiding the implementation of the Decree 42/2001/ND-CP. Those legislations are now repealed and replaced by the Decree No 45/2007/ND-CP guiding the implementation of the Law on Insurance Business and Circular 155/2007/TT-BTC guiding the implementation of the Decree 45/2007/ND-CP. Those legislations provide in detail the implementation of some articles of the Law, in which it stipulates rights of consumers in buying insurance such as principles, regulations, premium, and payment for each kind of insurance issued by the Ministry of Finance. For the services under life, health and accident insurance, the insurance enterprises must comply with regulations, articles and premium approved by the Ministry of Finance; for other insurance products that enterprises themselves develop, the regulations, articles and languages must meet certain requirements in order to express transparency, rights and obligations of each party; the premium must be developed based on the statistics, ensuring possibility of payments of insurance enterprises equal to conditions and responsibilities of insurance, etc (Article 20 of Decree 45/2007/ND-CP).

On assessments of protecting consumers, the provisions of insurance focus on prudential conditions of insurance enterprises, limiting bad impacts on consumers due to bankrupts of insurance enterprises; simultaneously, provide the prevention of unfair trade such as determination of unreasonable price, deceiving advertisement and untrue information. Moreover, it is noticeable that the refusing of responsibilities for insurance must be in writing. This could limit the cases that insurance enterprises refuse without reasons and protect consumers and be necessary to denunciate or complaint for interests.

4.4. Legislations on banking

The provisions on banking services currently are stipulated under the Law on Credit Institutions and the revised Law on Credit Institutions as well as other implementation regulations.

In order to protect interests of consumers when using credit, payment and loan services with banks, Article 17 of the Law on Credit Institution provides: “Credit institutions shall have to join the organizations that preserve or underwrite deposits; the level of preservation or underwriting shall be stipulated by the Government; to reate favorable conditions for customers to deposit and withdraw their money at their request; ensure full repayment of the principal and interest on all deposits as scheduled; to keep secret the customers' deposit balance; refuse the investigation, blocking, seizure, deduction or transfer of deposits without the consent of customers, except otherwise provided for by law; and to publicize the deposit interest rates.

For credit relations, the Law provides that loans shall be made in forms of credit contracts. The Contract must have contents of lending conditions, the loan use purpose, the form of loan, the loan amount, the interest rate, the loan duration, the security form, the value of the property as security, the mode of debt repayment and other commitments agreed upon by the involved parties. Moreover, the Law also has specialized regulations on management, control with banks, and prudential measures for banking and the needs to report and emergency controls. Those regulations all have impacts on protecting safe debits for consumers, reducing risks may happen to customer debits.

On assessments of protecting consumers, similar to insurance, one of the important measures that banking legislations apply to protect consumers is to stipulate prudential conditions of banking, imposing basic interests and ceiling interest. However, this is a measure needs to be discussed because of relating to independent rights in banking business.

4.5. Legislations on Electricity

Electricity is a crucial commodity for consumers and now distributed by the only supplier - Electricity of Viet Nam (EVN). Regarding the rights of consumers in using electricity, the Electricity Law dated 3 December 2004 provides: the seller collecting over payments of electricity must pay back to consumers, including interests. The interests agreed by parties under contract but do not exceed loaning interest of a bank where the seller has account at the time of payment. The buyer has rights to require the seller to consider the amount of payments. When receiving request of the buyer, the seller is responsible to solve it within 15 days. In case of disagreeing with the settlement of the seller, the buyer could propose competent authorities to conciliate. In case of not being successful in conciliation, the buyer could take action to the court under laws of civil procedures. During time of solving dispute, the buyer still have to pay electric amount and seller does not stop supply electricity

(Article 23). The investment and installment of measuring devices and supplemental equipments are fallen within the responsibilities of the generating, transmitting and distributing electricity organizations, unless the parties have another agreement. The measuring electricity devices must be consistent with Vietnamese Standard and examined/approved by the State Agency for Management of Measuring; the electricity meters must be installed within management area of buyers, unless parties have another agreement. The installment areas of electricity meter must be safe, convenient for buyers to check the numbers of meters, etc (Article 24). Regarding quality of electricity, the Law provides: “The companies of generating, transmitting and distributing electricity must ensure voltage and frequency in compliance with Vietnamese Standard. The productivity, quality of powers and times for supplying electricity shall be complied with terms and conditions under contracts. In case of not ensuring voltage standard, frequency, productivity, quality of electricity and supplying time under terms and conditions of the signed contract that cause damages to the buyer, the seller have to compensate to the buyer under laws (Article 26). In case of stop supplying or reducing the level of supplying powers not in emergency case, except under Article 23 (6) of the Law, the seller have inform the buyer the time of stop or reducing at least 5 days through announcement in media for other forms of announcement...In case of electricity agency to stop and reduce supplying inconsistent with regulations, the agency will be punished under laws on handling administrative violations; if cause damages such agency have to compensate to buyer in accordance with the laws (Article 27).

On assessments of protecting consumers, by large, the Law on Electricity has basic provisions to protect the interests of consumers, however, there is no mechanism to allow the consumers for complaining their rights and interests in the context where electricity is essential commodity and monopolized.

4.6. Regulations on post and telecommunication

At present, post and telecommunication services are being regulated by the 2000 Ordinance on Post and Telecommunication, Decree number 157/2004/ND-CP of the Government dated 18 August, 2004, promulgating details implementation of the Ordinance on Post and Telecommunication in the area of post and Decree number 160/2004/ND-CP dated 03 September, 2004 of the Government, promulgating details implementation of the Ordinance on Post and Telecommunication in the area of telecommunication.

Article 8 of the Ordinance on Post and Telecommunication regulates about the rights of service users in post, forwarding and telecommunication services that: "Organization, individuals are entitled to use services in post, forwarding and telecommunication areas and are responsible for the content of their information, mails, parcels, articles, products in accordance with laws and regulations; Post and Telecommunication service providers that provide services in post, forwarding and telecommunication areas are responsible for service

quality and must follow the regulations on service price as per laws and regulations, and are entitled for declination to provide services if organizations and individuals violates the laws while using the service and must be responsible for their declination". Article 26 stipulates that post, parcel and telecommunication service users are entitled for full information about the services that they use; are entitled for compensation as guided in the laws; are entitled for comfortable conditions for delivering letters, mails, parcels from the service providers to their addresses as well as installing mail boxes in convenient places for receiving letters, parcels. Article 42 regulates that post and telecommunication service users are entitled to choose companies or agents of telecommunication services of their needs, except the services that are prohibited or are not allowed to use; users are guaranteed on privacy as per laws, are compensated for damages as per regulations in laws.

Evaluation from the point of view of consumer protection: Recent regulations on post and telecommunication have raised the protection of a very important right of consumers in this area: privacy, however they lack of regulations on related information on cost, clear and transparent calculation of fees for preventing mistakes for consumers, the matter of service cancellation or the change of method of service provision...

4.7. Regulations on securities

Recent legal documents on securities include The Law on Securities 2006, Decree number 14/2007/ND-CP, promulgating details implementation of some articles of the Law on Securities and guidance documents from the Ministry of Finance.

In the area of securities, in order to prevent unfairness between traders in the market, especially in approaching for information and inappropriate usage of capital, the Law on Securities has strict regulations on the responsibility to publicize and update information, requirements on honesty and responsibility in publication to people, regulations on the security exchange between people, who may have internal information and responsibility to secure confidential information of clients. Article 71 of the Law on Securities also regulates that stock companies are obligated to establish internal control system, risk management and control and prevent the conflict of interest within companies and in transactions with related people; to manage separately the securities of each investor and separate money of investor and the stock company; to sign written contracts with client in providing service for customers, provide information fully and honestly to clients; prioritize orders from clients before orders of the company; To collect and study information about finance, investment target and ability to accept risk from clients; to guarantee suitable investment consultation for clients and obligation to purchase professional indemnity insurance or establish fund for protecting investors to compensate for investors for technical incidents or mistakes of employees of the company. Stock companies, fund management companies are restricted, such as: are not allowed to judge or guarantee for clients about the income or profit on

investment or guarantee that the clients will not lose, except when they invest in fixed-income securities; not allowed to disclose clients' information, except when with consent from clients or by order from authorized state bodies; not allowed to make clients and investors misunderstood about the price of securities (Article 73 of Law on Securities). Besides, Stock and Stock Management companies must apply strict control method to secure finance and prevent losses for clients. In the regulations on stock companies, promulgated in Decision 27/2007/QĐ-BTC, it is stated that stock companies are not allowed to transfer their risks to clients. etc... The sample of contract for account opening is a special type contract between stock companies and clients, which was promulgated in accordance with the regulations, in which main articles of the contracts are stated to prevent unfavourable conditions for clients.

Evaluation from point of view of consumer protection:

Among recent regulations on securities there are many regulations that protect consumers. The regulations have taken into consideration the specific disadvantages of consumers in this area, such as disadvantage in information, evaluation of market risks, approaching for capital resources, controlling money and security for themselves and the regulations develop methods for protecting consumers based on this basis, to protect consumers from being abused from the disadvantages. Besides, the regulations also have general characteristics to protect consumers such as confidentiality of information, responsibility of correct and full information to prevent misunderstanding for consumers, application of methods for securing clients' finance. The matter of consumer protection in discussion and signing sample contracts is also regulated, suitable with this specific area.

4.8. Regulations on tourism

In the area of services and tourism, the disadvantages of customers are shown clearly that tourists are always strangers in the tourism destination, with limited knowledge about the place's customs, practices, natural conditions, climate, civil organizations and local authority. They can be easily attacked while the stay time is not long enough for recovery their affected rights. Concerning consumer protection in tourism, the Law on Tourism 2005 stipulates regulations such as prohibition of discrimination against tourists, illegal black earning from tourists, scrambling for tourists, forcing tourists to buy goods or use services" (Article 12, clause 4-5); Tourists are entitled to choose tourism type, program, service, request for tourism itinerary, service and can request tourism companies to implement method for securing life, health and property while using tourism services; can receive relief, rescue in emergency cases, can be compensated for the mistakes of tourism company (Article 35). The Law on Tourism also reserves one article (Article 37) to regulate about the responsibility of providing security for tourists, therefore competent state bodies in their tasks, authority are responsible to apply suitable method for preventing risk and securing life, health and property of tourists and prevent activities for black commission on tourists; In urgent cases, the competent state

bodies can provide necessary rescue for minimizing loss for tourists; Tourism area, destination or city must have risk prevention method and organize security units for life rescue and emergency aid for tourists. Tourism organizations and individuals are responsible to inform in time to tourists about emergency, pandemic diseases and other threat that may affect tourists, apply necessary methods and cooperate with related organizations in relieving, rescuing or giving emergency aid for tourists.

Evaluation from the point of view of consumer protection:

With these rules, regulations on tourism have recorded specific protection for tourists as a special type of consumer, it also define the responsibility of protecting tourists of not only organizations and individuals, who provide tourism service, but also of related state bodies, such as the management of tourism area, tourism destinations, local authorities in tourism cities... However the regulations have just defined the responsibilities only, like many other legal documents, the guarantee of implementing specific sanction is still not yet complete, not only for state bodies but also for business owners.

GENERAL COMMENTS ABOUT SPECIALIST LEGAL DOCUMENTS ON CONSUMER PROTECTION

Through overall evaluation of specialist legal documents on consumer protection, following comments have been generated:

- The specialist legal documents, within their scope of regulations, in general, have stipulations to protect consumer rights through regulations on correlated areas of the documents, define responsibility of management bodies, good and service suppliers and regulate about structure to protect consumers in the area.
- The structures for guaranteeing benefits for consumers in each specific area are mainly stipulated via controlling product or service providers (defining conditions for good and service providing, the inspection, control and prohibition on the violation of consumer rights, specifically in the area) and regulation about responsibility on providing information (overall is adequate, correct and not misleading) to consumers.
- The levels of consumer protection are not equal in different areas, which shows that the protection of consumers depends quite a lot on the awareness of management in each specialist area. For instance, the matter of information for consumers: in some areas it is required honest information without requiring about the content of the information to be provided, especially the matter of security for consumers (such as in the area of electricity), while in the legal documents in other areas (such as

security), the warning about risks for clients is a main requirement of the task of supplying information.

- Consumers are protected as per structures for consumers generally, not discriminating consumers by business or consuming purposes.
- One of the requirement of consumer protection is reestablishment of violated rights of consumers. However, most of the specialist legal documents do not promulgate the method of defining damage by the violation actions in each specific area, therefore the basis for compensation for consumers are not yet complete. This is the main weakness that eliminate the ability to protect consumers of these regulations.

V. REGULATIONS ON REGIME OF CONSUMER PROTECTION

Recent regulations on consumer protection have many rules on responsibility and participation of state bodies, peoples' organizations, associations, press into the consumer protection works.

Recent regimes of law enforcement on consumer protection include regimes from state administration mechanism (specifically organizations from the Ministry of Industry and Trade, Ministry of Health, Ministry of Science and Technology and other related ministries and branches), organs of juridical bodies and associations of consumer protections.

Organs that play important roles in this area in Viet Nam include: Viet Nam Competition Administration Department (Ministry of Industry and Trade), Market Control Department (Ministry of Industry and Trade) and other local departments, Viet Nam Food Administration (Ministry of Health), Directorate for Standards, Metrology and Quality (Ministry of Science and Technologies), Inspector of Ministry of Health, Inspector of Ministry of Industry and Trade, Department of Industry and Trade, Department of Health of cities and municipalities.

- **Viet Nam Competition Administration Department:** According to Decree number 06/2006/ND-CP dated 9/1/2006, Viet Nam Competition Administration Department is “an organ that is directly under the Ministry of Trade (now is Ministry of Industry and Commerce) which helps the Minister of Trade to implement the state management on competition and anti dumping, anti subsidization, applying self-defence methods against importing products to Viet Nam; **protecting consumers' rights;** cooperating with companies and associations of specialist products in coping with international legal proceedings against dumping, subsidization, and application of self-protection methods. Thus, the Viet Nam Competition Administration Department have the roles of not only protecting consumers' rights via the guarantee of implementing regulations on competition, but also is the direct organization to implement the function of protecting consumers. Decree 06/2006/ND-CP also stipulates about Consumer Protection Unit. Consumer Protection Unit has responsibilities and

power of an organ under the management of Viet Nam Competition Administration Department.

Decree number 55/2008/ND-CP dated 24/4/2008 provides details provision about the implementation of Ordinance on Consumer Protection, which defines more clearly about the tasks, power of the Viet Nam Competition Administration Department in protecting consumers. Specifically, according to the regulations in Decree number 55/2008/ND-CP, Viet Nam Competition Administration Department is an organ that helps the Minister of Industry and Trade to implement the state management, including the implementation of following tasks: *To organize the study, planning, programming of project for submitting to competent authority for approval; to build legal documents on consumer protection for submitting to competent authority for promulgation and implementation; to coordinate with related organs to propagandize, popularize and educate about legal regulations on consumer protection; to manage and guide Departments of Industry and Commerce to implement consumer protection in their local area; to chair and cooperate with related organs to inspect, examine the execution of legal regulations on consumer protection; to receive claims from consumers and settle claims as per legal regulations, to receive and settle requests for conciliation between consumers and organizations, businesses; settle violations of consumers' right as per authority; to reinforce international cooperation in consumer protection as per competence; to implement the tasks, authority as stipulated in laws and regulations.*

Market management forces: at central level is called Bureau of market management (of Ministry of Industry and Trade), at local level is Department of Market Control (at provincial level) and Market Control Teams (district level).

According to Decree number 10/CP dated 23/1/2005 of the Government on the organization, tasks and power of market management, Decision number 1211/2000/QD-BTM dated 28/8/2000 of Minister of Trade on the assignment of tasks, duties of inspectors in trade area for market management forces, the Market Control Department is the organ of Ministry of Industry and Trade, which has function of implementation of state management on controlling market, battling against violation of laws and regulations in trade activities in domestic market, implementing the function of inspection in the specific area of commerce as per legal regulations. Market Control Department has following main tasks:

- + To build legal documents on the organization of management of examination, control of market, administrative fines in trade activities, regulations on market control, policies and regime for officers, who work in the area of market management to submit for the Ministry of Industry and Trade for presentation to the Government for promulgation as per its authority.

- + Organize the propaganda, popularities about law and regulations on market management.

+ To control the implementation of laws and policies, regulations, rules in trade activities in the market. To make recommendation for Minister about necessary policies, methods to implement laws, policies in market management area (including: building program, plans, projects for market examination and control, battling against speculation of market, illegal trade, fake and prohibited products trading and manufacturing and other activities that violate laws on trade in the scope of whole country for presenting to Minister as well as implement after being approved; guide and instruct on professional knowledge of market examination and control and deal with violations within the market management forces in provinces, cities, to keep track and control market and deal with violation of local market management forces in compliance and working regulations; request manager of local market management organ to suspend the examination activities, suspend the implementation of changes, revoke administration decisions and illegal administrative methods on examination and administrative fines; to receive and solve as per authority or guide, supervise, examine the settlement of claim letters, denouncements relating to the market examination and control, to handle administrative violation and legal violation of market management officers; guide the market control and examination and administrative fines as per authority on level of each violation case. To directly examine or cooperate with forces at central and local levels to examine and handle administrative violation in accordance with authority on typical commercial law violation cases, relating to different areas as per decisions by the Minister; to help the Minister to chair and organize cooperation in activities between state bodies in branches and local areas in the market management, preventing speculation of market, illegal trade, manufacturing and trading illegal, prohibited goods and other business activities that against legal regulations; to inform about situation, development, rules of speculation and cornering market, the manufacture and trading of fake, prohibited goods and other business activities that are against legal regulations. To synthesize market information, activities on examination, control of market and implement reporting policy as per regulations. To supervise, guide and request Local Departments of Market Control to implement correctly the policy on information and report frequently or suddenly as per regulations);

+ To identify and make recommendation for the Minister on suspension, change, supplementation or revoke legal documents, policies, rules, promulgated by different organs that are against commercial regulations on the examination and handling of legal violations in commercial activities in the market.

+ To stay on duty to help the Ministry to organize the cooperation between state bodies in different levels that have functions of market management, anti speculation, illegal trade and other illegal business activities.

Viet Nam Food Administrator (Ministry of Health) is an organ that plays an important role in activities for protecting consumers, especially in guaranteeing safety for

products that relate to daily vital needs of people (food, drinks...). According to Decision number 2964/2004/QĐ-BYT dated 27/8/2004, the Viet Nam Food Administrator is the specialist management bureau of Ministry of Health, which helps the Minister of Health to implement the state management function, to guide and manage professional activities on food and hygiene and safety in the whole country. The bureau has following main tasks: *To chair the building, participate in the building and organize the implementation of strategy, policy, programming, planning, legal documents, standards, procedures, technical norms on food safety and hygiene (after approval from related authority); to chair the building of: high risk food, functional microelement addition food, food reserved by x-ray with limited x-ray level, foods using gene technology, food with supplements addition, and related matters; to lead or cooperate with related organs in controlling the threat of food pollution; to prevent and overcome food poisonous and related diseases, transmitted through food; manage information, related to food safety, to build the content and direct the implementation of education and propaganda of legal documents and knowledge on food safety, to direct, guide and train professional knowledge on food safety and hygiene in the whole country, to direct, supervise and oversee units, authorized in state examination and recognize on food safety and hygiene; to organize the examination, cooperate with specialist inspector in examination, inspection of legal regulations on food safety and hygiene in organs and private food manufacturers and food traders in the whole country; to manage, direct and organize the implementation of following professional activities: manage the issuance and withdrawal the certificate on qualification of food safety and hygiene, receipt of documents on announcement of food safety and hygiene, receipt of documents on registration of advertisement of food and food supplements; registration of food safety and hygiene, medical certificate on food products...*

Associations of consumer protection in Viet Nam are organized in both central and provincial levels. At central level, the association is called Association of Standards and Consumer Protection of Viet Nam (abbreviated in English as VINATAS). The activities of consumer protection of the association had been implemented since 1990. The association is a non-profit organization, which is not funded by the Government for its operations. At provincial level, there are nearly 30 associations formed. According to the charter of the association of standards and consumer protection of Viet Nam, the association is a volunteer organs of people, who works in the area of standardization, quality and consumer protection.

The association is the member of Viet Nam Union Of Science and Technology Association. The association operates countrywide, has legal status, stamp and bank account of its own. Local associations of consumer protection have legal status too and operate independently. However all associations participates voluntarily in VINASTAS. VINASTAS has claim office of consumers, which was established since 1994 and locates in Ha Noi. VINASTAS owns Consumer Journal, which is the organ of the association.

The journal was formed in 1991 and publishes monthly in 24 pages per issue. From 2005, the journal publishes bimonthly in 48 pages per issue to meet the increasing need for information from consumers. The association also establishes a system of clubs, such as Quality Club, Club of Women Consumers, Anti Fake Goods and Fraudulent Business Club, Club of Journalists of Consumer Protection for increasing the strength of the association.

The Association also has some companies on PR, services, exhibition, which applied to be members of the association voluntarily. The Association has established the Center for Study and Consultation on Consumerism (CESCON) and Center for Consultation and Technology Transfer - CITEC. At present, each year, VINASTAS and local associations receives nearly 1000 claims from consumers. Most of claims are settled by negotiations, mediations with manufacturers or distributors.

In the last few years, VINASTAS and local associations have tried a lot in communication on consumer protection, assisting consumers to claim and protect their rights, participating in building related laws on consumer protection. However, when the requirements for protecting consumer are increasing, operations of VINASTAS and local associations are more challenging, especially when their operations are based on volunteer works of enthusiastic people, who do not receive any financial assistance from the Government as well as companies. Because the scope of operation of the Association is still limited, it concentrates on serving consumers in cities only.

The Court System also plays special role among organs of consumer protection, because while judging of violations of consumers' rights, Courts must follow a very strict procedure and must judge in the name of the government; sanction is applied for all people that violate consumer rights, in many cases it is very strict, for deterrence and education; decisions of courts are highly implemented and can protect consumers' rights strictly. In essential cases and upon request from plaintiff, before handling in court, during the legal procedures, the Courts can apply urgent methods to protect urgent rights of interested party. According to recent laws and regulations, the Courts have rights to apply civil sanction (especially in lawsuits for contract damages or out-of-contract damages) and criminal sanction. The application of criminal sanction is carried out in order and procedures that was stipulated in the Law of civil procedures. Concurrently the Administrative court also plays determined role in consumer protection through the consideration of administrative actions, administrative decisions of people who are authorized to settle the violation of consumer rights, submitted in administrative courts. In our country, there are not specialist courts on consumer protection. The lawsuits for compensation of damages and violation of consumer rights are classified as civil cases and can be settled in accordance with the law on contract or damage out of contract that are stipulated in civil law and related legal documents. The courts will handle the case if only consumer take legal proceedings.

Besides that, other regimes in the government system also play important roles in consumer protection, including organs in the field of science and technology (General Department of standards, measurements and quality), medical organs (Bureau of Medicine Control, Bureau of medical examination and treatment), transportation, police...

VI. THE PROVISIONS ON HANDLING OF VIOLATIONS OF ADMINISTRATIVE MEASURES AND CONSEQUENCE-OVERCOMING THE CONSUMER'S INTEREST

6.1. Provisions on administrative measures

Generally, the primitive measure for handling the mentioned regulations is in the form of administrative sanction. Pursuant to Ordinance on Handling of Violations of Administrative Regulations and other specialized legal documents, most of particular branches have issued or shall issue their specific Decree detailing the implementation of the administrative violations within the ambit of the branches and fields under their management and the above stated violating conducts of regulations on the protection of consumers are the subjects to be administratively sanctioned herunder these Decrees¹¹ and the fine levels and administrative measures must comply with each specific act of violation.

Under Article 12 of the 2002 Ordinance on Handling of Administrative Violations (currently replaced by The Ordinance amending and supplementing a number of articles of the 2007 Ordinance on Handling of Administrative Violations and the Ordinance on Handling of Administrative Violations, 2008), administrative measures include the administrative sanctions with the forms of warning or fines. Other administrative handling measures are of the following additional sanctioning forms: Stripping off the right to use permits, professional practice certificates; confiscating material evidences and/or means used to commit administrative violations (these measures prevent the violating person(s) from continuing the acts of violation). For consequence-overcoming the interest of consumers, Ordinance provides that the administrative violating individual(s) and organization(s) may also be subject to the application of one or many of the consequence-overcoming measures such as forcible restoration of the initial state altered due to the administrative violations; forcible application of measures to overcome the environmental pollution, epidemic spreads, caused by the administrative violations; forcible taking out of the Vietnamese territory or forcible re-exporting goods, articles and means; forcible destruction of articles which cause harms to human health, domestic animals and cultivated plants, and harmful cultural products and other measures regulated by the Government. The stated measures may help to overcome a portion of the infringed interests of consumers, however, compensation for the damages – the most important measure – is executed at the civil procedures.

¹¹ See the Appendix on the Legal Document Review for the list of Decrees on handling of violations of administrative regulations issued in specific area.

Administratively, in order to prevent, to settle or to stop the harmful acts upon the legitimate rights and interests of consumers, consumers are entitled to use the denunciation mechanism upon any illegal acts against the Protection of Consumer's Rights as prescribed in the Law on Complaints and Denunciations issued on December 2nd, 1998¹². Under this Law, citizens have the right to denounce to competent agencies, organizations or individuals illegal acts committed by any agencies, organizations and/or individuals, which cause damage or threaten to cause damage to the interests of the State and/or the legitimate rights and interest of citizens, agencies and/or organizations (Article 1). The Law also provides: agencies, organizations and individuals shall, within their respective functions, duties and powers, have to receive people who make complaints, denunciations, petitions and reports; to file and settle complaints and denunciations in a timely manner and in compliance with laws; to strictly deal with violators; apply necessary measures to prevent damage that may occur; to ensure the strict execution of settlement decisions and take responsibility for their decisions under the law (Article 5). The denunciation settlers shall have to study and make conclusion on the denunciation contents; if any violations are found they must instantaneously assign their tasks or request competent persons to deal with the violators; the victims shall have their legitimate rights and interests, which are infringed upon, restored, be compensated for damage as prescribed by law (Article 8). For denunciation procedures, Articles 66 and 67 of the Law on Complaints and Denunciations promulgates that within 10 days from the date of receiving the written denunciation, the receiving agency, organization or individual shall have to file it for settlement; in cases where a denunciation does not fall under its/his/her jurisdiction, it must be referred to the competent agency or organization for settlement and the denunciator shall be informed thereof, if so requested. In urgent cases, denunciation-receiving agencies, organizations and/or individuals shall have to notify to responsible agencies immediately so that measures shall be taken in time to prevent law-breaking acts; and necessary measures have to be applied to ensure the safety of denunciators upon their requests. The Time-Limits for settlement of a denunciation shall not exceed 60 days from the date of filling it; for a complicated case the Time-Limits may last longer, but shall not exceed 90 days from the date of filling that for settlement.

6.2. Provisions on criminal measures

In cases where violating conducts of regulations on the protection of consumers are at the serious level to become criminal offenses¹³, the wrong doers shall be executed according to the sanctions provided in the Criminal Code.. Settling an illegal act of consumer's right must be conducted in accordance with the strict order and procedure of instituting, investigating, prosecuting and adjudicating criminal cases prescribed in the 2003 Criminal

¹² Amended, supplemented by law amending and supplementing a number of articles of the Law on Complaints and Denunciations dated on 15/6/2004; law amending and supplementing a number of articles of the Law on Complaints and Denunciations issued on 29/11/2005.

¹³ See section 1.3 of the Report.

Procedure Code. If request of restitution and compensation for any damage within the settlement of a criminal case is occurred, which shall be handled parallel with that criminal offense. In the circumstances, the status may not be proven and no effects on handling the criminal offense are found, the restitution and compensation for damages may be adjudicated separately according to the provisions of the civil procedure legislation.

Due to the order and procedure of adjudicating criminal offenses restricts the Personal Rights of the citizens and it is carried out with the strict proceedings and with a number of stages, generally this measure of settlement has a sense of education and sanction, and this is not the best way to help overcome the interests of consumers.

6.3. Provisions on civil measures

Obviously, most of the legal documents regulate the relationship between consumers and producers, distributors, goods and service suppliers and they also prescribe the right to compensate the damages caused by the violation acts upon the consumers. In order to receive the damage compensation, under the the prevailing legal documents the measure commonly preferred to be performed is the civil litigation.

The order and procedures for initiating lawsuits at courts to protect the consumers' interests are undertaken the general order and procedures regulated by the 2004 Civil Procedure Code. Specifically, the consumers, whose legitimate rights and interests are infringed upon, have the right to bring a lawsuit against the people with violation acts to competent courts to request the compensation. The Consumer Protection Division is entitled to initiate lawsuits on behalf of the violated consumers if it is delegated only within their written requests. This regulation is stated at Article 4 and Article 161 of the 2006 Civil Procedure Code. In the course of settling the case the consumer and the accused enterprise are equal before courts (Article 8 of the Civil Procedure Code) and shall have the right to conduct negotiation and/or conciliation to reach agreement with one another on the resolution of their case (Article 5 and Article 10 of the Civil Procedure Code). Before the litigation and in the course of settling the case, both of the involved parties (the harmful consumer and the defendant) shall have the right and obligation to supply evidences in order to prove and to ensure the basis of the involved parties' complaints. The competent courts shall only testify and collect evidences in the circumstances regulated by the Civil Procedure Code (Article 6 and Article 85 of the Civil Procedure Code). *For the jurisdiction*, the litigation over the protection of consumers' interests, or any other civil disputes as stipulated by law over civil contracts or over compensation for non-contractual damage are broadly falling under the jurisdiction of the District- level People's Courts (commonly where the defendants reside or work, if the defendants are individuals, or where the defendants are headquartered, if the defendants are agencies)¹⁴. *For procedures on initiating the case of first- instance*, the

¹⁴ Articles 25, 33, 35 and 36 of the Civil Procedure Code.

consumers longing for initiating lawsuits against the violated people causing their damages must make a lawsuit petition as stipulated by Article 164 of the Civil Procedure Code. Enclosing with their lawsuit petition, the litigators must send the courts documents and/or evidences to prove that their claims are well-grounded and lawful¹⁵. For example, the consumers must hand in evidences to prove that they have brought the products of the defendant agencies, the consumers are harmful, evidences to prove that the defendant agencies has had law-breaking acts over consumer protection. The litigators may send their lawsuit petition enclosed with the documents and evidences to the competent courts through direct submission at courts or by post. The date of initiating a lawsuit shall be the date on which the lawsuit petition is filed at court or the postmarked date of sending the petition¹⁶. The courts must receive lawsuit petitions lodged by litigators directly or via post and must record them in the petition registers. Within five working days from the date of receiving the petitions, the courts must review them and make one of the following decisions: (1) carrying out the proceedings to file the cases if they fall within their jurisdiction; (2) transferring the lawsuit petitions to competent courts and notify the litigators thereof if the cases fall under other courts' jurisdiction; (3) returning the lawsuit petitions to the litigators if such matters do not fall under the court's jurisdiction. If the courts file the case, the procedures subsequently are implemented as stipulated by the Civil Procedure Code. *Court fee advance and other procedural expences*, when the consumers initiate lawsuits they must pay the amount of advance court fees stipulated by the Government (Article 130 of the Civil Procedure Code). when the consumers request the courts to conduct an expertise they must pay a number of money for expertising expense advance (Article 136 of the Civil Procedure Code), etc. *For the application of provisional emergency measures*, the consumers may request the handling courts to apply provisional emergency measures, which deal with the urgent requests of forcing the defendants to retrieve their products if such goods circulation might lead to serious consequences, especially to irrecoverable damage (Clauses 1 and 2 of Article 99, clause 12 of Article 102 and Article 115 of the Civil Procedure Code). However, in order to request the handling courts to apply provisional emergency measures, the consumers have the obligation to hand in a certain number of money for security.

Besides initiating lawsuit measure, the consumers may make direct complaints to individuals, companies or agencies which supply services or goods; the consumers may request for the conciliation at the city-level In-Commerce Department, Competition Administration Department in comply with the regulations of Decree 55/2008/NĐ-CP on guidlining the settlement of Ordinance on consumer protection.¹⁷

¹⁵ Article 165 of the Civil Procedure Code.

¹⁶ Article 166 of the Civil Procedure Code.

¹⁷ See section 2.4

VII. OVERVIEW OF CURRENT CONSUMER PROTECTION LEGISLATION OF VIET NAM

7.1. Advantages

- The current legal documents reserve a certain number of regulations for the matter of consumer protection. The consumer's rights are protected by many general and specific regulations. These regulations meet the requirement of protecting consumer's rights in general and in some specific industries. In these regulations, there is a principle set forth for the protection of consumer's rights or for the requirements of protecting consumer's rights.
- The current legal documents provide a relatively sufficient number of rights for the consumer as well as obligations of the manufacturer and seller. The said obligations of the manufacturer and seller set forth in the regulations of some specific trade practices like manufacturing, processing, supplying goods and services, announcing information, advertising goods and products, v.v..
- To some extent, the said documents set up a certain legal mechanism for protecting consumer's rights by two methods viz regulating necessary conditions for entrepreneurs in producing and supplying goods and services.
- Forming a system of sanctions dealing with violations of consumer's rights including administrative, criminal and civil sanctions and mechanism for consumer to recover his rights and interests.

However, based on the requirement of protecting consumer's rights, this system of legal documents is inadequate. The analysis of this system's drawback is necessary for the requirement of improving Law on consumer protection.

7.2. Weaknesses

7.2.1. Regulations are ambiguous

Regulations in many of legal documents of Viet Nam related to consumer protection are ambiguous. Therefore, it is very difficult to apply them in reality. Ordinance on consumer protection 1999 is a typical document containing this weakness. There are many provisions of this ordinance set forth rights of the consumer and obligations of manufacturer and seller. However, there is no regime for enforcing the said rights and obligations. For instance, according to Ordinance on consumer protection 1999, consumer has right to select goods, right to be informed. Nonetheless, there is no provision regulating subject who ensure this rights or how to enforce them. This legal document lacks a mechanism for a consumer to perform his rights. In other words, consumer can not rely on this ordinance as an effective instrument to protect his legal rights and interests. Different to these regulations of Viet Nam, those of some countries in the world do not contain this feature. For example, law on

consumer protection of some countries (such as France, Canada, UK, etc...) regulates right to select goods of consumer in the direct selling contract. In this kind of contract, consumer has some certain privileges. According to current law of Viet Nam, once consumer decides to buy a product, he has no right to return it back without the seller's acceptance. In this circumstance, pursuant to law on consumer protection of above said countries, such consumer has right to change his initial intention. He has right to return goods and recover his money from the seller within 7 to 10 days without any explanation or acceptance of the seller. Given that the period of 7 to 10 days is a reasonable time for the consumer to seek, collect essential information, he can select an appropriate product without any hasty decision.

7.2.2. Regulations are overlapped

In fact, legal documents from a variety of industries specify a general basis of rights of consumer and obligations of manufacturer and seller corresponding to each industry. Therefore, a certain right of consumer or an obligation of manufacturer or seller can be found in some different documents. This does not affect the enforcement of consumer protection legislations. However, in some circumstances, regulations on trade practice are overlapped. The overlapping of these documents makes the contradiction on sanctions and competent state authority. A violation may be fined by some different authorities with different sanctions.

Both Competition Law 2004 and Ordinance on Price 2002 deal with agreement of price fixing. According to Competition Law 2004, agreements between enterprises on directly or indirectly fixing goods or service prices are prohibited. Besides, the said agreements are considered as violation pursuant to Ordinance on Price 2002. As a result, the legal documents detailing the implementation of Competition Law and Ordinance on Price are contradictory. Complying with Article 15 of Decree 169/2004/ND-CP dated 22/9/2004, a fine of between 10 and 15 million dong will be imposed on the following acts committed within one province or centrally-run city: “a) Reaching agreement among organizations, individuals to set prices, control prices, change sale prices of goods and/or services with a view to restricting competition, infringing upon the legitimate interests of other production and/or business organizations, individuals or consumers b) Reaching agreement among organizations, individuals in order to create goods scarcity by way of restricting production, distribution, transportation and/or sale of goods and/or the provision of services; destroying, damaging goods, infringing upon the legitimate interests of other production and/or business organizations, individuals or consumers. c) Reaching agreement among organizations, individuals to realize conditions on goods sale, purchase, post-sale service provision, thus affecting goods prices, service prices, infringing upon the legitimate interests of other production and/or business organizations, individuals or consumers. d) Reaching agreement among organizations, individuals to change sale and/or purchase prices of goods, services in order to abolish or force other enterprises to align with them or become their branches, infringing upon the legitimate interests of other production and/or business organizations,

individuals or consumers.” A fine of between 15 and 29 million dong will be imposed on acts mentioned at points a, b, c, d above, which are committed in areas larger than a province or a centrally-run city. Meanwhile, according to Competition law 2004 and Decree 120/2005/NĐ-CP dated 30/09/2005 dealing with breaches in the competition sector, sanction for such a violation is up to 10% of the total revenue in the financial year prior to the year in which the breach was committed (this will be far different from the fine of between 10 and 15 million dong). Moreover, the competent authority who has power to deal with violation of Ordinance on price is Ministry of Finance whilst the Competition Authority has the unique power to investigate the breach of Competition Law. Therefore, overlapping on competent authority will occur when these regulations are applied.

- An infringement that violates the regulations of more than one Decree will be fined with different sanctions. For example:

+ According to Decree 56/2006/NĐ-CP dated 06/06/2006 dealing with breaches in culture-information sector, a fine of between 10 and 20 million dong will be imposed on deceitful advertising (Article 51 paragraph 6). Nevertheless, if the regulation of Decree 45/2005/NĐ-CP dated 6/4/2005 dealing with breaches in medical sector is applied for dealing this violation, such a violation will be imposed a fine of between 5 and 10 million dong.

+ A violation of regulations on labeling is fined with different sanctions pursuant to two different decrees. For instance, on the first hand, pursuant to Article 15 of Decree 45/2005/NĐ-CP dated 6/4/2005 dealing with breaches in medical sector, a fine of between 10 and 15 million dong will be imposed on the following violations: Manufacturing and carrying on business foods preserved by irradiation but not on the label content with Vietnamese or sign international food preserved by radiation method of producing and trading food use gene technology or materials to use genetic technology, but not labeled with Vietnamese as "food using gene technology"; Labeling goods or advertising in any form of food effective alternative medicament; change, work or change the label on production, limited use on food labels was available, circulation. On the other hand, according to Article 23 of Decree 06/2008/NĐ-CP dated 16/1/2008 dealing with breaches in trade practice, a violation of labeling (including sub label) that such a label or attached documents do not include required contents will be warned or imposed a fine of between 200,000 dong and 30 million dong. The level of monetary sanction is based on the value of the violated goods. The sanction will be twofold if the violated goods are food.

+ A violation of selling expired goods will be warned or imposed a fine of between 200,000 dong and 30 million dong pursuant to Decree 06/2008/NĐ-CP dated 16/1/2008 dealing with breaches in trade practice. The level of monetary sanction is based on the value of the violated goods. The sanction is twofold if the violated goods is a kind of food. Meanwhile, according to Article 15 of Decree 45/2005/NĐ-CP dated 6/4/2005 dealing with

breaches in medical sector, manufacturing and selling expired food shall be imposed a fine of between 10 and 15 million dong regardless the value of the said violated product.

+ A violation that not announces or announces the false quality of goods and products will be warned or imposed a fine of between 100,000 and 20 million dong according to Article 15 of Decree 126/2005/NĐ-CP dated 10/10/2005 dealing with violation in measuring and quality of goods and product (amended by Decree 95/2007/NĐ-CP dated 4/6/2007). The level of monetary sanction is based on the value of the violated goods. However, pursuant to Article 15 of Decree 45/2005/NĐ-CP dated 6/4/2005 dealing with breaches in medical sector, the following activities will be surcharged a fine of between 2 and 6 million dong: Failure to announce the quality and food sanitary standard or sell foods that do not meet the announced standard; Failure to announce the quality and food sanitary standard of food whose standard must be announced by law or such an announcement is expired.

- Overlapping of competent authority, for instance:

+ The assignment of competent authority in charge of administering product's label is inadequate. According to Article 21 of Decree 89/2006/NĐ-CP, Ministry of Science and Technology is in charge of administering nationwide product's label. General department of standard quality measurement is a body assisting Minister of Science and Technology in administering product's label. However, there are many competent authorities that are in charge of dealing with violation in this sector such as “public securities agency, custom agency, market supervising authority, product quality management agency and other competent authorities have rights to deal with violations in labeling sector pursuant to current law” (Article 24).

+ According to Decree 55/2008/NĐ-CP, Ministry of Culture, Sports and Tourism is in charge of “presiding and cooperating with Ministry of Industry and Trade and other Ministries to administrate, inspect and supervise the activities of propagating, announcing information, advertising products”. Meanwhile, pursuant to the current regulations, the task of administrating media of propaganda and advertising is vested in Ministry of Information and Communications¹⁸. This will cause overlapping on competence and consequently make difficulties for the said two ministries to administrate this sector. In order to overcome this limit, it is necessary to regulate the principle of dealing with a violation in circumstance where the competences of state authorities are overlapped.

7.2.3. Non-synchronous regulations

In light of analyzing the above said specific regulations, it is not obvious that all of the instruments of protecting consumer's rights are regulated in the said system of legal documents. There are different levels of protection between different documents. In order to

¹⁸ Website Ministry of Information and Communication: www.mic.gov.vn.

improve the effectiveness of protecting consumer's rights, the regulations on protecting consumer's rights in specific industries that is based on the framework of principal regulations will overcome this drawback.

7.2.4. Lack of need of special protection to the consumer

The current legislation system of Vietnam does not reserve a proper level of protection to the consumer. According to the analysis mentioned in section of General basis of consumer protection, a consumer who enters into a transaction with entrepreneur often stands on a disadvantage and vulnerable side. Normally, in this kind of relationship, the entrepreneur usually violates the consumer's rights. Therefore, it is necessary to protect the consumer at a level higher than other subjects (like the entrepreneur when they enter in a same relationship). However, given that this kind of relationship is concurrently applied Civil Code 2005 and other related legal documents, the position of the consumer is not special than other kinds of subject who enter the same transaction. In other words, there is no special right for the consumer that this kind of subject can overcome his disadvantage in the transaction with the entrepreneur¹⁹.

7.2.5. Lack of regulations on conditions for the consumer to protect their own rights and interests

According to Ordinance on Consumer Protection 1999, the consumers can not rely their rights and interests on this kind of regulations. The current consumer protection legislation strongly focuses only on the role of administrative authorities (by supervising, detecting and fining), not on encouraging consumers to protect themselves (by specific behaviors in transaction with the manufacturers or sellers²⁰). The punishments to person who violates the consumer's rights are rarely published. Even when they are published, the consumers can not find any benefit in these punishments (given that there is no link between the punishments to the compensations for the consumers).

Neither Ordinance on consumer protection 1999 nor any other legal documents contains regulation on behaviors of the consumer or the manufacturer and the seller in a certain contractual relationship (for instance, the regulations on the specific contract, regulations on circumstances where the consumer can withdraw from the contract without any compensation or any reason.

¹⁹ There are 4 fundamental disadvantage of the consumer mentioned in the section of general basis of consumer protection: unbalanced information, disadvantage of bargaining power, disadvantage of ability to decide the price and transaction terms, disadvantage of ability to bear the risk arising from consuming goods and services.

²⁰ For instance: require the seller to provide information, ensure the quality of products, provide the warranty service, require the seller to receive the product and return money, claim for remedies, etc,...

7.2.6. Lack of effective regulation for recovering consumer's rights

The laws and regulations on consumers protection are strongly relied upon administrative instruments (dependent on state subsidy, state penalties, etc) and penalty mechanism without paying attention to specific legal instruments to recover rights and interests of consumers. Under current laws, the consumers recovering their rights have to complain manufacturers, suppliers of goods or services or to take action before the courts. The performance of courts partly has some limitation on protecting consumers. In practice, in the past, consumers do not actively bring the case to courts without a reason that laws do not permit (this right has been provided under the Ordinance on Consumers Protection in 1999 and Civil Code and Civil Procedures Code) but due to the following reasons:

Firstly, the laws only allow, who has direct damages from violations of laws by others, so that he or she has right to litigate. This means that the litigator has an application and authorization from authorizer on behalf of him or her to participate in proceedings. The litigator will not require compensation, if he or she does not prove effects of products to him or her. Usually, in the case that the damages for collective consumers are large but individuals is not much or in complicated proceedings or compensation may be less than costs of proceedings, the litigators have a little motivation to take action.

Secondly, laws and regulations do not clearly regulate who will be litigated from the stage of distribution to consumer. Therefore, in practice, the consumers also are confused how to process litigation with whom: manufacturer, distributor or retailer?

Thirdly, laws provide litigation must pay court fees as a limitation to consumers for taking action before the courts.

Fourthly, according to hobby of consumers, in practice, when buying a product or commodity, consumers usually do not keep necessary receipt or invoice. Therefore, when the case happening, the consumers may face difficulty to collect evidence for proving that they has bought and consumed such unsafe product which causes damages to them.

Fifthly, in many cases, the conclusion that products having poison or damaging to consumers should be gone though examination; but the mechanism for examination is not so effective and does not become effective mechanism for consumers to suit.

Sixthly, the proving damage and link between cause and damage for consumers is complicated, especially in case of poisoning foods causing no disease at a short time but in future. In this case, the plaintiff finds difficulty in proving and convincing the courts that damage or injury to him or her when consuming poisoned products in the suitcase.

Seventhly, the procedures for taking action in the courts are usually complicated and consumes time, so that by large the consumers will accept their lost.

7.2.7. System of sanctions dealing with the violation of consumers' rights

The system on applying sanctions for violating consumers' rights still has some certain shortcomings.

The litigation of civil liability for violating consumers' interests requires the consumers to prove many contents, including cause or behavior of individuals or organizations in respect to violation. With respect to weakness of consumers on access to information of manufacturing and trading, it requires responsibility of the consumers for proving.

In addition, because of not recognizing responsibility to compensate damages due to defected commodities, even the manufactures and traders have no mistake, it could be difficult for consumers to bring a suitcase for protecting them.

The administrative sanction system is still inflexible and does not allow the protection consumer body to use other measures more flexible (other countries allow) such as warning violation and requiring enterprises to develop and apply a program in compliance with laws voluntarily, etc.

Criminal prosecution for subjects violating rights and interests of consumers only focus on a small number, in which it includes behaviors of wrong advertisement, "cheating customers", "making counterfeit goods". The behaviors of making low quality of goods or dangerous commodities to consumers (at serious level) are not criminalized.

7.2.8. System of sanctions dealing with the violation of consumer's rights

System of financial institutions apply to violations of consumers's rights also has certain unreasonable point.

Prosecution of civil liability for violations of the consumers's rights is required to prove a lot of content by themselves, including prove fault or prove violations of organizations and individuals (traders). With the consumers's disadvantages on the main access to the information of production processes, business, they are required to make the burden of proof above is very difficult. In addition, the regime did not admit liability to pay compensation for damage caused by defects of the goods caused even if the production and business with no errors (product liability) also make them own lawsuit to protect their rights become more difficult.

System of administrative financial institutions are rather rigid, not allowing the consumer protection agency are used measures more flexible (the law of many countries has allowed) the warning about violations, proposed business Industrial signs violate applicable building and program compliance voluntarily, ...

The prosecution of criminal liability for entities with violations of consumer's rights has just focus on a small group of acts including acts of "misleading ads", "deceiving

customers", "counterfeiting". Acts done in bad quality, make the dangerous goods for consumers (in severity) are not criminal in terms of goods for processing criminal cases.

7.2.9 There are loop-holes in the legal system

Consumers entering transactions in the market often met with basic disadvantages with respect to information, the ability to negotiate, exposure to risks etc. while the current legislation still lacks of provisions deal with those matter. To be more precise, those lacks are as follows:

- Lacking of provisions on some unfair trade practices such as aggressing that making the consumer buying goods or services unwillingly;
- Lacking of provisions on consumer contract and on the fairness of terms and conditions of a consumer contract (criteria of the fairness, the competence to hold whether a consumer contract is fair or not).
- Lacking of provisions on the legal consequences of violations of provisions on consumer protection (like false advertisement, abusement of favorable positions etc.) in transaction between traders and consumers (for example: whether such violations affect the validity of the contracts; whether the consumer buying a product under a false advertisement may return the product, ask for refund or compensation etc.);
- Lacking of provisions deal with the relation between consumer protection law and relevant stipulations (such as the consumer protection law and relevant provisions in civil and commercial law ect.).
- Lacking of provisions on consumer credit in the hire purchase;
- Lacking of regulatory terms and conditions in consumer contracts entered into by traders and consumers (especially direct sales contract, distance sales contract, consecutive service supply contract v.v.);
- Lacking of provisions on the linkage between the administrative as well as criminal measures and compensable remedies (decisions on administrative measures are not publicized; those decisions and court judgements have not been considered as evidence of the violations of consumer rights, without any other proof showing its illegality in compensable court case).
- Lacking of provisions on the responsibility of authorities for giving recommendations in terms of recognized goods, services and suppliers as well as violating goods, services and suppliers; on unfair terms and conditions of consumer contract etc. for the purpose of raising consumers' awareness and minimizing the abusability by businesses.

VIII. SEVERAL INITIAL RECOMMENDATIONS CONCERNING WITH LAW ON CONSUMER PROTECTION

Law on Consumer Protection should overcome the obstacles of non-synchronous state among the legal documents over the protection of the consumers, which would be done within the frame regulations, including the following aspects:

- To work out the criteria on providing the truthful, adequate, and misleading information: Besides the requirement to give the information honestly, clearly and precisely, it is essential to determine the type of information must be supplied to the consumers, which enable them to make the right consideration and good choice (to avoid concealing the necessary information, especially the information concerning with the safety, warning the risk, etc. to raise the responsibilities of the organisations and agencies over the consumers as in practice, the suppliers have a deeper knowledge about the thread of risk than the consumers. Warning the risk to the consumers is the necessary action so that the consumers are aware of the thread of the risk occurrence to prevent or to evade)²¹. On the basis of the requirement for providing the information, there might be the provisions on the possible reaction of the consumers in case the companies fail to carry out their responsibilities to disclose relevant information (For example: in case the companies fail to post up the selling price or fail to proclaim the price of the goods in advance to the consumers, the consumers have the right to refuse to purchase the goods – if the goods is not used or if the goods is used, the price shall is determined at the observed price in the market, etc.). On the basis of these provisions, the legal documents for specific field shall regulate more details about the responsible guidelines, the relevant warning to the consumers in comply with the requirements of the protection of the consumers in that field.
- To clarify unequally commerce acts, to make contracts with the consumers and to take responsibilities for the products are the basis for restrained regulation in particular area.

²¹ On September 13, Doan Thi Diem Junior High school, My Dinh, Tu Liem (Hanoi) organized a picnic for their school children at Thiên Sơn - Ngà Stream (Tân Lĩnh, Ba Vì, Hanoi). At Tam Cáp Falls, the tourist area had a path for the tourists going to the stream to take photographs. The stream was hand-made, the stream bed was made of cement, and the stream was about 50- 60m deep, the water depth was about lower legs, there was no notice of the danger and only one guard of the tourist area stood to take care of the pupils so no body beware. However, in that area, after the flagstone that used for photographer to stand taking photographs there was a deep water hole. Three pupils, Vũ Anh Tú (born in 1997, pupil of Class 6A7, lived at 708, Mỹ Đình 2); Dương Hương Ly (born in 1997, Class 6A2, lived at C1, the Living Quarter No 8, Lý Nam Đế Street, Hà Nội) and Đỗ Thanh Long (born in 1997, Class 6A2, lived at No 3, Lane 38/29-158 Nguyễn Sơn, Bồ Đề, Gia Lâm) were standing to take photographs there and were taking foot slips, pulling down one another, then falling down the hole and they died of drowning. (See Vietnamnet on 17 September, 2008: Three pupils of Đoàn Thị Diễm Junior High school died of one "trap"?).

To overwhelm the contradictions and the overlap in handling the violations is done, one measure is to set up the principles of the settlement (for instance, where exists many different ranks for handling the violation acts of the consumers' rights, the highest sanction shall be applied) and the other measure is to clarify the principle for classifying the authorities among the various organs in case their authorities are overlaped.

To overcome the backwards in reviving the interests of the consumers is made as like determining the methods for assessing the damages is the basis for specifying the exact responsibility of the compensation as well as for helping revive the greatest interests of the consumers. The damage may be defined as a certain damage of the property (or material damage), which is completely countable loss for an individual, a group of individuals and an organization or estimated damage, if the damage is not specified or if whose damage is not determined concretely, or the damage consequence occurs in a large area, the damage consequence is not obviously been seen immediately but accumulately found etc.; then to work out the mechanism for requesting the compensation in abridged procedures, in simple conditions and the easily-proved damage or requested urgent states.

To define the connection between Law on Consumer Protection and the other concerned legal documents: If the divisional regulated documents have no provisions upon the consumer protection, the regulations of Law on Consumer Protection is applicable. If the other legal documents have those provisions, the regulations of the specialized legal documents are priorly applied, except the case Law on Consumer Protection promulgates the consumer protection at the higher level or has more rapid mechanism in recovering the consumers' interests, regulations of Law on Consumer Protection are preferably in use.

Additional regulations on functions, duties and powers of the governmental organs in assisting the consumers to comprehend their legitimate rights shall be supplemented: for instance, the responsibilities to recommend the violating agencies of the consumers' interests; to inform unjust clauses in the contract forms that the agencies take advantage: if so the adjudication on these unjust clauses in the contract forms would be considered to transfer to the protecting consumer administrative government organs or permit these agencies to be entitled to request the courts to make resolution (in cases the consumers or Consumer Protection Division have no requiremets)./.