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**Voluntary peer review of consumer protection law and policy
of Thailand**
Overview*

* The findings, interpretations and conclusions expressed herein are those of the authors and do not necessarily reflect the views of the United Nations or its officials or Member States. The present document is an overview of a full report on the voluntary peer review of consumer protection law and policy of Thailand.



I. Introduction

1. The United Nations General Assembly, in its resolution on consumer protection of 22 December 2015, reaffirmed that the United Nations guidelines for consumer protection are a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems, among other aspects.¹ The Intergovernmental Group of Experts on Consumer Protection Law and Policy is mandated, inter alia, to conduct voluntary peer reviews of national consumer protection policies, as implemented by national consumer protection authorities.² Thailand is the fifth member State of UNCTAD to undergo a voluntary peer review, following those for Chile, Indonesia, Morocco and Peru.

2. The purposes of a peer review are to provide an external and independent assessment of the effectiveness of consumer protection law and policy in a given country, with the following three objectives: analysing the legislative, institutional and public policy frameworks and the enforcement of legislation in order to identify the challenges to be addressed and the areas to be improved in the legislative and institutional frameworks; assessing the consumer protection awareness of relevant stakeholders and their contributions in this area; and formulating and recommending appropriate measures and assisting countries in implementing the recommended measures by developing a capacity-building project.³ Thailand decided that the focus of the present review should be on consumer protection law and dispute resolution. This note serves as an overview of the full report on the voluntary peer review of consumer protection law and policy of Thailand, to provide a point of departure for discussion.⁴

II. Political, economic and social context

3. Thailand is located in South-East Asia, with an area of approximately 513,000 km. Thailand is a constitutional monarchy, and the Head of State is the King of Thailand; the current monarch was proclaimed in December 2016.⁵ The National Council for Peace and Order drafted a new constitution that was promulgated in 2017.⁶ The constitution provides for the National Assembly, comprising the House of Representatives and the Senate. Members of these two entities are voted in by citizens in a general election.⁷

III. Legislative framework

4. Thailand has been an early leader in Asia in the legal protection of consumers. The Consumer Protection Act was adopted in 1979, prior to the adoption of the United Nations guidelines for consumer protection in 1985. The current framework of consumer protection law consists of constitutional provisions, Consumer Protection Act BE[Buddhist Era] 2522 (1979), which is the primary law, and several other complementary laws. Consumer redress is addressed in the Consumer Protection Act and amplified in several other laws and initiatives by the Government, the courts and consumer organizations.

¹ A/RES/70/186.

² Ibid, para. 97 (c); TD/541/Add.2, para. 127 (z).

³ TD/B/C.I/CPLP/6.

⁴ UNCTAD, 2022, *Voluntary Peer Review of Consumer Protection Law and Policy: Thailand* (United Nations publication, Geneva).

⁵ <https://www.bbc.com/news/world-asia-15581957>.

Note: All websites referred to in footnotes were accessed in April 2022.

⁶ <https://www.loc.gov/item/global-legal-monitor/2016-08-10/thailand-new-constitution-approved-in-referendum/>.

⁷ https://www.constituteproject.org/constitution/Thailand_2017?lang=en.

A. Constitutional provisions on consumer protection

5. In 2007, Thailand adopted constitutional provisions on the rights of consumers and the duties of the State in consumer protection. The current constitution has three such provisions, as follows:⁸

(a) Section 46, on the right of consumers to unite and form consumer organizations and a council of consumer organizations with the support of the State provided by law;

(b) Section 60, on the requirement for the State commission responsible for the media to prevent unfair exploitation or the imposition of unnecessary burdens on consumers, to prevent acts obstructing access to accurate data and information and to prescribe a minimum proportion of the media to be undertaken for public interest;

(c) Section 61, on the imposition of a duty on the State to provide efficient measures or mechanisms to protect and safeguard consumer rights, including with regard to true information, safety and fair contracts.

B. Laws on protecting consumer interests

1. Consumer Protection Act BE 2522 (1979)

6. This Act was the first consumer protection law enacted in Thailand. It has been amended three times, in 1998, in 2013 and in 2019.

7. The Act declares the right of consumers to information, choice, safety, fair contracts, redress and compensation, with the proviso that this shall be as provided by the law with regard to particular matters or by the Act. It regulates four areas, namely, advertisements, labels, contracts and product safety, when its provisions do not repeat or are not contrary to those of other laws. Food and drugs, for instance, are not covered by the Act.

8. The Act establishes the Consumer Protection Board and the following four committees under its purview to enforce the Act: Committee on Advertisements; Committee on Labels; Committee on Contracts; and Committee on Safety.

9. The Prime Minister is the chair of the Consumer Protection Board. As provided by the Act, the members elect a member from among themselves to preside over meetings. The Board comprises senior civil servants of related ministries and not more than eight consumer protection experts, with two each from academia, civil society and business. The Secretary-General of the Consumer Protection Board is both a member and the secretary of the Board.

10. The Board has a wide range of powers and duties to promote the interests of consumers, including the following: assisting in settling or mediating consumer complaints; bringing court actions beneficial to consumers at large or in place of a particular consumer whose rights have been breached; ensuring product safety and undertaking product testing; scrutinizing the execution of duties by other consumer-related regulatory agencies; conferring recognition on consumer organizations; submitting recommendations to the council of ministers; and performing other functions as prescribed by other laws.

11. The amendment to the Consumer Protection Act in 2019 enhanced the responsibility of the Board for preparing a consumer protection strategic plan, proposing a new consumer protection law and requiring other Government agencies and non-governmental organizations to adopt measures under the consumer protection law and strategic plan.

12. The Act also establishes the Office of the Consumer Protection Board under the supervision of the Secretariat of the Prime Minister. The Office is the executive arm of the Board, with the Secretary-General of the Board responsible for its performance. Some of the functions of the Office are to handle complaints, test products and promote sustainable consumption, as well as to carry out consumer education, studies and research and such duties as required by the Board and the four committees. The amendment to the Act in 2019 enabled the decentralization of the operations of the Office, whereby local officials can be appointed

⁸ Ibid.

to perform the duties of officials of the Office at the local authority level. As an incentive to elicit the collaboration of local authorities, fines paid by offenders that breach the Act become the revenue of the local authority.

13. The Consumer Protection Board and the four committees have a supervisory role in protecting consumers from infringements of rights conferred by the Consumer Protection Act. This role extends even to areas of law under the purview of other agencies. If there is a dispute about applicable provisions between the Act and those of another law, decisions of the Board are final and binding. The Board can undertake action to support or seek remedy for consumers in the initial stage, even in matters under the purview of other agencies, in a manner that does not contradict other laws. The Board may, by order, permit officials of other agencies to exercise the powers of officers of the Office.

14. Based on the amendment to the Consumer Protection Act in 2019, the Consumer Protection Board, the committees or the Secretary-General of the Board can call meetings between organizations to facilitate collaboration on consumer protection.

15. Criminal and administrative sanctions are foreseen in case of breaches of provisions of the Consumer Protection Act and notifications and orders of the Consumer Protection Board and committees. Such sanctions include fines and imprisonment. The Act originally imposed criminal liability on a director or manager of a corporate business operator. However, it was amended following a decision of the Constitutional Court that held that the presumption of criminal liability was unconstitutional, and now determines that the director or manager or person responsible will only be liable if the offence derives from an act or omission of that person's duty.

16. The Act sets out the governing principles, powers and duties of each committee. A general rule applies to all products not explicitly regulated by other statutes or excluded by ministerial order. In addition, each committee may impose more stringent requirements for particular categories of products and is conferred a comprehensive mix of control measures.

17. Progressive approaches adopted in the Act include the following:

(a) Business operators may consult with the Consumer Protection Board before marketing products as to whether their labels and advertisements comply with regulations;

(b) Standard form contracts are controlled and the terms, conditions and forms they must use are prescribed. To date, 23 notifications have been issued, including with regard to apartment rentals, fitness club memberships, purchases of used vehicles and hire purchases of vehicles and motorcycles, as well as construction and consumer credit;

(c) The Act defines dangerous goods or services as those that cause or may cause danger to life, health, the body, mental state or property.

18. The Act contains a general requirement on product safety (goods, not services) including the consideration of consumers who are particularly at risk from the consumption of certain goods, such as children, pregnant women, the elderly, patients and the disabled. The Act and other consumer protection laws recognize the particular risks faced by disadvantaged and vulnerable consumers.

19. Thailand has revised the Consumer Protection Act to keep it fit for purpose and has also enacted numerous other laws to protect consumers.

2. Direct Sale and Direct Marketing Act BE 2545 (2002)

20. The Prime Minister oversees this Act, issuing ministerial regulations for its execution and appointing officials. The Direct Sale and Direct Marketing Board, comprising ministry officials and representatives of industry and consumers, has broad powers, including processing consumer complaints. The Office of the Consumer Protection Board also executes the functions of this Board and the Secretary-General of the Office acts as the registrar.

21. Both direct sales and direct marketing operators must register before conducting business. Those involved in both activities need to register separately for each. Applicants must provide a security deposit to the Office of the Consumer Protection Board, which the registrar may use to compensate consumers whose rights have been violated. The primary

focus of the direct sales regulation is on preventing pyramid sales and pressure sales. Sales documents need to be in Thai and prominently state the right of consumers to terminate a contract. Businesses must provide consumers with a copy of the sales agreement for it to be binding. Consumers may terminate a contract, return the product within a seven-day cooling-off period and be entitled to a full refund within 15 days of the termination notification. In addition, the Act states that the products excluded from the seven-day cooling-off period and the procedures for returning goods are regulated separately. However, the regulations have not yet been issued although the Act has been amended twice, in 2007 and in 2017.

3. Product Liability Act BE 2551 (2008)

22. This Act provides consumers with a civil remedy in addition to tort claims or contracts for harm caused by defective products. The Act does not compromise any rights already available under any other law. It imposes a joint liability for damages on all entrepreneurs in the chain of supply of a product to a consumer. Exemptions apply to agricultural commodities, drugs and medical devices produced for individual use by a medical professional and substances excluded by ministerial regulation. A product could be defective due to design, production or inadequate information; the plaintiff needs only to prove that damage was due to the product and its use and storage. The burden of proof lies with the defendant, who must prove that it was not an unsafe product or that the injured knew the risks or that the loss was caused by incorrect use by the plaintiff. The consumer's right cannot be restricted or excluded by an exemption clause in a contract. The law in Thailand does not recognize defences based on state of the art and notable development risks.

23. This Act introduced new types of damages not recognized hitherto by the Civil and Commercial Code, namely, damages for emotional distress, including by certain relatives or heirs of a deceased, injured person; and punitive damages of up to twice the actual compensation amount. The limitation period for a lawsuit is three years from the date an injured person learns of the hazardous nature of a product and knows the identity of the business operator liable for the loss or damage. However, the injured person loses the right to claim for damages 10 years after the date of sale of a product. The Consumer Protection Board and consumer associations certified under the Consumer Protection Act may file legal proceedings on behalf of consumers.

4. Consumer Case Procedure Act BE 2551 (2008)

24. Thailand has not established consumer claims tribunals or small claims courts or procedures. Instead, the Consumer Case Procedure Act simplifies the exercise of all consumer claims against a business, including with regard to unsafe product liability and as part of civil cases prescribed by any other law. The President of the Supreme Court controls the execution of this Act and its rules. The Court of Appeal jurisprudence on the interpretation of the term "consumer case" has led to the Act being used for truncated proceedings by corporate plaintiffs for litigation against each other and even for debt collection from consumers.

5. Establishment of the Consumer Organization Council Act BE 2562 (2019)

25. This Act is the law mandated under section 46 of the constitution on setting up a consumer council. The Act defines the scope, power, resources and management of the council and consumer organizations. The council is an independent organization outside of the control or influence of the Government, public authorities, political parties, entrepreneurs or employees in the business sector. To establish the council, at least 150 certified consumer organizations had to submit a joint letter declaring themselves as founders to the registrar general. The council currently has 194 members, and has a wide range of powers and duties, including filing cases in court as a consumer representative.

C. Other laws of particular importance in consumer protection

1. Unfair Contract Terms Act BE 2540 (1997)

26. This Act provides guidelines for courts in judging the fairness of contracts that restrict or exclude liability. The Act defines an unfair contract as granting undue advantage to one party. It is applicable in every case of unfair terms in any form of contract between consumers and businesses, whether written or not. The Act provides an inexhaustive list of nine terms in standard form contracts that may be deemed unfair. The approach adopted under the Act is to determine unfairness on a case-by-case basis. A legal challenge and decision by a court are required to establish the fairness of a contract term. This approach differs from the proactive one required under the Consumer Protection Act. The Committee on Contracts regulates standard form contracts and specifies the terms of contracts to be included in selected areas of commerce. There is a mutually enriching relationship between the Committee on Contracts and the judiciary; judges determine the unfairness of a contract by following the regulations of the Committee and the Committee bars clauses deemed unfair by the courts.

2. Price of Goods and Services Act BE 2542 (1999)

27. This act is for the control of the supply and prices of essential goods and services, which are periodically announced as controlled goods or services by the Central Board Governing Prices of Goods and Services.

3. Laws on electronic commerce

28. Thailand has enacted several laws to facilitate electronic commerce (e-commerce) and create confidence in local e-marketers. The primary law, Electronic Transactions Act BE 2544 (2001), is based on the model law on e-commerce of the United Nations Commission on International Trade Law. The Electronic Transactions Commission administers it with the Minister of Information and Communications Technology as the chair and the Director of the National Electronics and Computer Technology Centre of the National Science and Technology Development Agency as the secretary. The Commission has used its powers to obtain royal decrees on security procedures in e-transactions, rules and procedures for public sector e-transactions and the regulation of e-payment services (2010), as well as the regulation of particular financial institutions (2016).

29. The Electronic Transactions Development Agency was established in 2019 to supervise market conduct. It operates an online complaints centre (OCC 1212) and forwards unresolved complaints to relevant Government agencies such as the Office of the Consumer Protection Board, the Food and Drug Administration and the Department of Business Development of the Ministry of Commerce.

30. E-commerce businesses must register with the Ministry of Commerce, the Office of the Consumer Protection Board, as required by the Direct Sale and Direct Marketing Act, and the Bank of Thailand under the Payment Systems Act BE 2560 (2017). In addition, they must comply with Ministry of Commerce Notification No. 44 BE 2560 (2017) on displaying the price and details of goods and services sold via e-commerce systems or online. Furthermore, business-to-consumer contracts are subject to the Unfair Contract Terms Act.

31. Accreditation of the cybersecurity standards of websites may be obtained from the Department of Business Development of the Ministry of Commerce.⁹

32. A national e-payment system, Prompt Pay, facilitates fund transfers to or from a bank account through the use of the national identification card number or mobile telephone number of the account owner, instead of a bank account number, with payments charged to a credit card, savings account or e-wallet. The Ministry of Finance and the Bank of Thailand regulate e-payment businesses. Thailand does not regulate business-to-consumer e-commerce.

⁹ <https://www.trustmarkthai.com/th>.

4. Personal Data Protection Act BE 2562 (2019)

33. This Act seeks to protect personal data use by both the Government and the business sector. The Act establishes the Personal Data Protection Commission and the Office of the Personal Data Protection Commission to issue and enforce implementation rules.

34. The Act limits the collection, use and disclosure of personal data by data controllers or data processors to only when they have the explicit consent of the data subjects, except for a few stated exceptions. Strictly necessary personal data can be collected for the lawful purposes of the data controller and only from the data subject. Data controllers and data processors must implement appropriate measures to protect and secure collected personal data and notify the Office of any breach within 72 hours of becoming aware of the breach. The data subject must be notified without delay if the breach is likely to pose a high risk to the rights and freedoms of the data subject.

35. It is an offence to transfer personal data from Thailand to a foreign country or an international organization. Such a transfer can only be made with the consent of the Personal Data Protection Commission.

36. Data controllers and data processors that violate the Act and cause injury to data subjects are liable to pay civil compensation and punitive damages to the injured data subject, as well as criminal liabilities. A significant portion of this law has not yet been enforced.

IV. Scope of the voluntary peer review: Consumer dispute resolution

37. Thailand decided that the focus of the peer review should be on consumer protection law and dispute resolution, in the context of section F of the United Nations guidelines for consumer protection and with reference to previous analysis conducted by UNCTAD.¹⁰ To understand the applicable framework, it is important to first present the judicial avenues for consumers to obtain redress in order to then assess the alternative, out-of-court mechanisms for providing consumers with dispute resolution.

A. Judicial redress and Consumer Case Procedure Act

38. The complex procedural and evidentiary rules governing court proceedings led to demands for simplified rules for consumer cases. In response, Parliament enacted the Consumer Case Procedure Act, which mandates prelitigation mediation in all cases filed under the Act. A court-appointed case officer assists in handling cases and ascertains that all parties are adequately represented. The mediator makes a settlement agreement on a resolution satisfactory to the parties. The court issues a judgment based on this agreement.

39. In 2020, amid the pandemic, the President of the Supreme Court published Regulation on Electronic Procedures BE 2563 (2020) and, in January 2022, established a new civil court division to exclusively handle e-commerce cases. New regulations now require consumer cases in the Civil Court that involve online sales to be tracked separately from other consumer cases.

B. Alternative dispute resolution via the Consumer Protection Board and the Office of the Consumer Protection Board

40. The Consumer Protection Act requires the Consumer Protection Board to consider and assist in settling or mediating consumer complaints. The regulations of the Board explain the process for receiving, managing and mediating consumer complaints. All complaints received are registered through the Office of the Consumer Protection Board online application and classified, such as to permit complainants to track progress in resolving their complaints. All parties must agree to have a mediation procedure. A complex mediation case

¹⁰ TD/B/C.I/CPLP/11.

could involve several stages and may be undertaken differently at each stage. For example, the responsible officer may mediate at the initial stage, the committee for dispute mediation may mediate at the second stage and the committee for screening complaints may mediate at the final stage. The Office of the Consumer Protection Board assigns the task of mediation to its divisions based on their expertise in advertisements, labels, contracts, direct sales and direct marketing or foreign relations and cooperation.

41. In provincial areas, officers of the Office of the Consumer Protection Board mediate and submit findings to a supervisor, who determines whether the matter will be referred to the subcommittee in Bangkok for resolution. The amendment to the Consumer Protection Act in 2019 permitted local officials to make decisions and local offices to keep any imposed fines. Amendments to reflect this change in the regulations are pending.

42. If a mediation is successful, the mediator drafts a settlement agreement, which establishes new enforceable rights and obligations between the parties.

43. Complaints received by the Office are a valuable indicator of the remedial measures that need to be initiated (through law reform, policy initiatives, enforcement, consumer education, etc.). In 2020, the Office received 22,263 complaints (15,530 from other Government agencies), handled 20,994 and forwarded the remaining 1,269 to other Government agencies. In 2021, the Office received 22,591 complaints, handled 21,290 and forwarded the remaining 1,301 to other Government agencies. Redirecting complaints absorbs considerable resources at complaints processing agencies. Among the agencies considered during the peer review, the Office handled the most significant number of complaints. It may be appropriate for the Office to forego its current approach of providing a mediation service.

1. Online dispute resolution initiative of the Office of the Consumer Protection Board

44. In 2019, the Office sought to modernize its complaints management process by building an information and communications technology platform that collects all case data and utilizes a tracking system that allows relevant parties to verify and monitor the status of individual cases. The platform also serves as a tool to gather consumer protection data. It was overhauled and connected with the data system of 28 other Government agencies under “Office of the Consumer Protection Board Connect”, to gather comprehensive data on consumer complaints. The platform serves as an online gateway for consumers to communicate with other Government agencies and some business operators with consumer contact centres for dispute resolution. It helps to reduce the number of complaints reported to the Office. In addition, the Office has an application that provides a 24-hour chatbot to answer consumer queries.

45. Also in 2019, the Office initiated a pilot project on online mediation in the following three areas: sale of real estate before granting credit applications; sale of new vehicles; and non-conformity of goods. Its success led the Office to commit to a budget for the project of approximately B 6 million for financial year 2020, for both software and all information technology infrastructure. The new online dispute resolution platform for all consumer complaints was introduced in November 2021.¹¹ The website of the Office contains all applicable rules on the mediation platform. The Office seeks to conduct research on the possible use of artificial intelligence in the online dispute resolution process and the management of the complaints data collated and, in this regard, is a beneficiary (along with Indonesia) of an UNCTAD technical cooperation project on delivering digital trading infrastructure and online dispute resolution for consumers as means to improve international trade and e-commerce, which is aimed at enhancing consumer trust and protection in digital markets and serving as a pilot in assisting in implementing online dispute resolution systems for consumers in the beneficiary countries.¹²

¹¹ <https://ocpbmediate.ocpb.go.th/>.

¹² <https://unctad.org/project/delivering-digital-trading-infrastructure-and-online-dispute-resolution-consumers-means>.

2. Alternative dispute resolution via specialized Government agencies

46. Some specialized Government agencies have established consumer protection units to help reduce consumer disputes with services providers.

47. The Financial Consumer Protection Centre of the Bank of Thailand requires a complaint to first be filed with the financial institution concerned. If the dispute remains unresolved, the Centre may assist the consumer to seek mediation through a third party, such as a court-run mediation centre or the Office of the Consumer Protection Board. The Centre does not conduct mediation or decide on the complaint.

48. Office of Insurance Commission officers negotiate with an insurance company when a complaint is not a complicated matter. If the matter remains unresolved, the consumer may choose mediation by a mediator certified by the Office or arbitration by a third party. Both options are governed by dedicated legislation that delineates the applicable rules.

49. The National Broadcasting and Telecommunications Commission has two consumer units, for broadcasting and for telecommunications, which handle consumer complaints and have authorized panels of mediators if the parties choose to mediate.

3. Complaints processing agencies

50. The Government Contact Centre (GCC 1111) and the Damrongdham Centre 1567 receive all types of complaints and forward them to the appropriate State agency for resolution. OCC 1212 only handles complaints related to e-commerce and cybercrime. These authorities submit consumer complaints to the Office of the Consumer Protection Board or other agencies responsible, according to the subject matter.

4. Alternative dispute resolution via consumer associations

51. Consumer associations and networks play a critical role in consumer dispute resolution.

52. The Foundation for Consumers is one of the most popular consumer organizations in Thailand. It has maintained a complaints and legal assistance centre since 1996, which assists consumers in mediating disputes or filing lawsuits against business operators. The Centre has an extensive membership and has established a network of social action organizations. It also has media support and presence, incentivizing corporations to be responsive and mindful of their brands and reputations. The Centre accepts all types of consumer cases, including those declined by the Office of the Consumer Protection Board, such as complaints by taxi drivers regarding damaged vehicles or complaints brought by microenterprises and small enterprises such as massage centres or by auto rickshaw users. If a dispute is not resolved through alternative dispute resolution, the Centre supports consumers who wish to file an action in court with the assistance of a lawyer from its own panel or that of its network partners.

5. Dispute Mediation Act BE 2562 (2019)

53. This Act was adopted to encourage and regulate the use of mediation in both civil and criminal cases before litigation in court. The Act is important as it invites Government agencies, private organizations and social organizations, including consumer associations not hitherto conferred the power to provide mediation services, to register as dispute mediation centres. However, those operating under any other law, such as the Office of the Consumer Protection Board under the Consumer Protection Act, can continue to operate beyond the Dispute Mediation Act. The Act distinguishes between State agency dispute mediation centres and those offered by other providers, namely, public sector mediation centres. The former can mediate civil cases of up to B 5 million and the latter, of up to B 500,000.

54. The Rights and Liberties Protection Department of the Ministry of Justice is responsible for promoting the establishment of public sector dispute mediation centres and ensuring their compliance with the Act. Following a mandatory training programme on dispute mediation, the National Commission for Justice Administration Development accredits mediators for State agency and public sector mediation, and ensures that the centres established under the Act can competently administer mediation. As at 19 November 2021, the Department had registered 82 State agency and 532 non-State agency mediation centres

and, in the same period, 1,808 mediators were registered as State agency mediation centres and 1,940, as public sector mediation centres. In addition, numerous consumer organizations have submitted applications to serve as public sector dispute mediation centres.

55. The Court of Justice and the Ministry of Justice have mediation facilities in Bangkok and in the provinces under branches of the Court of Justice and Department of Justice. Mediation is thereby made available to all residents in the provinces.

V. Conclusions and recommendations

56. With over 40 years of experience in consumer protection law and policy, Thailand has comprehensive legislative and institutional structures on consumer protection, comprising several different authorities, with the Office of the Consumer Protection Board serving as the focal point. Thailand also engages in constructive dialogue and cooperation with businesses and consumer groups. The conclusions and recommendations on the legislative and institutional frameworks, as contained in the full report on the peer review, are summarized in this chapter.

A. Legislative framework

57. The constitution of Thailand enshrines the protection of consumers. The Consumer Protection Act, amended in 2019, is the main law on consumer protection, containing consumer rights and principles for consumer protection. There are several other relevant laws such as the Direct Sale and Direct Marketing Act, the Product Liability Act, the Consumer Case Procedure Act and the Establishment of the Consumer Organization Council Act.

58. The definition of who should be considered a consumer is not standardized across the different bodies of law and is subject to controversy. Section 3 of the Consumer Protection Act defines a consumer as a person who has purchased or received a service from a business operator or a person who has received an offer or a solicitation from a business operator to purchase goods or receive a service and includes a person who duly uses goods or receives a service from a business operator even if he or she is not the person who pays the remuneration. The definition covers all buyers and users of goods and services. However, it does not specify that to be classified as a consumer the purchase needs to be by a natural person, as distinct from a juristic person. However, section 3 of the Unfair Contract Terms Act states that entry into a contract as a buyer “shall not be for the purpose of trade of such property, services or other benefits”, leading to the interpretation that the goods or services need to be purchased and used for personal, family or household purposes in line with the definition proposed in the United Nations guidelines for consumer protection. The Court of Appeal adopted a more nuanced approach in one case, in Decision of the President of the Court of Appeal 935/2561, stating that a consumer purchasing a second-hand truck had done so as a means of increasing the consumer’s income and not to operate a significant business.

59. The Consumer Case Procedure Act was enacted to facilitate consumer access to courts by prescribing simplified rules of procedure and evidence. The Act defines a “consumer” in line with the Consumer Protection Act and the Product Liability Act, whereby a consumer case is that between a consumer or authorized representative and an entrepreneur having a dispute concerning a legal right or obligation related to the consumption of goods or services or a civil case under the Product Liability Act (section 3). However, the Consumer Case Procedure Act states that if a business operator is going to take legal action against a consumer as a consumer case, the operator shall submit the case to the court within the territorial jurisdiction of which the consumer is domiciled (section 17). This has resulted in a substantial increase in cases filed and occasioned delays. Significantly, the Act has become the chosen framework for banks and other lending institutions with regard to debt collection from consumers.¹³

¹³ N Nawatrakulpisut, 2020, Amendment of the consumer protection law: Important steps forward for improvement towards more efficient protection, *Thammasat Law Journal*, 49(2):157–189.

60. Thus, although the legislative framework contains a broad set of consumer protection rights, there are areas that could benefit from regulation or precision, namely, unifying and expanding the definition of “consumer”; explicitly addressing the needs of vulnerable and disadvantaged consumers; limiting the application of simplified procedures to cases where consumers are plaintiffs (thereby excluding business plaintiffs); regulating all consumer contracts; and regulating the concept of unsafe services.

61. Thailand does not have a law on consumer goods and services guarantees and the Civil and Commercial Code provides superficial assistance with regard to nonconformity and faulty goods and services. The Office of the Consumer Protection Board has proposed amending the Consumer Protection Act to establish a committee on guarantees and define standards on consumer guarantees. It is recommended that the law on consumer guarantees and warranties be revised and the Act be amended to better address substantive and procedural fairness and ensure that opt-out clauses may not exclude these areas in consumer contracts.

62. E-commerce is not exempt from any of the provisions of the consumer protection laws, yet laws dedicated to business-to-consumer e-commerce have not yet been enacted. Thailand does not maintain comprehensive data on consumer complaints about e-commerce providers; a dedicated agency has not been identified to compile such data, and information obtained through the Electronic Transactions Development Agency and OCC 1212 are merely indicative. The need to adapt laws and policies to the particular features of e-commerce will have a direct impact on consumer protection laws. In particular, Thailand could broaden the scope of the Electronic Transactions Act to address issues particular to the digital economy, such as the liability of platforms, online payments, the use of data and online complaints handling. Although e-transactions are not exempt from existing consumer protection laws, Thailand lacks business-to-consumer e-commerce regulations, such as in the field of digital advertising and online behavioural advertising (influencer marketing).

63. Foreign corporations are not required to maintain a representative office in Thailand. A new section under the Electronic Transactions Act, as amended in 2019, prescribes that foreign businesses can be required to maintain a representative office in Thailand via royal decree. Subsidiary legislation may, however, provide for the registration and control of foreign corporations.

64. Clarity would be welcome when examining the burden of proof rules in product liability cases, to better protect consumers. The Direct Sale and Direct Marketing Act requires regulatory revision, to indicate which goods are excluded from cooling-off periods and other return procedures.

B. Institutional framework

65. The institutional framework for consumer protection comprises several different authorities. Such a framework implies that all of the authorities have mechanisms for consumer dispute resolution. The Court of Justice and the Ministry of Justice have established mediation facilities in the provinces. Regulation agencies and consumer associations also receive and process consumer complaints. Thailand is a leader in the development of online dispute resolution in South-East Asia and a beneficiary of the UNCTAD technical cooperation project on delivering online dispute resolution for consumers. The Office of the Consumer Protection Board provides consumers with different channels through which to file complaints and access dispute resolution, from email for information exchanges and meeting appointments confirmed by short messaging service to a website for complaints tracking, video conferencing and linkages with other State agency complaints centres. In line with the United Nations guidelines for consumer protection on taking into account the needs of vulnerable and disadvantaged consumers, Thailand provides dedicated attention to children and elderly consumers.¹⁴ However, there is room for improvement in the attention paid to rural consumers, consumers with disabilities and financial consumers. The

¹⁴ See, for example, Food and Drug Administration, Thailand, 2018, Announcement re: Criteria for food advertisement BE 2561.

International Organization for Standardization standard 22458, on the requirements and guidelines for the design and delivery of inclusive service, provides useful guidance and its adoption would be beneficial.

66. The lack of Government agencies offering consumer protection in rural areas and the lack of dedicated attention to consumers with disabilities requires cooperation among Government agencies, namely the Office of the Consumer Protection Board and the National Office for Empowerment of Persons with Disabilities. The International Organization for Standardization standard 30071-1, on the code of practice for creating accessible information and communications technology products and services, addresses the need for the inclusion of the elderly and persons with disabilities. Advocacy by the Office of the Consumer Protection Board and consumer organizations with regard to the accessibility guidelines for online content is recommended. In addition, improving the information and communications technology infrastructure of the Court of Justice and the Ministry of Justice could also help enhance consumer access to justice in all of the provinces.

67. Given the primary role of the Office of the Consumer Protection Board as regulator and policymaker, it may be advisable for it to oversee a national consumer protection system whereby local authorities could handle consumer complaints, instead of the Office directly handling the over 20,000 consumer complaints received each year. A national policy based on the Dispute Mediation Act could be a valuable strategy for delivering better consumer protection focused on consumer access to justice. Further efforts should be invested, in distributing complaints among the Government agencies receiving them. In addition, such a model would provide the Office with the necessary market intelligence to better craft policies. The amendment to the Consumer Protection Act in 2019 allowed for the appointment of provincial-level officers to function with powers similar to those of officers of the Office; and for locally collected fines to finance the hiring of local officers, thereby supporting the work of the Office at the local level. In this regard, dedicated attention is recommended, to address the lack of required information and communications technology infrastructure at the provincial level.

68. Given the 20 years of experience of the Office of the Consumer Protection Board in handling complaints and as the national consumer protection system coordinator, the Office could train local officials to serve as mediators, handle complaints and conduct mediation. Capacity-building for members of the judiciary in consumer protection matters is also recommended.

69. The National Commission for Justice Administration Development is entrusted with guaranteeing the competence of mediators who may also handle consumer cases. Therefore, it is important that it disseminates the tools it uses to ensure that mediators have access to continuous learning and the continuous assessment of capacities. It is uncertain how courts will view mediation conducted under the Dispute Mediation Act. For example, it remains to be clarified whether applicants for litigation in courts would be required to undergo prelitigation mediation under the provisions of the Consumer Case Procedure Act or the new provisions in section 20 (tr) of the Civil and Commercial Code. Similar rules, if feasible, may be issued to govern mediation under the Dispute Mediation Act and section 20 (tr) of the Code.

70. The Office of the Consumer Protection Board should pursue its partnership with businesses and consumer groups to strengthen education and information campaigns for consumers on their rights and on avenues for seeking dispute resolution and redress, including online dispute resolution mechanisms.

71. Based on the amendment to the Consumer Protection Act in 2019, the Consumer Protection Board can undertake court action on behalf of an aggrieved consumer. It would place the Board in an invidious position to be both mediator and, if mediation fails, the prosecutor on behalf of a consumer. For this reason, the Board should not act as a mediator; it needs only to assist a consumer during the mediation process conducted by a mediation facility independent of the Board.

72. The Office of the Consumer Protection Board currently receives all consumer complaints directly from consumers and other complaints-receiving agencies. The collation

and analysis of complaints are vital in its research and policy development role. The Office should be entrusted with responsibility for overseeing the handling of consumer complaints.

73. Businesses should be encouraged to make available internal complaints-handling mechanisms expeditious, fair, transparent, inexpensive, accessible, speedy and effective, without unnecessary costs or burdens, and to provide links to the online consumer complaints and dispute resolution services of the Office of the Consumer Protection Board.

74. The Office of the Consumer Protection Board should cooperate with the Personal Data Protection Commission to pursue the full implementation and enforcement of the Personal Data Protection Act.

75. Finally, considering the relevance of the Office of the Consumer Protection Board as a regulator, investigator and researcher, it is necessary to increase its financial resources to place it at a level comparable with that of other countries with a similar level of development. According to the UNCTAD world consumer protection map, the Office has a staff of 350 and an annual budget of \$6,900,000. In comparison, the consumer authority of Colombia has a staff of 98 and an annual budget of \$63,308,891, the authority of Italy has a staff of 226 and a budget of \$69,800,000 and the authority of South Africa has a staff of 85 and a budget of \$4,080,000. An increase in the annual budget of the Office of the Consumer Protection Board could significantly improve efforts with regard to consumer information, education and access to justice. It would also positively impact support to the provinces and the activities dedicated to vulnerable and disadvantaged consumers.

76. The recommendations of the peer review on the legislative and institutional frameworks are shown in the table.

Voluntary peer review of consumer protection law and policy of Thailand: Recommendations

<i>Recommendations</i>	<i>Target audience</i>
Legislative framework	
Unify the definition of “consumer” in all pieces of legislation to improve legal certainty. Further address the particular domestic needs of vulnerable or disadvantaged populations by extending the definition of “consumer” to categories other than natural persons purchasing goods or services for personal, family or household purposes	Legislative and executive branches with support of Consumer Protection Board and Office of the Consumer Protection Board
Review Consumer Protection Act BE 2522 (1979) to explicitly address the needs of vulnerable and disadvantaged consumers. Consider the adoption of International Organization for Standardization standards 22458 on the requirements and guidelines for the design and delivery of inclusive service and 30071-1 on the code of practice for creating accessible information and communications technology products and services	
Limit Consumer Case Procedure Act BE 2551 (2008) to cases where consumers are the plaintiffs, to avoid abuses of its simplified procedures by businesses	
Empower the Committee on Contracts to regulate all consumer contracts through contract terms and prohibitions of general application	
Enact legislation on guarantees for consumer goods or services and establish a committee on guarantees to set standards	
Review the law on consumer guarantees and warranties and amend the Consumer Protection Act to address substantive and procedural fairness in consumer contracts	
Review existing consumer protection policies to accommodate the particular features of e-commerce and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace. Consider	

<i>Recommendations</i>	<i>Target audience</i>
enacting legislation or policies on digital advertising, including behavioural advertising (influencer marketing)	
Revise the amendments to Electronic Transactions Act (No. 3) BE 2562 (2019) to include the following:	
(a) Encouraging domestic product prioritization	
(b) Making explicit that online commerce is subject to all consumer protection laws, emphasizing the need to comply with Unfair Contract Terms Act BE 2540 (1997), including in the areas of misleading advertising and labelling, guarantees and warranties and the prohibition of opt-out clauses	
(c) Requiring high standards of data protection and security; allowing a wide range of payment modes (cash, credit and debit cards, e-wallets, etc.) and catering to the unbanked	
(d) Imposing a gatekeeper role and third-party liability on e-commerce platform providers for the conduct of online sellers who use their platforms	
(e) Specifying minimum standards for consumer complaints-handling services	
Complement the definition of “unsafe product” with that of “unsafe service” in the Consumer Protection Act	
Unify the criteria for establishing the burden of proof under Product Liability Act BE 2551(2008)	
Revise Direct Sale and Direct Marketing Act BE 2545 (2002), to indicate the goods and services excluded from the seven-day cooling-off period and the procedures for returning goods	
Institutional framework	
Establish Office of the Consumer Protection Board offices in all of the provinces and/or partner the Office with other institutions such as the National Office for Empowerment of Persons with Disabilities, to more directly reach and protect vulnerable and disadvantaged consumers	Office of the Consumer Protection Board and National Office for Empowerment of Persons with Disabilities
Improve the information and communications technology infrastructure of the Court of Justice and the Ministry of Justice to enhance access to justice for consumers in all of the provinces	Executive and judicial branches
Entrust the Office of the Consumer Protection Board with responsibility for overseeing consumer complaints handling and mediation, to strengthen its mandate as regulator	Consumer Protection Board and Office of the Consumer Protection Board and relevant stakeholders (academia, consumer associations, experts from regulation authorities)
Consider transferring complaints-handling and mediation tasks and responsibilities to local authorities, to better address the needs of consumers. To fulfil this mission, strengthen capacities at the local level	
Establish mechanisms to distribute complaints among Government agencies	Office of the Consumer Protection Board, Office of Insurance Commission, National Broadcasting and Telecommunications Commission and relevant stakeholders
Establish high-quality requirements for mediation by disseminating the tools needed for the continuous assessment and learning of mediators and subjecting Government agencies to quality assessment, including the Office of the Consumer	National Commission for Justice Administration Development

<i>Recommendations</i>	<i>Target audience</i>
Protection Board, the Office of Insurance Commission and the National Broadcasting and Telecommunications Commission	
Encourage businesses to make available internal complaints-handling mechanisms that are expeditious, fair, transparent, inexpensive, accessible, speedy and effective, without unnecessary costs or burdens, and to provide links to the online consumer complaints and dispute resolution services of the Office of the Consumer Protection Board	Office of the Consumer Protection Board and businesses
Strengthen education and information campaigns for consumers, including in cooperation with businesses and consumer groups, on consumer rights and on avenues for seeking dispute resolution and redress, including online dispute resolution mechanisms	Office of the Consumer Protection Board, businesses and consumer groups
Pursue the full implementation and enforcement of Personal Data Protection Act BE 2562 (2019)	Office of the Consumer Protection Board and Personal Data Protection Commission
Increase the budget of the Office of the Consumer Protection Board, to improve the resources necessary for law enforcement, litigation on behalf of consumers, product testing, education, research and policy development activities	Legislative and executive branches