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Thailand

Enhancing Consumer Protection in Thailand: An Overview of The Proposed Lemon Law Bill

欠陥製品に関する売主等の責任を規定する法案（通称レモン法）の制定に向けた動きが進められている。欠陥製品に関しては、製造者、販売者等が民商法や PL 法に基づき一定の責任を負っているが、これに加えて、本法案においては、交換、修理又は代金減額に応じる義務等が売主に課され、買主保護の強化が図られている。本稿では、6 月のパブリックヒアリングで公表された、最新の法案の概要を紹介する。

I. Background

The enactment of the draft Liability for Defective Goods Act or so-called “Lemon Law” (the “**Lemon Law Bill**” or “**Bill**”) in Thailand has been a long discussion since its initial approval in principle by the Cabinet on 22 November 2022. Despite several rounds of public hearings and consideration by relevant authorities, the Lemon Law Bill has not yet been enacted. In 2023, the Lemon Law Bill was again proposed by the Office of Consumer Protection Board under the Office of the Prime Minister of Thailand for public hearing. As of June 2024, an updated version of the Bill, which has been examined by the Council of State, was undergoing the public hearing from 24 May 2024 until 26 June 2024.

II. Existing Regulations on Product Safety

The requirement of a legal infrastructure to ensure products’ safety and quality is not a new concept under Thailand’s legal system. The Consumer Protection Act of 1979, for instance, recognizes the consumers’ right to enjoy safe products or services and imposes a general duty on all business entrepreneurs to provide only safe products or services to consumers. Additionally, the Industrial Product Standards Act of 1968 also designates quality standards which specific industrial products must comply with before being manufactured or imported into Thailand.

In terms of compensation for injury caused by defective products, sellers of products are liable for any defect which impairs the value, fitness for ordinary purposes or for the purposes of the sales contract under the principle of defect liability under Section 472 of the Civil and Commercial Code of Thailand. Furthermore, consumers who suffered damage to body, health, mind or property may seek compensation from “business entrepreneurs”¹ under the Liability for Damages Arising from Unsafe Product Act of 2008 or commonly known as the Product Liability Act. Under the said Act, the principle of strict liability applies to business entrepreneurs who are liable

¹ A “business entrepreneur” shall include, (i) manufacture or hirer of manufacturing, (ii) importer, (iii) seller of goods whose manufacturer, hirer or importer cannot be identified, or (iv) The person who uses the name, trade name, trademark, mark, statement or the person who demonstrates in any manner which can be seen as the manufacturer, hirer or importer. (Section 4 of the Product Liability Act of 2008)

for any damage caused by unsafe products, regardless of their intention or negligence.

Although the above legal regimes recognize the importance of product safety and provide remedies for consumers who suffered injury from unsafe products, there is still no specific law which recognizes the right of the consumers to demand exchanges, repairs or discount price for defective products or imposes a legal duty on product sellers to provide quality assurance for a specific length of time. Given this, the Lemon Law Bill is important to further enhance the protections offered to consumers.

III. Key Takeaway of the Lemon Law Bill

The followings are the key takeaways from the most recent Lemon Law Bill which are disclosed for the public hearing until 26 June 2024:

A *Definition of “Seller” and “Buyer”*

The current Lemon Law Bill broadens the scope of parties subjected to the Bill from “business entrepreneurs and consumers” in the previous draft to “sellers and buyers”, hence the scope of application of the Lemon Law extends more broadly to any seller and buyer who sells and purchases products. In this regard, under the current Bill, a “Seller” is defined as “a seller of products in an ordinary cause of business”, and a “Buyer” shall include “any person who receives a transfer of or assumes a right in products from an original buyer”.

B *Liability for Defect in General Product*

In case of general products, the Seller shall be liable for any defect in the product which exists at the time of the delivery (“**Defect**”) if such Defect impairs the value or fitness of the product to its objective under the contract, or its ordinary usage, or any other objectives in accordance with the information disclosed to the public by the Seller.

If any Defect is discovered within six months from delivery, it shall be presumed that such Defect has existed since the time of the delivery. In this regard, any contract made in advance between the Seller and the Buyer imposing liability different than the liability under the Lemon Law Bill and which deems disadvantageous or imposes burden on the Buyer shall become void.

C *Rights of the Buyer*

If the Seller is found to be liable for Defect, the Buyer shall have the right to demand repair, exchange, discount price or to terminate the sales contract with the Seller. In case of a non-material Defect, the Buyer must invoke the right to demand for repair first, followed by exchange, discount price or termination of the sales contract in order.

In response to the demand for repair, exchange or discount price by the Buyer, the Seller has the option to repair or exchange the products (as the case may be) by considering the reasonableness or cost to meet such demand. In case the Seller fails to fulfill the demand for repair and exchange, the Buyer shall have the option to demand for the discount of price and demand for the termination of the sales contract as the last resort.

Regardless of the order of demands stated above, in case that a material Defect is discovered within seven days from delivery, the Buyer shall be able to directly demand the exchange of products. If the Seller fails to comply all of the preceding demands, the Buyer may also terminate the sales contract with the Seller.

D *Liability For Providers of Financial Loans*

Persons who provide financial loans to a Buyer to purchase products, whether through (i) executing a hire-purchase agreement or (ii) providing loan where the price of the products is paid, allowing the Buyer to possess the products and use them as debt collateral, shall also be liable for the Defect in the same manner as a general Seller of the products.

E *Liability for Defect in Specific Products*

In addition to the liability for defect in general products, the Lemon Law Bill stipulates specific liability for specific types of products, namely, (i) cars and motorcycle, (ii) electronic appliances, electronic devices and devices used as engine (collectively, “**Electronic Devices**”) and (iii) other similar products which will be designated later under

the Royal Decree. The rationale for including these products is that they possess complex qualifications, and their Defects are not easily detectable by the Buyer at the time of delivery.² The key points of liability for Defect in specific products are as follows:

1. Cars and Motorcycles

The Seller shall be strictly responsible for Defect which appears within the period or mileage of usage (whichever comes first): (i) within one year or 10,000 kilometers of distance from the delivery date, in case of cars or (ii) within six months or within 5,000 kilometers of distance from the delivery date, in case of motorcycles.

In case of a non-material Defect, the Buyer shall have the right to demand for repairing of cars or motorcycles from the Seller, in which the Seller may choose to exchange instead. In case of a material Defect which is not repairable, the Seller may demand for the exchange or the termination of sales contract if the Buyer fails to meet the demand.

2. Electronic Devices

Regardless of the rights of the Buyer under item C above, if a material Defect is discovered in Electronic Devices within 14 days from the date of delivery, the Buyer shall be entitled to demand an exchange from the Seller. If the Seller rejects or is unable to exchange the products, the Buyer is entitled to terminate the agreement.

F Prescription Period

In case of general products, the prescription period for the Buyer to invoke the rights under the Lemon Law Bill shall be one year from the time that the Defect is discovered by the Buyer or from when the Seller accepts the demand from the Buyer to repair, exchange or discount the price of the products. In case of cars and motorcycles or Electronic Devices the prescription period shall be two years from the said date.

IV. Conclusion

In conclusion, the Bill will enhance protection to Buyers in Thailand by establishing additional liability for defective products on the Sellers and granting the Buyers the rights to demand repairs, exchanges, discounts or termination of contract, while imposing corresponding duties on the Seller. Additionally, it will drive improvements in quality control processes for products from the relevant industries to mitigate risks associated with Defects. However, certain issues need to be further addressed in sub-regulations or guidelines, for example, the list of products exempted from the Bill, or the enforcement of the Bill with respect to business-to-business (B2B) transactions.

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² See Memorandum of the Office of the Council of State for the Lemon Law Bill No. 615/2567 in May 2024.

Vietnam

New Regulations on E-Signatures

ベトナムでは、本年 6 月 22 日に電子取引に関する法律第 20/2023/QH15 号が成立し、同法は同年 7 月 1 日に施行されている。同法では、電子取引に関する様々なルールが定められているが、本稿では、そうしたルールのうち実務的にお問い合わせを頂くことが多い電子署名に関する規定を中心に、旧法（法律第 51/2005/QH11 号）における規定内容とも比較しつつ、その概要をご紹介します。

On 22 June 2023, the National Assembly of Vietnam promulgated law No. 20/2023/QH15 dated 22 June 2023 (“**LOET 2023**”) on e-transactions, which replaced the law No. 51/2005/QH11 dated 29 November 2005 (“**LOET 2005**”) and came into effect from 1 July 2024. LOET 2023 governs a number of issues regarding e-transactions, but in this article, we only discuss certain key regulations of LOT 2023 on e-signatures.

E-signatures and Digital Signatures

While the terms “e-signatures” and “digital signatures” are normally used interchangeably, in practice, they are two different terms under LOET 2023. In particular, “e-signature” is defined under Article 3.11 of LOET 2023 to mean “a signature in the form of electronic data that is attached to or logically associated with a data message to identify the signatory and authenticate his/her approval for the data message”. Meanwhile, Article 3.12 of LOET 2023 defines “digital signature” as “an e-signature using asymmetric algorithm, consisting of a private key and a public key. The private key is used to insert the digital signature, and the public key is used to verify the digital signature. A digital signature ensures the authenticity, integrity and undeniability but does not ensure the secrecy of the data message.”³ Accordingly, digital signatures are a type of e-signatures which additionally satisfy certain technical requirements.

Three types of e-signatures

LOET 2005 did not provide any classification of e-signatures, while LOET 2023 classifies e-signatures into three types according to their use purposes as follows⁴:

- (1) “Specialized e-signatures” (in Vietnamese: “chữ ký điện tử chuyên dùng”), which are e-signatures created and used by agencies and organizations especially for their operations, which are suitable to their functions and tasks;
- (2) “Public digital signatures” (in Vietnamese: “chữ ký số công cộng”), which are digital signatures used in public activities and secured by public digital signature certificates; and
- (3) “Public service digital signatures” (in Vietnamese: “chữ ký số chuyên dùng công vụ”), which are digital signatures used in public services and secured by public service digital signature certificates.⁵

Legal validity of e-signatures

LOET 2023 explicitly stipulates that “Legal validity of e-signatures shall not be denied only because they are shown in the form of e-signatures”.⁶ However, under LOET 2023, only (1) secured specialized e-signatures (in Vietnamese: “Chữ ký điện tử chuyên dùng bảo đảm an toàn”) and (2) digital signatures are stated to have legal

³ The definitions of “e-signature” and “digital signature” are basically unchanged compared with those stipulated under LOET 2005 and its implementing legislation. However, LOET 2005 did not set forth any regulations (including definition) regarding “digital signatures” but those regarding “e-signatures” only. Regulations regarding “digital signatures” were provided under legislation detailing LOET 2005 (i.e., Decree 130/2018/ND-CP dated 27 September 2018 of the Government).

⁴ Article 22.1 of LOET 2023

⁵ LOET 2023 does not provide a clear distinction between “public activities” (for which “public digital signatures” are used) and “public services” (for which “public service digital signatures” are used), so the differences between “public digital signatures” and “public service digital signatures” are unclear. However, from the applicable entities stipulated under Article 2 of Decree 68/2024/ND-CP dated 25 June 2024 of the Government detailing LOET 2023 on public service digital signatures, it seems that public service digital signatures shall be used only by governmental authorities, political organizations, officials, etc. to perform their tasks.

⁶ Article 23.1 of LOET 2023

validity equal to “wet-ink” signatures on paper.⁷

Qualifications of a secured specialized e-signatures

Specialized e-signatures

An e-signature is considered a specialized e-signature if it satisfies the following conditions⁸:

- (i) Being capable of authenticating the signatory and his/her approval of the data message;
- (ii) E-signature creation data is only associated with contents of approved data message;
- (iii) E-signature creation data is only subject to the control of the signatory at the time of signing; and
- (iv) The validity of specialized e-signature may be verified according to conditions agreed by the parties.

Secured specialized e-signatures

A secured specialized e-signature is a specialized e-signature certified by Ministry of Information and Communications (“MIC”) as a secured specialized e-signature⁹. The specific procedures to obtain this certification are subject to detailed guidelines to be promulgated by the Government.

Qualifications of a digital signature

An e-signature is considered as a digital signature if it satisfies the following conditions¹⁰:

- (i) Being capable of authenticating the signatory and his/her approval of the data message;
- (ii) Digital signature creation data is only associated with contents of approved data message;
- (iii) Digital signature creation data is only subject to the control of the signatory at the time of signing;
- (iv) All changes to the data message after the time of signing are detectable;
- (v) The signature must be secured by a digital signature certificate, which is issued by a qualified service provider;
and
- (vi) Signature creation device can ensure that (a) digital signature generation data must remain confidential and cannot be collected and used for the purposes of forging the signatures; and (b) digital signature generation data is designed to be used only once and does not affect the data to be signed.

Foreign E-Signature

According to LOET 2023, entities which are entitled to use a foreign e-signature (“**Entitled Persons**”) consist of¹¹:

- (i) Foreign organizations and individuals; and
- (ii) Vietnamese organizations and individuals who have the demands to be involved in e-transactions with foreign organizations and individuals, but e-signatures and e-certificates provided by Vietnamese provider have not been recognized in such a foreign jurisdiction.

LOET 2023 also provides conditions for recognition of a foreign e-signature and a foreign e-certificate to be

⁷ Article 23.2 of LOET 2023

⁸ Article 22.2 of LOET 2023

⁹ Article 25.2 of LOET 2023

¹⁰ Article 22.3 of LOET 2023

¹¹ Article 26.3 of LOET 2023

recognized in Vietnam as follows¹²:

- (i) The foreign e-signature and foreign e-certificate shall comply with technical regulations and standards on e-signature and e-certificate under Vietnamese law, recognized international standards and international treaties to which Vietnam is a party; and
- (ii) Foreign e-certificate is created based on adequate and verified identity information of foreign entities and individuals.

In addition, to use a foreign signature and foreign certificate, an Entitled Person shall carry out procedures for recognizing the foreign e-signature and foreign e-certificate at MIC¹³.

However, LOET 2023 does not provide any definition of “foreign e-signatures”, so at this stage, it is unclear as to what may be regarded as “foreign e-signatures”. From the regulations of LOET 2023 on “Entitled Persons” (as discussed above), a reasonable interpretation could be that e-signatures authenticated by a foreign service provider, such as DocuSign, are regarded as foreign e-signatures. If this is the case, e-signatures created by using DocuSign and other e-signatures authenticated by a foreign service provider would only be recognized under LOET 2023 if the relevant procedures for recognition of these e-signatures are carried out with MIC.

Transitional provisions

E-transactions which have been initiated but not have been completely performed by the effective date of LOET 2023 (i.e., 1 July 2024) shall continue complying the provisions of LOET 2005 and its implementing legislation, unless the parties agree to apply regulations of LOET 2023.

Conclusion

To conclude, LOET 2023 introduces certain new concepts and stringent regulations on e-signatures. Accordingly, it is notable that entities who wish to use e-signatures in transactions in Vietnam should carefully observe the provisions of LOET 2023 to ensure the legal validity of these transactions.

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¹² Article 26.2 of LOET 2023

¹³ Detailed application documents and sequence for this procedure are set forth under Circular 06/2024/TT-BTTTT dated 1 July 2024 of the MIC, which is to come into effect on 15 August 2024.

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