

Product Liability Act changes consumer-protection focus

A new Thai product-liability law will soon come into force, and when it does, it will likely create significant change in the business and legal landscape. In this, the first of a two-part series, we look at the legal framework of the draft law, with particular emphasis on its key provisions and how they differ from currently available legal remedies.

Currently, people who are injured by defective products in Thailand have recourse primarily through tort or breach of contract provisions of the Thai Commercial and Civil Code. Take the case of a person injured as a result of a defective automobile. In order for the injured party to recover from the car manufacturer, he must prove that the manufacturer either intentionally or negligently designed or manufactured the car and/or components responsible for the injury, or that the manufacturer breached a contract with him. However,

proving an intentional tort is nearly impossible and proving negligence is very difficult. In addition, it is possible that there would be no recourse in breach of contract, particularly where the injured person was not a party to a contract with the manufacturer. In short, there is simply no guarantee that the injured party would recover under current law, even when there is a certain defective product. The Product Liability Act changes all that.

Products: According to the Act, products subject to protection include any property manufactured or imported for sale. Importantly, the Act defines a broad scope of products under the Act, which include not only conventional products for sale, but buildings, agricultural products and services, to name a few.

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Authorised Plaintiffs: With the implementation of the Act, any injured person can sue, even if they are not the buyer or user of the product. Additionally, the Consumer Protection Committee, set up under the Act, as well as any consumer advocacy group recognised under consumer protection laws, can sue on behalf of injured parties.

Strict Liability: The Act adopts the concept of "strict liability", which means that the burden of proof shifts from the plaintiff to the defendant. Under such a concept, the plaintiff must merely prove that he or she was injured by the product, and it is the defendant that must prove that they are without fault. This creates a presumption that the defendant was at fault and the defendant must prove either that the product was safe, that the

plaintiff knew the product was dangerous, that the injury was caused by improper use despite clear warnings and instructions, or, for component part manufacturers, that the lack of safety was due to the conduct of the finished product manufacturer.

Operators Jointly Liable: Not only will the injured party be able to sue the manufacturer, he will be able to sue any "operator". The Act defines an "operator" as the manufacturer or hirer, importer, or seller who cannot identify the manufacturer, hirer or importer. In addition, any person who uses a name, trade name, trade mark, service mark, mark, statement or acts in any manner to cause an understanding that it is the manufacturer, hirer, importer or seller is also considered an "operator."

Moreover, each "operator" is held jointly liable to the injured person for the damages caused by the unsafe products, regardless of whether the

damages were intentionally or negligently caused. Further, "operators" won't be able to contract their way out of liability.

Class Action Provision: A significant change in the legal landscape is presented by the Act's acceptance of a class action amendment to the Civil Procedure Code, which will be concurrently implemented with the Act. Specifically, the Act recognises that where a group of people have received injury from an unsafe product according to the same facts and principles of law, the injured person or his or her representative, is authorised to file a class action on behalf of other injured persons. As is common in many Western jurisdictions, injured parties may choose to opt out of such class actions, if they prefer to file suit independently.

Damage Awards: Another change from present civil court practice is that the Act allows for mental anguish and punitive damage awards in addition to actual damages normally available in civil

litigation. In awarding punitive damages, the court, at its discretion, may instruct defendants to pay up to four times actual damages depending on extenuating circumstances.

Contingency Fees: The class action law will also allow Thai attorneys to work for contingency fees, i.e. for a percentage of the potential award. This is a major change from current Thai practice, as contingency fees have been largely discouraged on ethical grounds.

The Act is significant and will have enduring impact on Thai business. In part two, we will analyse the anticipated effects of the law on consumers and business alike.

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