

Class actions could spur change

LAW: Consumers could benefit but product liability law is also needed

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Providers of goods and services in Thailand are expected to be on their best behaviour as the country prepares to adopt a class action law.

Greater consumer and environmental protection is expected to result from the application of the law, which will make it easier, less time-consuming and more cost-effective for groups of people to challenge wrongdoing.

Government officials and legal professionals have spent the past two years drafting the law, which is now being reviewed by the Council of State, the government's legal advisory body.

Class action law, or group litigation, allows a person, organisation, official authority or any damaged parties to bring a legal action against a defendant for damages caused to an entire group. The approach is very common and effective in developed countries, notably in the United States, as anyone who saw the movie *Erin Brockovich* knows.

Even when one person brings an action on behalf of a group, all members are covered by the court's judgment even if they are not direct parties to the litigation themselves.

Claims can arise, for example, from defective products or services, questionable business practices, wrongful acts or breaches of contract harmful to public or individual interest, or environmental deterioration.

This new trial method can be based on many existing laws such as those



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involving intellectual property, consumer and environmental protection, labour, trade competition or securities.

"It's very likely that the law will be passed by Parliament as it is really for the public's best benefit and interests," said Thawat Damsa-Ard, a legal partner at Tilleke & Gibbins International Ltd.

Once implemented, the law will signal a major change in social responsibility and the public's standard of living — something should have been done much earlier, added Mr Thawat.

The need for the law stems from the nature of modern living, with so much

tied to mass production, distribution and consumption of products and services. Consequently, chances are higher that large numbers of people can be injured, harmed, cheated or just dissatisfied with defective products, malpractice, unfair or irresponsible treatment.

Of course, there is nothing to stop an individual from seeking legal redress, even if that person is just one of hundreds affected. But the trial process usually takes too much time, effort and, of course, money that the individual plaintiff has to shoulder. Consequently, small or individual claims are infrequently litigated.

"So, consequently, the obvious benefits of the class action law are that the individual's rights will no longer be ignored but better taken care of," said Mr Thawat. "Small claims can be pursued with damaged members joining the cases. The trials will be executed in a group format with the group's representatives which, in this case, makes the entire process much easier, less time-consuming and requires less money."

For instance, if a thousand people suffer health damage from excessive toxic emissions by vehicles, under current laws it would be very difficult to make a case. For a start, which party would one pursue: a car manufacturer, a dealer, or government officials responsible for health or the environment? Since car-makers know it is too burdensome for each damaged party to file a suit, there is no incentive to provide cleaner cars.

To take another example, if a stock investor is harmed by a share price manipulator or incorrect information provided by a listed company, he or she could use the new law to join with other affected investors and litigate as a group.

"But they also have to make sure that the representatives are qualified and good enough to represent them in the court," Mr Thawat said.

But for consumers who see class actions as a way of holding businesses more accountable, a note of caution: Thailand still lacks a product liability law, which would likely form the basis of many class-action suits. A draft is now being reviewed in Parliament.

Under product liability law, manufacturers or service providers will be fully, and directly, liable for damages caused by defective or improper products or services. Without it, plaintiffs cannot directly take legal steps against manufacturers themselves but only against contractual parties who are normally wholesalers, retailers or distributors.

While the eventual application of the two new laws will make manufacturers and service providers more careful about quality control, consumers might find the change a double-edged sword.

One concern is that if the law is enforced — and courts approve major damage awards — manufacturers will face higher costs, notably for legal liability insurance, which ultimately would be passed on to consumers.