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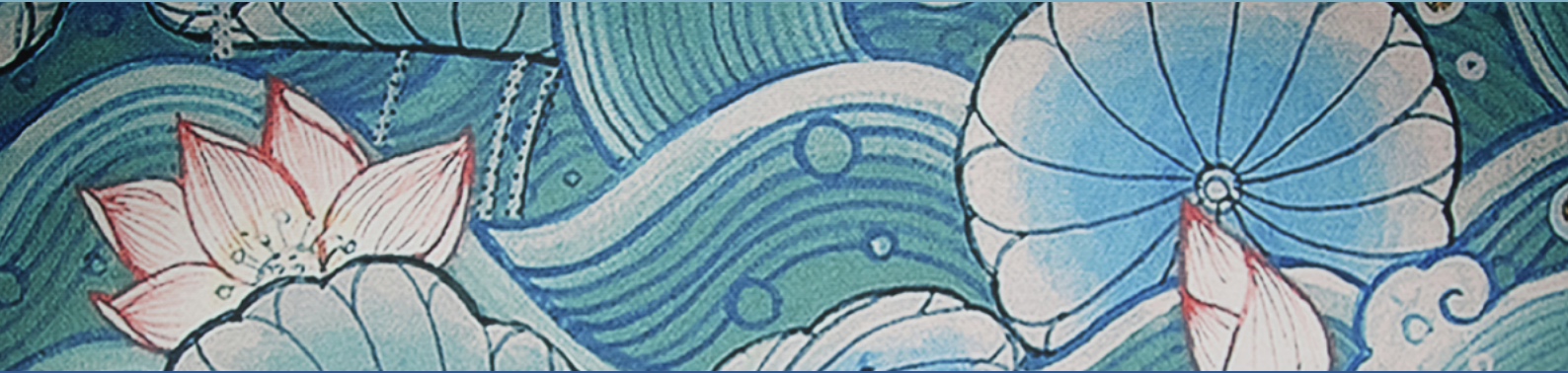
# **VOLUNTARY PEER REVIEW OF CONSUMER PROTECTION LAW AND POLICY OF THAILAND**



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UNITED NATIONS

Geneva, 2022

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## NOTE

The United Nations Conference on Trade and Development (UNCTAD) serves as the focal point within the United Nations Secretariat for all matters related to consumer protection policy. UNCTAD promotes the United Nations guidelines for consumer protection and encourages interested member States to create awareness of the many ways in which member States, businesses and civil society can foster consumer protection in the provision of public and private goods and services.

UNCTAD seeks to further the understanding of the contribution of consumer protection law and policy to development and to create an environment enabling the efficient functioning of markets. UNCTAD's work is carried out through intergovernmental deliberations, capacity-building activities, policy advice, and research and analysis on the interface among consumer protection, competition and development.

Voluntary peer reviews of consumer protection law and policy conducted by UNCTAD are mandated by the General Assembly in its resolution 70/186 of 22 December 2015 adopting the United Nations guidelines for consumer protection. The guidelines seek, among other things, to assist countries in achieving or maintaining adequate protection for their population as consumers.

## ACKNOWLEDGEMENTS

Voluntary peer reviews of consumer protection law and policy are conducted by UNCTAD at the annual meetings of the Intergovernmental Group of Experts on Consumer Protection Law and Policy or at the United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

This report was prepared by Professor Sothi Rachagan, Vice Chancellor of Nilai University and former Dean of the Faculty of Law, University of Malaya, and Vice Chancellor of Perdana University, Malaysia and Professor Aimpaga Techa-apikun, Assistant Professor of Private law, Faculty of law, Thammasat University, Thailand, under the coordination of Ana Cândida Muniz Cipriano, Legal Officer, and the overall direction of Teresa Moreira, Head of the Competition and Consumer Policies Branch.

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## POLITICAL, ECONOMIC AND SOCIAL CONTEXT

The Kingdom of Thailand (Thailand) is located primarily in mainland Southeast Asia. Historically known as Siam<sup>1</sup>, the country spans an area of approximately 513,000 kilometres extending about 1,715 kilometres from north to south and 915 kilometres from east to west.<sup>2</sup> As of 2020, the population stood at approximately 69.8 million<sup>3</sup>, consisting mostly of ethnic Thais, whereas the minority comprises people of Malay, Cambodia, Chinese, Vietnamese, Burmese, Indian and non-Thai hill tribe descent<sup>4</sup>.

As Thailand is a constitutional monarchy, its head of state is the King of Thailand. The current monarch, Maha Vajiralongkorn, was proclaimed king in December 2016<sup>5</sup>. The current head of government, Prayut Chan-o-cha, has technically held the office of Prime Minister since he led the National Council for Peace and Order (NCPO) in 2014<sup>6</sup>. The NCPO drafted a new constitution<sup>7</sup>, which was promulgated in 2017. The Constitution provides for a National Assembly, comprised of the House of Representatives and the Senate. Members of these two bodies are voted in

by the citizens in a general election.<sup>8</sup> After the General Election 2019, Prayut Chan-o-cha was elected as the Prime Minister by the National Assembly<sup>9</sup>.

Thailand's progress from a low-income to an upper-middle income country, which has been achieved over the last four decades, has been lauded as a success story. The average economic growth ranging between 7.5 per cent from 1960-1996 and 5 per cent during the years of the Asian Financial Crisis, drove job creation that helped many of its citizens escape the clutches of poverty. In recent years, the country's growth has slowed to 4.2 per cent in 2018 and 2.4 per cent in 2019.<sup>10</sup> The Gross Domestic Product (GDP) for 2020 was \$501.64 billion, down from its peak of \$544.26 billion in 2019<sup>11</sup>, due in large part to the COVID-19 pandemic which wreaked havoc on its major economic sectors, industry, and services.<sup>12</sup>

Thailand's welfare programs are lauded by international agencies. Its Universal Healthcare Coverage Scheme (UCS) and Old Age Allowance (OAA) are regional models for social welfare programs. In the last 14 years, UCS has contributed toward declines in infant and child mortality, HIV infections, effects of diabetes, and workers' sick days. OAA has also reduced elderly poverty. Over the last 30 years, Thailand's relative poverty rate, measured on the basis of the national poverty line, declined from 65 per cent in 1988 to 9.85 per cent in 2018. Extreme poverty rates, measured by the World Bank as those living below US\$ 1.90 per day, have been reduced to virtually zero.<sup>13</sup>

<sup>1</sup> Royal Thai Honorary Consulate General, Portland, Oregon, USA (n.d.). Thailand overview. Available at <http://www.thai-or.com/thailand-overview> (accessed 28 November 2021)

<sup>2</sup> United Nations Economic and Social Commission for Asia and the Pacific (n.d.). General information on Thailand. Available at [https://www.unescap.org/sites/default/files/General\\_Information\\_TH.pdf](https://www.unescap.org/sites/default/files/General_Information_TH.pdf) (accessed 26 November 2021)

<sup>3</sup> World Bank (2022). Population, total - Thailand. Available at <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=TH> (accessed 15 January 2022)

<sup>4</sup> United Nations Economic and Social Commission for Asia and the Pacific (n.d.). General information on Thailand. Available at [https://www.unescap.org/sites/default/files/General\\_Information\\_TH.pdf](https://www.unescap.org/sites/default/files/General_Information_TH.pdf) (accessed 26 November 2021)

<sup>5</sup> BBC (2019, March 7). Thailand country profile. Available at <https://www.bbc.com/news/world-asia-15581957> (accessed 10 January 2022)

<sup>6</sup> The National Human Rights Commission of Thailand (NHRCT) (2014). Report on the National Council for Peace and Order (NCPO) and the Interim Government. Available at <https://www.nhrc.or.th/getattachment/4cc7dafc-525b-48d8-b175-ea8bb79bf182/Report-on-the-National-Council-for-Peace-and-Order.aspx> (accessed 18 December 2021)

<sup>7</sup> Library of Congress (2016). Thailand: New Constitution approved in referendum. Available at <https://www.loc.gov/item/global-legal-monitor/2016-08-10/thailand-new-constitution-approved-in-referendum/> (accessed 15 November 2021)

<sup>8</sup> Royal Thai Honorary Consulate General, Portland, Oregon, USA (n.d.). Thailand overview. Available at <http://www.thai-or.com/thailand-overview> (accessed 28 November 2021)

<sup>9</sup> BBC (2019, June 6). Thai parliament elects ex military government chief Prayuth as PM. Available at <https://www.bbc.com/news/world-asia-48537664> (accessed 25 November 2021)

<sup>10</sup> World Bank (2021). The World Bank in Thailand - Overview. Available at <https://www.worldbank.org/en/country/thailand/overview#1> (accessed 1 December 2021)

<sup>11</sup> World Bank (2022). GDP (current \$) - Thailand. Available at <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=TH> (accessed 10 January 2022)

<sup>12</sup> World Bank (2021). The World Bank in Thailand - Overview. Available at <https://www.worldbank.org/en/country/thailand/overview#1> (accessed 1 December 2021)

<sup>13</sup> International Labour Organization (2022). Thailand: A regional example in social protection. Available at [https://www.ilo.org/asia/media-centre/news/WCMS\\_606069/lang-en/index.htm](https://www.ilo.org/asia/media-centre/news/WCMS_606069/lang-en/index.htm) (accessed 5 January 2022)



Although income inequality in Thailand has been relatively stable over the last five years, there remains a huge disparity in wealth and incomes in the country, with average incomes varying markedly across regions. In 2017, the average income per household in the capital city Bangkok was roughly US\$ 19,000 per year, while it was less than half that for those living in the poorer regions of the north, northeast, and the south.<sup>14</sup>

A cursory study of the Gini Index for Thailand showed significant progress from the high of 47.9 in 1992 to the low of 34.9 in 2019.<sup>15</sup> However, from a standpoint of wealth concentration, the disparity is striking, as the top 1 per cent of the population possesses 58 per cent of the country's total wealth.<sup>16</sup>

Thailand joined the United Nations (UN) on 16 December 1946 as its 55<sup>th</sup> member. It has served in various capacities, including through an appointed Thai President of the General Assembly in 1956, as non-permanent member of the Security Council in 1985-1986 and the United Nations Human Rights Council for 2010-2013.<sup>17</sup> Bangkok, the country's capital, hosts the regional offices of the Economic and Social Commission for Asia and the Pacific (ESCAP), the Food and Agriculture Organization (FAO) and the United Nations Children's Fund (UNICEF). A founding member of the Association of Southeast Asian Nations (ASEAN), Thailand is also part of the Asia Pacific Economic Cooperation (APEC).<sup>18</sup>

While Thailand's judicial system dates back to the 13th century, the foundation of its current system was laid during King Chulalongkorn's era<sup>19</sup>. The

Constitution of Thailand provides for the powers of the Courts in the conduct and decision of legal proceedings which are required to be carried out in accordance with the Constitution and laws and in the name of the King. Judges and justices, who are appointed by the King, are vested with independence to act in a swift and fair manner, and without any partiality<sup>20</sup>. Courts can only be established by official government Acts and the Constitution recognizes four Courts – Court of Justice<sup>21</sup>, Administrative Court<sup>22</sup>, Military Court<sup>23</sup> and Constitutional Court<sup>24</sup>.

The Court of Justice has general jurisdiction over civil and criminal cases<sup>25</sup> with the first tier in the form of the Courts of First Instance, which in turn consist of the General Courts, Juvenile and Family Courts, and Specialized Courts. The Specialized Courts are comprised of the Tax Court, the Intellectual Property and International Trade Court, the Bankruptcy Court, and the Labour Court. The second tier of the Court of Justice is the Court of Appeal, followed by the third tier occupied by the Supreme Court.<sup>26</sup>

The Administrative Court handles disputes between the private sector, administrative agencies and/or state bodies. These disputes may concern by-laws, orders or any other acts, neglect of official duties or unreasonable delay<sup>27</sup>. The Military Court

(pp. 407–446). Cambridge: Cambridge University Press. doi:10.1017/CBO9781107588813.014

<sup>14</sup> Durongkaveroj, W (2020, January 15). Thailand's grand welfare experiment: Showcase or basket case? Available at <https://www.policyforum.net/thailands-grand-welfare-experiment/> (accessed 7 December 2021)

<sup>15</sup> World Bank (2022). World Development Indicators. Available at <https://api.worldbank.org/v2/en/indicator/SI.POV.GINI?downloadformat=excel> (accessed 8 January 2022)

<sup>16</sup> World Bank (2021). The World Bank in Thailand - Overview. Available at <https://www.worldbank.org/en/country/thailand/overview#1> (accessed 1 December 2021)

<sup>17</sup> Royal Thai Embassy - Singapore (2010). Believe in Thailand for the United Nations Security Council. Available at <https://www.thaiembassy.sg/announcements/believe-in-thailand-for-the-united-nations-security-council> (accessed 23 November 2021)

<sup>18</sup> Royal Thai Embassy, Washington D.C. (n.d.). Thailand in brief. Available at <https://thaiembdc.org/about-thailand/thailand-in-brief/> (accessed 15 November 2021)

<sup>19</sup> Satayanurug, P, & Nakomin, N (2014). Courts in Thailand: Progressive development as the country's pillar of justice. In: Yeh, J & Chang, W, eds., *Asian Courts in Context*.

<sup>20</sup> Constitution of the Kingdom of Thailand, s 188, Legal Opinion and Translation Section, Foreign Law Division under the legal duty of the Office of the Council of State (n.d.). Thailand's Constitution of 2017 (Unofficial translation). Available at [https://www.constituteproject.org/constitution/Thailand\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en) (accessed 1 October 2021)

<sup>21</sup> Constitution of the Kingdom of Thailand, Chapter X, Part 2

<sup>22</sup> Constitution of the Kingdom of Thailand, Chapter X, Part 3

<sup>23</sup> Constitution of the Kingdom of Thailand, Chapter X, Part 4

<sup>24</sup> Constitution of the Kingdom of Thailand, Chapter XI

<sup>25</sup> Council of ASEAN Chief Justices (n.d.). Overview of Thailand Court of Justice. Available at <https://cacj-ajp.org/thailand/judiciary/overview-of-thailand-court-of-justice/> (accessed 4 November 2021)

<sup>26</sup> Court of Justice Thailand (n.d.). The Court of Justice System. Available at <https://www.coj.go.th/th/content/page/index/id/91994> (accessed 4 November 2021)

<sup>27</sup> The Administrative Court of Thailand (2021). Mediation in the Administrative Court of Thailand: Experiences and current situation. Available at <https://www.admncourt.go.th/admncourt/site/?lang=en&page=06articledetail&id=439> (accessed 29 November 2021)

has jurisdiction over military personnel and matters subject to military laws <sup>28</sup>.

The Constitutional Court is vested with the power to conduct reviews and adjudicate on the lawfulness of laws or bills, as well as the duties and powers of

various government entities, including the House of Representatives, the Senate, the National Assembly, and the Council of Ministers. It consists of nine judges - three from the Supreme Court, two from the Supreme Administrative Court, two renowned academics, and two senior government officials <sup>29</sup>.

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<sup>28</sup> Council of ASEAN Chief Justices (n.d.). Overview of Thailand Court of Justice. Available at <https://cacj-ajp.org/thailand/judiciary/overview-of-thailand-court-of-justice/> (accessed 4 November 2021)

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<sup>29</sup> Constitution of the Kingdom of Thailand, s 200

# 1. INTRODUCTION

Thailand was an early pioneer in the legal protection of consumers, not only in ASEAN but also in Asia. It adopted a Consumer Protection Act in 1979, well before the adoption of the original United Nations Guidelines on Consumer Protection (UNGCP) in 1985.

In 2007, Thailand adopted constitutional provisions on consumer protection, spelling out not only the rights of consumers but also the duties of the state in relation to consumer protection.<sup>30</sup> Constitutional provisions on consumer rights have since been a feature of all post-2007 constitutions of Thailand. The current constitution of Thailand adopted in 2017 contains the following provisions related to consumer protection:

**Section 46** The rights of a consumer shall be protected.

Persons shall have the right to unite and form a consumer organization to protect and safeguard the rights of consumers.

The consumer organizations referred to in paragraph two are entitled to unite and form an independent organization to strengthen the protection and safeguarding of the rights of consumers with support from the State. In this regard, the rules and procedures for the formation thereof, the power to represent consumers and financial support from the State shall be those provided by law.

**Section 60** • State operation of the media. Media commission

The State shall maintain the broadcasting frequencies and the right to access a satellite

orbit, which are national assets, in order to utilize them for the benefit of the country and the people. The arrangement for utilization of the broadcasting frequencies referred to in paragraph one, regardless of whether it is for radio broadcasting, television broadcasting and telecommunications or for any other purposes, shall be aimed at providing the greatest benefit of the people, security of the State, public interest, as well as the participation by the people in the utilization of broadcasting frequency, as provided by law.

The State shall establish an independent State organization in charge of supervising and overseeing undertakings in relation to the broadcasting frequencies referred to in paragraph two. In this regard, **such organization shall ensure that measures are put in place to prevent unfair consumer exploitation or imposition of unnecessary burdens on consumers**, to prevent the interference of broadcasting frequencies, as well as to prevent acts which could obstruct the people's freedom to gain knowledge, or prevent them from gaining knowledge of true and accurate data or information, and to prevent any person or group of people from utilising the broadcasting frequencies without considering the rights of the general public. This shall include a requirement imposed upon any person utilising the broadcasting frequencies as provided by law to undertake to dedicate a minimum portion of such broadcasting frequencies to public interests.

**Section 61** The State shall put in place efficient measures or mechanisms to protect and safeguard the rights of consumers in various ways, including, inter alia, the right to obtain knowledge of truthful information, safety, fair conclusion of contracts, or any other matters for the benefit of consumers.<sup>31</sup>

The inclusion of consumer protection as a right of the Thai people, and as a duty of the Thai government, is testimony to the fact that Thailand regards consumer protection and policy as pivotal for its national development.

<sup>30</sup> The 2007 constitution mentions consumers in sections 61, 84 and 303. Section 61 of that constitution provided as follows: "The right of a person to receive truthful information as a consumer shall be protected, and he or she shall enjoy the right to lodge a complaint and demand a remedy for damages, and the right to assemble to protect consumers' rights. An independent body shall be instituted to protect consumers, consisting of consumer representatives whose duty is to offer opinions for use in consideration by the Government agencies enacting and enforcing laws and rules, to offer opinions in laying down provisions, and scrutinize and report acts or omission of acts to protect consumers. The State has to provide government statement of expenditure to such independent body." Legal Opinion and Translation Section, Foreign Law Division under the legal duty of the Office of the Council of State (n.d.). Thailand's Constitution of 2017 (Unofficial translation). Available at [https://www.constituteproject.org/constitution/Thailand\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en) (accessed 1 October 2021)

<sup>31</sup> Constitution of the Kingdom of Thailand

Consumer protection law in Thailand may be subdivided into three categories.

The first category comprises general laws such as the Civil and Commercial Code and the Penal Code. These Codes were not specifically designed to protect the rights of consumers but may be relied upon to prevent infringement of consumer rights. Section 341 of the Penal Code is illustrative in such regard. This section defines the offence of deception and fraud as the obtainment of property by dishonestly deceiving a person through an assertion of a falsehood or the concealment of facts which should be revealed. In theory at least, a false representation concerning the quality or origin of a product could be subject to sanction under this provision.

The second category comprises laws specifically enacted to protect consumer interests. The first of these was the Consumer Protection Act B.E. 2522 (CPA 1979). There have since been several additional pieces of legislation passed to promote consumer rights. These laws govern such areas as unfair contractual terms<sup>32</sup> direct sales and direct marketing,<sup>33</sup> and product liability.<sup>34</sup>

A third category consists of laws governing the provision of particular products and services deemed as complex and therefore requiring special laws. These include, for example, telecommunication services,<sup>35</sup> banking and finance services,<sup>36</sup> and insurance services.<sup>37</sup> The regulatory frameworks of these areas involved the creation of administrative and enforcement bodies that not only set technical and prudential standards, but also regulate market conduct, including consumer protection. A concentration of a wide range of disparate powers within single authorities entails the risk that consumer protection may be compromised in favour of a perceived interest in prudential regulation and national economic growth.

In light of the foregoing, and because the area of consumer protection encompasses the whole spectrum of supply of and demand for goods and services, it is inevitable that consumer protection falls within the ambit and responsibility of multiple Ministries. For example:

- the Prime Minister's Office develops consumer protection policy in general,<sup>38</sup>
- the Ministry of Public Health is responsible for food<sup>39</sup> drugs,<sup>40</sup> cosmetics,<sup>41</sup> and all other products related to health and medical services,<sup>42</sup> and
- the Ministry of Commerce is in charge of competition<sup>43</sup>, price control<sup>44</sup> and the weights and measures of goods.<sup>45</sup>

The focus of this Peer Review is consumer protection law and dispute resolution in Thailand.

The following parts of this report are therefore presented in four sections:<sup>46</sup>

- laws enacted specifically to protect consumers (section 2)
- consumer protection via other selected statutes (section 3)
- consumer dispute resolution (section 4)
- focus areas for reform (section 5)
- conclusions and recommendations (section 6)

Annex 2 to this report provides a description of consumer protection law and policy in other domains identified as important in the United Nations Guidelines for Consumer Protection but which are not central to the scope of this Peer Review.

<sup>32</sup> The Unfair Contract Terms Act B.E. 2540 (1997)

<sup>33</sup> The Direct Sales and Direct Marketing Act B.E. 2545 (2002)

<sup>34</sup> The Unsafe Product Liability Act B.E. 2551 (2008)

<sup>35</sup> The Telecommunications Business Act B.E. 2544 (2001)

<sup>36</sup> The Financial Institutions Businesses Act B.E. 2551 (2008)

<sup>37</sup> Life Insurance Act B.E. 2535 (1992) (Amended by the Life Insurance Act (No. 2) B.E. 2551(2008) and (No. 3) B.E. 2558 (2015) and the Non -Life Insurance Act B.E. 2535 (1992)

<sup>38</sup> The Consumer Protection Act B.E. 2522 (1979), s 8

<sup>39</sup> The Food Act B.E. 2522 (1979), s 5

<sup>40</sup> The Drug Act B.E. 2510 (1967), s 5

<sup>41</sup> The Cosmetic Act B.E. 2558 (2015), s 5

<sup>42</sup> The Medical Products Act B.E. 2551 (2008), s 5

<sup>43</sup> Competition Act B.E. 2560 (2017), s 6

<sup>44</sup> The Price of Goods and Service Act B.E. 2542 (1999), s 6

<sup>45</sup> The Weights and Measures Act B.E. 2542 (1999), s 6

<sup>46</sup> Section 2 and Section 3 of this Peer Review Report draw on materials included in an article by Dr. Aimpaga TECHA-APIKUN, Assistant Professor of Law, Thammasat University, Thailand, entitled 'Chapter 13 Thailand: Part II National Report', Consumer protection in Asia, Edit Geraint Howells, Hans-W. Micklitz, Mateja Durovic and André Jansen by Hart Publishing, 271-297 (forthcoming)

## 2. LAWS AIMED SPECIFICALLY AT PROTECTING CONSUMER INTERESTS

### 2.1 The Consumer Protection Act B.E. 2522 (CPA 1979)

As noted in the introduction, the Consumer Protection Act 1979 (CPA 1979) was the first consumer protection law enacted in Thailand; it even preceded the original UNGCP of 1985. It has since been amended three times: in 1998,<sup>47</sup> 2013<sup>48</sup> and 2019.<sup>49</sup> Each amendment served to further strengthen consumer protection and to keep the Act fit for this purpose. This analysis refers to the CPA 1979 as amended.

#### 2.1.1 Scope

Section 4 of the CPA 1979 declares the rights of consumers:

A consumer has the right to be afforded the following protection:

- (1) the right to information including a correct and adequate description of the quality of goods or services;
- (2) the right to enjoy freedom in the selection of goods or services;
- (3) the right to be afforded safety in the use of goods or services;
- (4) the right to fairness in concluding contracts;
- (5) the right to have injury considered and compensated

These are not absolute overriding declarations of rights in that the same section includes the proviso that:

“... all of these matters shall be governed by the laws on particular matters or by this Act.”

The CPA 1979 provides protection in four areas: advertisements, labels, contracts, and product safety. Section 21 of the CPA 1979, however, limits the application of the CPA: “In cases where any particular law specifically governs certain matters, such matters shall be governed by such specifically applicable

provisions and the provisions of this Chapter shall apply insofar as they are not repetitious therewith or contrary thereto...” Hence, the CPA provisions do not supersede the provisions of the other laws. Therefore, areas such as food<sup>50</sup> and drugs<sup>51</sup> for instance, are not covered by the CPA 1979 and the provisions of those Acts will be applicable if differing from the CPA.

#### 2.1.2 Administration

The CPA 1979 established the Consumer Protection Board (CPB)<sup>52</sup>, as well as four Committees under its purview in charge of enforcing the Act. These committees are: the Advertisements Committee, the Labelling Committee, the Contracts Committee and the Goods and Services Safety Committee.<sup>53</sup>

The Act stipulates that the Prime Minister shall be the chairperson of the CPB.<sup>54</sup> However, in practice, the Prime Minister does not attend its meetings and pursuant to the Act,<sup>55</sup> its members elect from amongst themselves a chair who chairs the meeting. The composition of the Board was amended by the version of the CPA enacted in 2019 (the CPA 2019). As originally worded, the members were senior civil servants of the relevant Ministries and “not more than eight qualified persons appointed by the Council of Ministers”. It has now been clarified that the eight persons are required to be experts in consumer protection from the academic, civil society and business sectors, “with at least two experts per sector”.<sup>56</sup> The Act created the post of Secretary-General of the CPB who is both a member and secretary of the CPB.<sup>57</sup>

The CPB is conferred a broad range of powers and duties to promote the interest of consumers. These include: the powers to consider consumer complaints, to ensure product safety, to regulate the conduct of committees and sub-committees, to scrutinize and expedite the exercise of powers

<sup>50</sup> The Food Act B.E. 2510 (1967)

<sup>51</sup> The Drug Act B.E. 2522 (1979)

<sup>52</sup> The Consumer Protection Act B.E. 2522 (1979), s 10.

<sup>53</sup> The Consumer Protection Act B.E. 2522 (1979), s 14, s 21

<sup>54</sup> The Consumer Protection Act . 2522 (1979), s 9

<sup>55</sup> The Consumer Protection Act . 2522 (1979), s 13

<sup>56</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019), s 9

<sup>57</sup> The Consumer Protection Act . 2522 (1979), s 9

<sup>47</sup> The Consumer Protection Act (No. 2) B.E. 2541 (1998)

<sup>48</sup> The Consumer Protection Act (No. 3), B.E. 2556 (2013)

<sup>49</sup> The Consumer Protection Act (No.4) B.E. 2562 (2019)

and duties by other regulatory agencies responsible for particular aspects of consumer protection, to commence legal proceedings when consumer rights are infringed, to confer recognition on consumer organizations, to litigate on behalf of consumers, to submit recommendations to the council of ministers, and to carry out any other act provided by applicable law as falling under the CPB's competence.<sup>58</sup>

The above-mentioned powers and duties were further enhanced by the 2019 amendments to the CPA 1979. The CPB has now been assigned the responsibility of drafting a consumer protection strategic plan in line with the national strategic plan, government policies, cabinet resolutions regarding consumer protection, and international standards.<sup>59</sup>

It may submit opinions to the Council of Ministers so that laws and regulations concerning consumer protection may be enacted or amended in accordance with the consumer protection strategic plan. It may also submit proposals to other government agencies and non-government organizations, to put in place, review, assess, or adjust measures and guidelines on the performance of official duties or operations in accordance with the consumer protection strategy and consumer protection law.<sup>60</sup>

The CPA 1979 confers on the CPB the power to bring legal action in the courts of law. It may do so where it concludes that the pursuit of such legal action would be "beneficial to consumers at large".<sup>61</sup> The 2019 amendments to the Act enhanced the role of the CPB to take legal action on behalf of consumers. It may now also take action, acting in lieu of a particular consumer whose rights have been violated.<sup>62</sup>

The CPA 1979 also established the Office of the Consumer Protection Board (OCPB) under the supervision of the Secretariat of the Prime Minister.<sup>63</sup> The OCPB is the executive arm of the CPB. The Act provides that in the performance of its duties, the CPB may delegate the OCPB to carry out activities or prepare recommendations for submission to the

Board for further actions.<sup>64</sup> The Secretary-General of the CPB is responsible for performing the official duties of the OCPB. The OCPB's functions include the handling of complaints, product testing, consumer awareness-raising, promotion of sustainable consumption, conduct and promotion of consumer-related studies and research, and any other acts that may be delegated by the Board or the Committees.<sup>65</sup>

The 2019 amendments to the CPA 1979 included a very significant change to the administration of the OCPB; it decentralized the OCPB's power. A local official can now be appointed with the same duties as an OCPB official. A fine paid by offenders breaching the provisions of the CPA to a local authority will constitute revenue of that local authority.<sup>66</sup>

### 2.1.3 Supervisory Role

The CPB and the four Committees play an essential supervisory role in protecting consumers from infringements of their rights as conferred by section 4 of the CPA.<sup>67</sup> This supervisory role extends even to the areas of law falling under the purview of other agencies.

The CPA 1979, as amended in 1998, permitted the CPB or any of the Committees to give written notification to other authorities, requesting them to take action "where it is necessary for the benefits of consumers at large" if it appears that officials with authority under any other law have not taken appropriate action in accordance with the law applicable to their respective areas of competence. Where the officials concerned fail to take appropriate action, the CPB was authorized to refer the matter to the Prime Minister for the issuance of appropriate orders.

The above-described 'instruction-based approach' has been replaced with a more 'collaborative approach' by the 2019 amendments to the CPA 1979. At present, where a dispute arises between Government agencies on which provision of law shall apply, as between the provision of the CPA and the provision of another law, the OCPB is required to submit the matter to the CPB which makes the final decision, which is also final and binding upon the

<sup>58</sup> The Consumer Protection Act . 2522 (1979), s 10 (1) - (10)

<sup>59</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019), s 10

<sup>60</sup> Ibid

<sup>61</sup> Consumer Protection Act B.E. 2522 (1979), s 39

<sup>62</sup> Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019), s 39/1

<sup>63</sup> The Consumer Protection Act B.E. 2522 (1979), s 19 to s 20.

<sup>64</sup> The Consumer Protection Act 1979 section 10 (10) para 2.

<sup>65</sup> The Consumer Protection Act B.E. 2522 (1979), s 19 to s 20.

<sup>66</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019), s 39/1 s 62 and s. 63

<sup>67</sup> Nawatrakulpisut, N (2019). *Consumer protection law* [In Thai]. The textbook and study document project; Faculty of Law, Thammasat University, Vol. 1.

Government agencies. The CPB is even permitted to undertake action to “support or remedy consumers in the initial stage” but in a manner that does not conflict with the other law.<sup>68</sup>

Where the other law does not provide authority to exercise the required powers, the CPB may issue an order permitting the officials to exercise the powers as granted to the officers of the OCPB. Violation of an order issued by the authorized official would be deemed a violation of an order from the specific Committee and punishable as provided under the CPA 1979.

As a means of ensuring collaboration, the amended provision provides for “a meeting among consumer protection organizations” at the initiative of the CPB, the committees or the Secretary General of the CPB, or even at the initiative of the other boards governed by other laws related to consumer protection.<sup>69</sup>

#### 2.1.4 Sanctions and remedies

Violation of the provisions of the CPA 1979 or the rules, notifications or orders issued by the Consumer Protection Board and the Committees, under powers conferred upon them by the CPA 1979, may lead to criminal and administrative sanctions.<sup>70</sup> The CPA 1979 specifies both imprisonment and fines as possible punishments. However, in practice, a businessperson who is found to have breached the rules, notifications or orders is generally fined rather than imprisoned.

The CPA 1979 mainly provides for administrative and criminal penalties. Hence, a consumer whose rights have been breached has to seek redress and compensation *via* mediation conducted by the OCPB. If the consumer is not satisfied with the mediation, he or she may request the CPB (Section 39) or the Secretary General of the CPB (Section 39/1) to file a lawsuit against businessperson.<sup>71</sup> The consumer is also entitled to independently submit the matter to a court of law, benefiting from the facilitated procedure provided under the Consumer Case Procedure Act B.E. 2551 (2008).<sup>72</sup>

As for criminal law aspects, the CPA 1979 imposes criminal liability on directors, managers or a person responsible for the operation of a company or business that has breached the law. Such personal criminal liability is in addition to the penalty imposed on the company or business itself. As originally provided under the CPA 1979, there would have been a presumption of criminal liability:

As originally worded, section 59 of the CPA 1979 provided for a presumption of criminal liability:

“Section 59. In cases where the offender subject to the penalty under this Act is a legal entity, then a director or a manager or a person responsible for the operation of such legal entity shall also be subject to such penalty as provided by law for such offence unless the person can prove that he or she had no part in the commission of the offence by such legal entity”.

In a landmark decision issued in 2012, the Constitutional Court held that the presumption of criminal liability is contrary to the Constitution.<sup>73</sup> Section 59 of CPA 1879 was amended by the Criminal Liability of Representatives of Legal Entities Amendment Act (B.E. 2560) to read as follows:

“Where the offender is a legal entity, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has the duty to issue an order or to act but failed to do so thereby causing the legal entity to commit the offence, the person shall be subject to the punishment provided for such offence as well.”

Hence, the Act has revived the principle of a presumption of innocence, where the burden of proof imposed on the prosecution now lies with a claimant, who must prove that the offence committed by a business or company resulted from the instruction, act, or omission of the ‘person responsible’.<sup>74</sup>

<sup>68</sup> Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019), s 21

<sup>69</sup> Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019), s 21/2

<sup>70</sup> The Consumer Protection Act B.E. 2522 (1979), s 45 to 62.

<sup>71</sup> As provided in the Consumer Protection Act B.E. 2522 (1979), s 30 and s 39/1.

<sup>72</sup> Supphanit, S (2014). *Consumer Protection Law* [In Thai]. Vol. IX, Bangkok: Chulalongkorn University Press.

<sup>73</sup> Constitutional Court case no. 12/2555 dated 28 March 2012

<sup>74</sup> In the context of this report, the decision of the Constitutional Court also relates to section 54 of The Direct Sales and Direct Marketing Act, B.E. 2545, section 42 of The Price for Goods and Services Act B.E. 2542 and section 46 of The Electronic Transactions Act B.E. 2544(2001).

### 2.1.5 Advertising

The CPA 1979 provides a broad definition of the term ‘advertisements’<sup>75</sup> and requires that advertisements governed by the Act do not contain any statement which is considered unfair to consumers or which may harm society.<sup>76</sup> Furthermore, advertisements may not be carried out by a method which may be harmful to health or cause physical or mental harm or nuisance to consumers.<sup>77</sup>

The advertising rules of the CPA 1979 apply to all goods and services that are not specifically regulated by other laws, such as those governing drugs, food, cosmetics, or insurance services.

Both the Office of the Prime Minister and the Advertisement Committee may issue regulations under the CPA 1979. The Office of the Prime Minister has issued Ministerial Regulations concerning the wording used in the advertising of goods and services that are unfair to consumers or that may have negative effects on society. These regulations prohibit citing the King or members of the Royal Family in advertisements,<sup>78</sup> control advertisements that offer bonuses, gifts or prizes as a sales tactic,<sup>79</sup> and the sale of condominium units<sup>80</sup>. The Advertisement Committee has issued Notifications on marketing by price discounts<sup>81</sup>, the requirement that the factual content of advertisements be provable,<sup>82</sup> and prohibition on the use of statements that are hard to prove.<sup>83</sup>

<sup>75</sup> The Consumer Protection Act B.E. 2522 (1979), s 3.

<sup>76</sup> The Consumer Protection Act B.E. 2522, s 22

<sup>77</sup> The Consumer Protection Act B.E. 2522 (1979), s 23

<sup>78</sup> Ministerial Regulations prescribing text for advertising products or services that are Unfair to consumers or that may cause negative effects on society as a whole B.E. 2564 (2021), s 2-3

<sup>79</sup> Ministerial Regulations prescribing text for advertising products or services that are Unfair to consumers or that may cause negative effects on society as a whole B.E. 2564 (2021), s 5-7

<sup>80</sup> Ministerial Regulations prescribing text for advertising products or services that are unfair to consumers or that may cause negative effects on society as a whole B.E. 2564 (2021), s 8-11

<sup>81</sup> Notification of the Office of the Consumer Protection Board on the Guideline on Sale Marketing by Price Discount B.E. 2555 (2012)

<sup>82</sup> Notification of the Advertisement Committee on the Guideline for Proving the Fact of Advertisements B.E. 2535 (1992)

<sup>83</sup> Notification of the Advertisement Committee on the Advertisement using the Statement which is Hard to Prove B.E. 2526 (1983)

The CPA 1979 provides for a process of pre-advertisement consultation by a businessperson to ascertain whether the intended advertisement meets the required standards. The businessperson may apply to the Advertisement Committee for a consultation to consider whether the proposed advertisement complies with the applicable laws and rules.<sup>84</sup> This is the approach that the CPA 1979 adopts in relation to all other areas that it seeks to regulate. (A similar approach is also adopted in the regulation of food and drugs.<sup>85</sup>)

### 2.1.6 Labelling

The CPA 1979 maintains, also for labelling, the distinction between controlled goods and those that are not; the former are subject to more stringent labelling rules<sup>86</sup>. However, for purposes of labelling, it deems all goods imported into Thailand, and goods produced by factories “under the law on factories” as controlled goods unless specifically exempt pursuant to a Gazette notification.<sup>87</sup> This means that all local agricultural produce and goods produced in establishments not deemed to be factories under the Factory Act<sup>88</sup> are not required to observe the stringent labelling rules for controlled goods.

All goods that fall within the scope of the CPA 1979 are required to bear a label in accordance with the CPA’s general provisions and hence such labels must contain all relevant information. All information shown on labels must be readily readable and in the Thai language.<sup>89</sup> Additionally, the Labelling Committee has the authority to impose particular rules governing the labelling of specific products.

The Labelling Committee also has the authority to declare by Gazette notification any “goods which may be harmful to health or cause physical or mental harm due to their use or nature” or “goods regularly used by general members of the public” as controlled goods. The Act empowers the Labelling Committee to specify the information required to be stated on their labels.<sup>90</sup> To date, more than 40 notifications have been

<sup>84</sup> The Consumer Protection Act B.E. 2522 (1979), s 29

<sup>85</sup> The Food Act B.E. 2522 (1979), s 41 and Drug Act B.E. 2510 (1967), s 88 bis.

<sup>86</sup> The Consumer Protection Act B.E. 2552 (1979), s 31

<sup>87</sup> The Consumer Protection Act B.E. 2552 (1979), s 30

<sup>88</sup> The Factory Act, B.E. 2535 (1992)

<sup>89</sup> Gazette Notification: Announcements No.1-No.2 of the Committee of Labels

<sup>90</sup> The Consumer Protection Act B.E. 2552 (1979), s 30 para 3



made related to, *inter alia*, electric water heaters,<sup>91</sup> gas water heaters,<sup>92</sup> and children's bathtubs.<sup>93</sup> This requires businesses to declare essential information and enable informed consumer choice.

The law requires, as a minimum, information on the name or trademark of the manufacturer or the importer, the place of manufacture or of the operating importer, price, quantity, usage, recommendations, warnings, and expiry date.<sup>94</sup> As with advertisements, business operators may consult with the Labelling Committee as to whether the labels they intend to use comply with the applicable rules<sup>95</sup>. The Labelling Committee is authorized to order business operators to cease the use of labels, or to modify labels, that it considers not to be in compliance with the rules.<sup>96</sup>

It has been suggested that one weakness of the CPA 1979 is that it fails to address the problem of imitation or counterfeit goods and associated copycat labelling. Section 31 of the CPA 1979 reads as follows:

A label on label-controlled goods must be as follows:

(1) it must contain a statement representing the truth and must not contain any misleading statement causing fundamental misunderstanding with regard to the goods;

(2) it must indicate the following information: (a) the name or trademark of the producer or the importer, as the case may be; (b) the place of production or the place of importation, as the case may be; (c) the statement describing what the goods are and, in the case of imported goods, the name of the country of production.

It would appear that the above-cited section is adequate basis for the OCPB to address the threat of imitation or counterfeit goods and copycat labelling if they entail false information or descriptions on labelling.<sup>97</sup>

<sup>91</sup> Announcement of the Committee of Label no.10 B.E. 2545

<sup>92</sup> Announcement of the Committee of Label no.42 B.E. 2562

<sup>93</sup> Announcement of the Committee of Label no. 37 B.E. 2556

<sup>94</sup> The Consumer Protection Act B.E. 2552 (1979), s 31

<sup>95</sup> The Consumer Protection Act B.E. 2552 (1979), s 34

<sup>96</sup> The Consumer Protection Act B.E. 2552 (1979), s 33

<sup>97</sup> For a comprehensive discussion of the problem of lookalike product packaging see Ananvorapunya, N (2017). Legal problems related to protecting consumers from unfair trading practices: Lookalike product packaging (Copycat) (Master of Laws in Business Laws Thesis). Thammasat University. Available at [http://ethesisarchive.library.tu.ac.th/thesis/2017/TU\\_2017\\_5801040154\\_9102\\_8729.pdf](http://ethesisarchive.library.tu.ac.th/thesis/2017/TU_2017_5801040154_9102_8729.pdf) (accessed 10 January 2022)

### 2.1.7 Contracts

The CPA 1979 confers upon the Contracts Committee the power to require any contract for the sale of goods or the supply of services which "is required by law to be made in writing or is customarily made in writing" to be considered "contract-controlled business" contract. It is only such contracts that have been decreed as contract-controlled that become subject to regulation.<sup>98</sup> It does not matter whether the contract is used in e-commerce or otherwise; the same rules are applicable.<sup>99</sup>

The Contracts Committee can impose terms, conditions, and forms of contracts for contract-controlled business. There is no limitation on the type of terms that can be specified for such controlled contracts; they may therefore address both substantive and procedural unfairness. If such a contract contains a forbidden term, such term shall be deemed deleted and inexistent. The Committee may also specify mandatory terms or conditions.<sup>100</sup> A contract executed without the required terms or conditions or which does not otherwise meet the prescribed requirements shall be deemed to have the legally imposed terms and conditions as part of the contract.<sup>101</sup>

To date, the Contracts Committee has issued twenty-three notifications for the regulation of business-to-consumer contracts, including agreements for apartment leases,<sup>102</sup> the purchase of used cars,<sup>103</sup> hire-purchase of vehicles and motorcycles,<sup>104</sup> construction,<sup>105</sup> fitness club membership,<sup>106</sup> and consumer credit.<sup>107</sup>

<sup>98</sup> The Consumer Protection Act B.E. 2522 (1979), s 45 to s 62

<sup>99</sup> The validity of online contracts is governed by the Electronic Transactions Act B.E. 2544 (2001) as amended by B.E. 2562 (2019). The validity of written contracts is governed by the Civil and Commercial Code.

<sup>100</sup> The Consumer Protection Act B.E. 2522 (1979), s 35 quarter

<sup>101</sup> The Consumer Protection Act B.E. 2522 (1979), s 35 ter.

<sup>102</sup> Notification of the Contracts Committee concerning the Apartment Room for Rent B.E. 2562 (2019)

<sup>103</sup> Notification of the Contracts Committee concerning the Sale of Used Car B.E. 2562(2019)

<sup>104</sup> Notification of the Contracts Committee concerning the Hire Purchase on a Vehicle or a Motorcycle B.E. 2561 (2018)

<sup>105</sup> Notification of the Contracts Committee concerning the Residential Construction Agreement B.E. 2559 (2016)

<sup>106</sup> Notification of the Contracts Committee concerning the Fitness Membership B.E. 2554 (2011)

<sup>107</sup> Notification of the Contracts Committee concerning Consumer Credit B.E. 2544 (2001)

One weakness of the provisions regarding contracts is that the OCPB can only control the contracts of businesses that are designated as contract-controlled businesses. It would be appropriate to empower the Contracts Committee to regulate all consumer contracts by imposing contractual terms and prohibitions of general application.

Every contract of controlled businesses is regulated by the Contracts Committee whether transaction is a standard written contract or online contract. Nonetheless, validity of the online contract is governed by another specific law, the Electronic Transactions Act B.E. 2544 (2001) amended B.E. 2562 (2019). On the other hand, the validity of written contracts is governed by the Civil and Commercial Code.

### 2.1.8 Product Safety

The 2019 amendments to the CPA 1979 introduced a new Part 1 A with a total of 17 sections to comprehensively address the safety of consumer goods and services.<sup>108</sup> As was already the case for the regulation of contracts, advertising and labels, this part also established a special committee on the safety of goods and services known as the Safety Committee and conferred upon it broad powers to take the relevant measures to deal with unsafe products that are offered to consumers in Thailand.<sup>109</sup> It provides new definitions, compulsory procedures for business operators (regardless of whether they are importers, manufacturers, sellers, resellers, or advertisers), preventive measures, a remedial action plan and legal liabilities.<sup>110</sup>

The new definition section describes the term 'dangerous', where used in relation to goods and services. 'Dangerous Goods' is defined as those goods which "cause or may cause danger to life, body, health, mental state or property". The term 'Dangerous Service' also has the same definition.<sup>111</sup> The specific inclusion in the definition of 'mental state' is a notable step forward.

The Act introduced a general requirement on product safety of goods (but not of services) and a set of six

criteria that will be considered when determining whether the general standard has been met:

The goods which the entrepreneur intends to sell, presents for sale, for which he/she enters into an agreement for sale, presents by advertisement or any other methods or introduces to the market are required to be safe goods.

The practices implemented concerning the safety of goods shall be based upon the following:

1. The characteristics and type of goods, as well as their components, designs, packaging and packages, instructions concerning their assembly, installations, maintenance, and expectations that the general consumers should have concerning the goods.

2. How the goods are presented and labelled, and their warnings and instructions concerning usage, disposal, and destruction as well as indications and any information concerning the goods, including the advertisement of the goods.

3. The effects on the safety of the goods if the goods are being used in conjunction with other goods.

4. The consumers who are especially at risk from the consumption or use of the goods, such as children, pregnant women, the elderly, patients, and the disabled.

5. The safety standard generally accepted for that type of goods.

6. Best practice of the business sector.<sup>112</sup>

The inclusion of criteria (4) is the first time in the CPA that recognition is given to the special risks faced by disadvantaged and vulnerable consumers: "The consumers who are especially at risk from the consumption or use of goods, **such as** children, pregnant women, the elderly, patients and the disabled." The words **such as** make it clear that the list is indicative and hence capable of including other vulnerable consumers "who are especially at risk from the consumption or use of goods".

There is no equivalent provision for determining a safe service. The OCPB may wish to address this lacuna in the CPA 1979.

(The CPA 1979 does not use the word 'unsafe'; it uses the word 'dangerous'. The following analysis assumes

<sup>108</sup> Consumer Protection Act (No. 4) B.E. 2562 (2019) introduced, *inter alia*, Part 1/1 consisting of sections 29/1 to 29/17.

<sup>109</sup> The Consumer Protection Act B.E. 2522 (1979), s 36.

<sup>110</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019), s29/1-29/17

<sup>111</sup> Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019), s29/1

<sup>112</sup> Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019), s29/2

that the word dangerous is used to describe those that are not safe as defined in section 29/2 cited above.)

The CPA imposes a general prohibition on dangerous goods: An entrepreneur must not produce, order, or import for sale into the Kingdom goods that are dangerous, and must not recommend or advertise such goods.<sup>113</sup> Business operators must properly handle specified “label controlled” products and certain products and services (to be specified by the Safety Committee) using preventive measures. For example, business operators may be required to conduct product safety surveillance during the warranty period, maintain statistical records of said surveillance, communicate with consumers, investigate complaints from consumers, conduct post-sale monitoring of products and services.<sup>114</sup>

If a business operator can foresee that a product or service could cause severe danger to a person or property, that business operator is required to notify other operators and the OCPB without delay about the danger and rectify such dangerous condition.<sup>115</sup>

The Safety Committee may issue an order requiring a business operator who offers a product, be it goods or services, to conduct a test or provide proof that the product is not harmful, when there is reasonable cause to suspect that such goods or service may be dangerous to consumers. If the business operator fails to do so without justifiable reason, the Committee for Safety may have the test conducted and charge the related costs to the business operator.<sup>116</sup> Where necessary and in emergency situations, the Safety Committee may issue an order prohibiting the sale of such products *pro tempore* until the result of the test or proof of safety becomes available.<sup>117</sup>

If proof is obtained that the product is dangerous, the Safety Committee will consider whether the matter may be addressed through labelling in accordance with the provisions on controlled goods. If it cannot be so addressed, the Committee may rely on its range of options to take one or more of the following actions:

prohibit the sale of the product, require the recall of the goods not yet distributed to consumers and/or already distributed to consumers, require business operators to rectify, modify or improve the goods to ensure they are no longer harmful to consumers or arrange for replacement of the goods or reimburse consumers for the price paid.<sup>118</sup>

If the Committee issues an order prohibiting the sale of dangerous items, the business operator is required to recall all goods from customers and to use all available means to eliminate any risks associated with the recalled or returned goods. If the Committee instructs the business operator to destroy such products, the business operator must notify the Committee immediately after the business operator completes such destruction of the goods. Additionally, the business operator is responsible for compensating consumers in the event of a product recall. Within three days after the date on which the ban on sales is ordered, the business operator must notify the public of the recall.<sup>119</sup>

The business operator must submit to the Safety Committee, within seven days after the ban on sales of a dangerous product, a plan for the recall of the goods, or a plan for correcting the defects, or a plan for compensating consumers, as the case may be. The Committee is authorized to review the proposals and to require amendments. The business operator must announce the approved plan to the public within three days of its approval.<sup>120</sup>

The Committee may lift the ban when all reasonable measures to ensure that the goods are no longer harmful have been taken.<sup>121</sup> The Committee has similar powers as regards a service it deems to be dangerous to the consumer.<sup>122</sup>

The Thailand Consumer Alert System within the OCPB undertakes the OCPB’s functions related to product safety. The centre gathers all claims and complaints from consumers concerning unsafe products, conducts random inspections, cooperates with other

<sup>113</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019) s.29/3

<sup>114</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019) s.29/4

<sup>115</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019) s.29/6 and s.29/7

<sup>116</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019) s.29/6 and s.29/8

<sup>117</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019) s.29/9 para 2

<sup>118</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019) s.29/9

<sup>119</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019) s.29/10

<sup>120</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019) s.29/11

<sup>121</sup> The Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019) s.29/12

<sup>122</sup> Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019) s.29/13

bodies of state and academic institutes to conduct research and to carry out studies, and even conducts product testing.<sup>123</sup>

The provisions of the CPA 1979 on general product safety are supplemented by provisions of other laws. Food, drugs, medical devices, cosmetics, industrial products, and agriculture products are examples of products governed by their own specific laws and regulatory body which issues and enforces standards and ensures compliance with the relevant international standards, such as CODEX and ISO.<sup>124</sup>

Industrial goods are regulated under the Industrial Products Standards Act B. E. 2511 (1968) which establishes the Industrial Product Standard Council and the Industrial Product Standard Institute. There are presently more than three thousand industrial products that are regulated by this law, including electronic products, electrical products, toys, vehicles, food, and furniture.<sup>125</sup> A standard mark (TIS mark) will be displayed on an industrial product that conforms to the standards established by the Ministry of Industry. To receive such a mark, the producer or the supplier of the product must present its product for inspection by a competent officer, and if successful, the Industrial Product Standard Council will issue a licence to the relevant producer or supplier.<sup>126</sup> A criminal penalty will be imposed upon those who distribute unlicensed products.<sup>127</sup>

Agricultural commodities are regulated by the Agricultural Product Standard Act B.E. 2551 (2008) which grants powers to the Agricultural Product Standards Committee to submit recommendations to the Ministry of Agriculture and Cooperatives for the issuance of Ministerial Regulations or Notifications concerning agricultural product standards.<sup>128</sup> The

safety of food and drugs is regulated by the Food Act B.E. 2522 (1979) and the Drug Act B.E 2510 (1967), respectively.

The OCPB product safety powers are essentially post-marketing in nature. It has no power to set pre-marketing controls by specifying composition, design, or performance standards, probably due to the fact that standard setting is assigned to the Industrial Product Standard Council. As noted above, the Council adopts a product-by-product approach.

The CPA 1979 contains a provision that states that a product must be safe if the business operator plans to sell, offer to sell, enter into a sale agreement, present the product through advertising or other means, or introduce it onto the market. It also stipulates that such businesses shall not manufacture, order, or import dangerous items into the Kingdom for the purpose of selling them, and are prohibited from recommending or advertising such items.<sup>129</sup>

### 2.2 The Unsafe Product Liability Act B.E. 2551 (2008)

The Unsafe Product Liability Act B.E. 2551 (2008) provides an additional civil remedy to consumers who incur harm from defective products by imposing strict liability on business operators involved in the manufacture or sale of the products. This civil remedy is in addition to tort or contract claims.<sup>130</sup>

The Act provides that all business owners shall be jointly liable for damages occurring to the damaged party from an unsafe product sold to the consumer.<sup>131</sup> The term business owner is defined broadly. It includes a producer, a person authorizing the production and an importer. A seller also becomes liable if the seller cannot identify the producer or person authorizing the production, or the importer. A party using a name, trade name, mark, message, or other means which may be perceived by the consumer as indicating the producer's name will be liable if unable to identify the producer or the importer.<sup>132</sup>

<sup>123</sup> Please also see the website of the Unsafe Product Verification and Alert Centre: Thailand Consumer Alert System (n.d.). Alert New. Available at <https://thaicas.ocpb.go.th/Home/Index/EN> (accessed 30 December 2021)

<sup>124</sup> Thanitcul, S (2016). Thailand. In: Nottage, L and Thanitcul, S, eds. *ASEAN Product Liability and Consumer Product Safety Law*. (p. 242). Winyuchon Publication House: Bangkok.

<sup>125</sup> Please see the list of Industrial Product Standards on the website of the Thai Industrial Standards Institute (TISI) (2015). TISI work programme. Available at <https://www.tisi.go.th/list-tisi> (accessed 18 September 2020)

<sup>126</sup> The Industrial Products Standards Act B.E. 2511 (1968), s 16.

<sup>127</sup> The Industrial Products Standards Act B.E. 2511 (1968), s 54 and s 55.

<sup>128</sup> The Agricultural Product Standards Act B.E. 2551 (1968), s 15.

<sup>129</sup> The Consumer Protection Act B.E. 2522 (1979) s 29 (1) and (2)

<sup>130</sup> Thanitcul, S. (2016). Thailand. In L. Nottage & S. Thanitcul (Eds.), *ASEAN product liability and consumer product safety law* (pp. 250-251). Bangkok: Winyuchon Publication House: Bangkok.

<sup>131</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 5.

<sup>132</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 4

The broad definition of “ product” covers all types of goods. Any physical item or thing, including electricity, could be a ‘product’. There are three exceptions to this broad definition: agricultural commodities, drugs and medical devices produced for individual use by a medical professional, and such other substances as may be excluded by ministerial regulation.<sup>133</sup>

A product could be defective due to design, production, or inadequate information (failure to adequately warn of the danger or deficient instructions for safe use).<sup>134</sup>

For a claim to be successful, the victim must prove that damage was caused by the business owner’s product, and that the use or storage of the product was carried out in a customary manner. There is no requirement to prove that the damage was caused by an intentional or negligent act by the business owners.<sup>135</sup> The Act shifts the burden of proof to the defendant. To be held not liable, the defendant has to prove:

- (1) that the product is not an unsafe product<sup>136</sup>; or
- (2) that the injured victim already knew that it was an unsafe product<sup>137</sup>; or
- (3) that the harm or loss was caused by the victim, such as incorrect use of the product or failure to follow possible warnings or ignoring information given by the business owner concerning the product.<sup>138</sup>

Moreover, a party that produces products on commission is not liable if it is able to prove that the danger was unexpected and was caused by the design or instructions given by the party authorizing the production.<sup>139</sup> A producer of a component is not liable if it can be proved that the hazardousness of the product was caused by the design, instruction for use and storage, the warning, or the product information provided by the producer of the product.<sup>140</sup>

The provisions of the law cannot be restricted or excluded by an exemption clause in the contract

entered into between the business and the consumer.<sup>141</sup> Defences such as the ‘notable development risk’ and ‘state of the art’ are not recognized by Thai law.

The Unsafe Product Liability Act B.E. 2551 (2008) introduces new types of damages not recognized by the Civil and Commercial Code. An injured person can claim damages for emotional distress.<sup>142</sup> A claim of this type may be brought by certain relatives or an heir of a deceased injured person.<sup>143</sup> The court can also award punitive damages equal to up to twice the actual damages suffered if the business owner knew that the product was unsafe but failed to take proper action to remedy the defect or failed to recognize the defect due to gross negligence.<sup>144</sup>

The limitation period for an action under the Act is three years from the date that the injured person learns of the unsafe nature of the product and knows the identity of the business operator liable for the injury, loss or damage. In any event, the injured person loses the right to claim damages ten years after the date of sale of the product.<sup>145</sup> However, if the loss of life, bodily function, health, or hygiene is the result of an accumulation of chemicals in the body, and the symptom arises after the limitation period, the injured person would still be entitled to seek damages if the claim is made within three years from the date the injured person becomes aware of the damage and the identity of the business owner responsible for it. Again, the statute of limitation of ten years applies from the date on which the person becomes aware of the damages and the identity of the entrepreneur responsible.<sup>146</sup>

The Act specifically empowers the CPB and consumer associations, or foundations certified under the CPA 1979 to commence legal proceedings for compensation on behalf of the consumer who has incurred damages.<sup>147</sup> The Act also specifies that the rights under the Act do not compromise any other rights that the injured person may have under any other law; proceedings under this Act do not impair rights to claim further damages under other Acts.<sup>148</sup>

<sup>133</sup> *ibid.*

<sup>134</sup> *ibid.*

<sup>135</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 8 para 1

<sup>136</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 7

<sup>137</sup> *ibid.*

<sup>138</sup> *ibid.*

<sup>139</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 8 para 1

<sup>140</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 8 para 2

<sup>141</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 9

<sup>142</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 11(1)

<sup>143</sup> *ibid.*

<sup>144</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 11(2)

<sup>145</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 12

<sup>146</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 12 para 2

<sup>147</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 10

<sup>148</sup> The Unsafe Product Liability Act B.E. 2551(2008), s 14

The matter of burden of proof in product liability cases under the Act was considered by the Supreme Court in a 2015 case brought by the Consumer Protection Board on behalf of a consumer who had purchased a bag of jasmine rice contaminated by fungus. The Supreme Court ruled that the defendant had proven that the manufacturing process met acceptable standards as defined by several competent authorities. The defendant pleaded that if the harm was caused by a manufacturing defect, there would have been more bags of defective jasmine rice. The court held that given the facts of the case, the onus of proving that the manufacturing process was not defective could not be imposed on the defendant; the plaintiff would have to establish that it was defective.<sup>149</sup> This is a departure from the general provisions of the Act, and it is hoped that future product liability cases will clarify how the rules on burden of proof under the Unsafe Product Liability Act B.E. 2551 (2008) are to be resolved.

### 2.3 The Direct Sales and Direct Marketing Act B.E. 2545 (2002)<sup>150</sup>

As the name suggests, this Act is intended to regulate both direct sales and direct marketing transactions. The Prime Minister is in charge of and regulates the implementation of the Act, appoints competent officials, and issues the Ministerial Regulations for the implementation of the Act. It is enforced by the Direct Sales and Direct Marketing Board established by the Act.<sup>151</sup> The Committee is granted broad powers including the power to review complaints from consumers who suffer damages.

The Act did not establish a new executive arm for the Board. Instead, the Act provides that the Board may authorize the OCPB to execute an act or prepare recommendations for the Board to consider.<sup>152</sup> The Board however is permitted to appoint subcommittees to consider issues or to execute any act on its behalf.<sup>153</sup>

The Direct Sales and Direct Marketing Board consists of a mix of *ex officio* members of specified

government agencies<sup>154</sup>, two industry representatives and two consumer association representatives, and four persons with expertise in the direct sales and direct marketing industries. Though all appointments to the Board are made by the Council of Ministers, those appointed as representatives of industry and consumer associations are chosen from amongst those appointed by their respective organizations.<sup>155</sup> The Chair, who is also appointed by the Council of Ministers, must be a person with knowledge of and expertise in the direct sale and direct marketing business.<sup>156</sup> The Act specifies that the Chair shall not hold any position or be a partner or a shareholder holding over ten percent of a partnership or company that conducts direct sale business or direct marketing business during the year before he or she assumes the office or during his term in office.<sup>157</sup>

Both direct sales and direct marketing operators are required to register<sup>158</sup> before conducting business, and when they engage in both activities, they are required to register separately for both types of business operations. The Secretary-General of the Consumer Protection Board acts as Registrar<sup>159</sup>. New direct sales and direct marketing applicants are required to provide a security deposit to the OCPB. Existing business operators will be subject to rates based on their gross revenue.<sup>160</sup> The Registrar is authorized to compensate a consumer whose rights have been violated by a business operator, using the security deposit provided by that business operator.<sup>161</sup>

A large part of the Act deals with which entities are entitled to carry out direct sales or direct marketing businesses and how such businesses may be conducted.

<sup>149</sup> Thai Supreme Court Decision no. 4829/2558

<sup>150</sup> This Act has been recently amended in 2017 by the Direct Sales and Direct Marketing Act (No. 3), B.E. 2560 (2017)

<sup>151</sup> The Direct Sale and Direct Marketing Act B.E. 2545 (2002), s 8

<sup>152</sup> The Direct Sale and Direct Marketing Act B.E. 2545 (2002), s 13

<sup>153</sup> The Direct Sale and Direct Marketing Act B.E. 2545 (2002), s 14

<sup>154</sup> The *ex officio* members are the Director-General of the Department of Internal Trade, the Director-General of the Department of Industrial Promotion, the Commissioner-General of the Royal Thai Police and the Secretary-General of the Food and Drug Administration. The Direct Sale and Direct Marketing Act B.E. 2545 (2002), s 8 (2)

<sup>155</sup> The Direct Sale and Direct Marketing Act B.E. 2545 (2002), s 8 (3) and (4)

<sup>156</sup> The Direct Sale and Direct Marketing Act B.E. 2545 (2002), s 8(1)

<sup>157</sup> The Direct Sale and Direct Marketing Act B.E. 2545 (2002), s 9

<sup>158</sup> The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s 38

<sup>159</sup> *ibid.*

<sup>160</sup> Ministerial regulation concerning the guarantee of business operator for applying for the direct sale and direct marketing licence B.E. 2561

<sup>161</sup> Direct Sale and Direct Marketing Act B.E. 2545 (2002), s 41/5 - 41/7

The focus of the direct sales regulation is primarily on preventing pyramid sales operations and offering protection against pressure sales, especially of high-priced items. The law addresses the pyramid sales menace by prohibiting the offer of benefits for solicitation calculated on the basis of the additional number of persons joining the network.<sup>162</sup> The marketing plan of the direct sales operator (but not that of the direct marketing operator) also needs to be submitted to and approved by the Registrar.<sup>163</sup>

All sales documents are required to be drafted in the Thai language and must contain the seller's and buyer's names, the purchase date, the date of delivery of the goods or services and a description of the consumer's right to terminate the contract, printed more prominently than the other text. A copy of the sales document must be provided to the consumer in order for the consumer to be bound by the terms contained in the same.<sup>164</sup>

A direct sales agreement is legally binding seven days after the goods or services are delivered. The consumer may terminate the contract and return the product before the expiration of the seven-day cooling-off period and is entitled to receive a full refund within 15 days of the seller's receipt of the termination notification.<sup>165</sup> The consumer, however, is financially responsible for any damage caused. The Act provides that goods and services excluded from the seven-day cooling-off period and the procedures for returning goods must be specified in regulations of the Act but such regulations have not yet been issued despite the fact that the Act was enacted almost two decades ago.<sup>166</sup>

The Act also seeks to protect consumer privacy by prohibiting independent sellers or direct sales agents from offering their goods at the consumers' residences, places of work, or other places that are not the usual places where retail sales are concluded, unless the consumer has granted prior permission in such regard.<sup>167</sup>

<sup>162</sup> The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s 19

<sup>163</sup> The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s 21

<sup>164</sup> The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s 30-31

<sup>165</sup> The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s 36

<sup>166</sup> The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s 33

<sup>167</sup> The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s 26

Penalties for violations of the Act or its rules vary depending on the severity of the offence. The maximum imposable sentence is imprisonment not exceeding five years, and fines not exceeding THB 500,000. A repeat offender may be punished by twice the punishment prescribed for the relevant offence.<sup>168</sup> The penalties may be applied not only to the enterprise but also to the managing director, manager, or person in charge of operations, but liability must be proven by the prosecution.<sup>169</sup>

### 2.4 The Consumer Case Procedure Act B.E. 2551 (2008)

Unlike many other countries, Thailand has not established special consumer claims courts or small claims courts or even small claims procedures. It chose to enact The Consumer Case Procedure Act B.E. 2551 (2009) to specify the manner in which all consumer cases are to be handled by the courts.

The Consumer Case Procedure Act B.E. 2551 (2009) is primarily a procedural law designed to facilitate civil actions by consumer claimants. The Act simplified the exercise of consumer claims by changing certain rules of the Civil Procedure Code. The Act applies to:

- a case between a consumer and a business owner involving a dispute related to a legal right or obligation concerning the consumption of goods or services;
- a case under the law relating to liability for damages deriving from unsafe goods; and
- such other civil cases as may be provided under any law.<sup>170</sup>

The Act empowers the President of the Supreme Court to regulate the implementation of the Act and to impose separate Rules for proceedings in consumer cases to ensure that they are conducted conveniently, swiftly, and fairly, without of course impeding the rights of the defendant.<sup>171</sup> This provision may be a fertile source for facilitating consumer redress.

<sup>168</sup> The Direct Sales and Direct Marketing Act B.E. 2545 (2002), Part Sanctions s 45-55

<sup>169</sup> As established by the Criminal Liability of Representatives of Legal Entities Amendment Act (B.E. 2560) (2017)

<sup>170</sup> The Consumer Case Procedure Act B.E. 2551(2008), s 3

<sup>171</sup> The Consumer Case Procedure Act B.E. 2551(2008) s 6 & The Rule of the Supreme Court of Justice concerning the proceeding and the duties of the Case official in consumer case B.E. 2551

In 2020, specifically in response to the COVID 19 pandemic, the President of the Supreme Court published Regulation on the Electronic Procedures B.E. 2563 to facilitate court proceedings and avoid delays during the lockdown.<sup>172</sup> This new rule is an extension of the Electronic Filing System that was introduced in 2017<sup>173</sup>; it now permits the Thai courts to also conduct proceedings online. The judiciary has recognized the critical role of Information and Communication Technologies (ICT) in expanding access to justice for all citizens, including consumers.

In January 2022, the President of the Supreme Court announced the establishment of a new Civil Court division exclusively dedicated to handling cases involving e-commerce. Cases must be filed through a free electronic filing system hosted on the Civil Court's website <https://efiling3.coj.go.th/citizen/> and the entire litigation process is conducted online. This division, however, will not consider cross-border cases.<sup>174</sup>

To facilitate and promote the work of the Civil Court's Online Division, the Office of the Judiciary has signed a cooperation agreement with the Consumer Protection Board, the Electronic Transactions Development Agency, the Food and Drug Administration, the Royal Thai Police's Legal Enforcement Department, and the Thailand Consumers Council for the exchange of consumer protection information.<sup>175</sup>

The Act enables the CPB or any association, or foundation approved by the CPB to take legal action and pursue consumer cases on a consumer's behalf. The body acting on behalf of the consumer may not withdraw the legal action except with the written consent of the consumer, and if it so decides, the Court may grant permission only if it is of the opinion

that such withdrawal does not negatively affect consumer protection in general.<sup>176</sup>

On the other hand, section 17 of the Act suggests that business owners can also bring actions against consumers. This circumstance, and the case law of the Court of Appeal on the interpretation of the term "consumer case" has led to the Act being used for truncated proceedings commenced by corporate plaintiffs in litigation against corporate defendants, and even for the collection of debt from consumer borrowers. (This is discussed in further detail in section 5 below.)

### 2.5 The Establishment of the Council of the Consumer Organization Act B.E. 2562 (2019)

Paragraph 3 of section 46 of the 2017 constitution of Thailand provides that:

"... consumer organizations ... are entitled to unite and form an independent organization to strengthen the protection and safeguard the rights of consumers with support from the State. In this regard, the rules, and procedures for the formation thereof, the power to represent consumers and financial support from the State shall be those provided by law."

The Establishment of the Council of the Consumer Organization Act B.E. 2562 (2019) is the law mandated by section 46 of the 2017 Constitution. It provides for the establishment of the Consumer Council and the rules defining its scope, power, resources and management, and the establishment of consumer organizations.

The Consumer Council is an independent organization that is not to be controlled or intervened with by the government, any public authority, any political parties, any entrepreneur, or any employees of the business sector.<sup>177</sup>

The Act sets forth stringent requirements for the establishment of the Consumer Council. The Permanent Secretary of the Office of the Prime Minister or a person appointed by the Permanent Secretary acts as the Registrar General. At least one hundred and fifty certified consumer organizations must submit a joint letter to the Registrar General which declares

<sup>172</sup> Chandler MHM. (2021, August 1). Electronic hearings in Thai Civil Court procedures. Available at Thailand Newsletter: <https://www.chandlermhm.com/content/files/pdf/Newsletter/2021/CMHM%20Newsletter%20-%20Electronic%20Hearings%20in%20Thai%20Civil%20Court%20Procedures%201%20August%202021.pdf> (accessed 2 January 2022)

<sup>173</sup> Directive of the President of the Supreme Court on Submitting, Sending, and Receiving Pleadings and Documents via the Electronic Filing System came into effect on May 4, 2017

<sup>174</sup> Notification of the Commission for Judicial Service on the Establishment of the Online Division of the Civil Court B.E.2564 (2021)

<sup>175</sup> Ngamkham, W (2022, January 27). New online shopping row court division opens. Available at Bangkok Post: <https://www.bangkokpost.com/thailand/general/2254127/new-online-shopping-row-court-division-opens> (Accessed 27 January 2022)

<sup>176</sup> The Consumer Case Procedure Act B.E. 2551(2008), s 19

<sup>177</sup> The Establishment of Consumer Council Act B.E. 2562 (2019), s 10



themselves as founders for the establishment of the Consumer Council. The founders would then have to gather not less than half of the certified consumer organizations within 90 days. When the founders gather a sufficient number of certified consumer organizations, the Central Registrar will announce the establishment of the Consumer Council.<sup>178</sup> The founder consumer organizations themselves select the Consumer Council Committee and draft all its relevant regulations.<sup>179</sup> The Government shall grant to the Consumer Council a sum of not less than THB 350 million as its initial capital.<sup>180</sup> The Consumer Council may request an annual budget through the Office of the Permanent Secretary, Prime Minister.

The Act confers broad powers on the Consumer Council, including:

- making and proposing recommendations concerning consumer protection issues to the government
- supporting, conducting, examining, and monitoring problems with goods and services
- warning consumers of goods or services that are not safe or may cause harm to consumers.
- promoting consumer awareness-raising and research
- assisting consumer organizations in safeguarding the rights of consumers and promoting the right of consumers to participate at the local level
- supporting and assisting members in mediation of disputes relating to the infringement of consumer rights, before and during court proceedings

- commencing legal proceedings on matters relating to infringement of consumer rights as deemed reasonable or at the request of individual consumers or member consumer organizations and offer them assistance when legal action has been taken against them
- facilitating and helping members to negotiate and settle disputes before/after the commencement of court proceedings.<sup>181</sup>

The Council is authorized to file a case before the court as a representative of the consumer. If the case is successful, the business operator would be liable for the associated costs. In addition, the Council is entitled to receive between 25 per cent to 50 per cent of the indemnity or damages that the court awards to the consumer. In exceptional instances, the Council may seek a higher commission.<sup>182</sup>

There was much concern that the provisions of the Act were too stringent and that the required consensus among consumer organizations for the establishment of the Consumer Council would not be reached and that there may be bogus consumer organizations which could disrupt the Council's work.<sup>183</sup>

It is a testimony to the determination of the consumer groups that they have managed to meet the requirements of the Act. On 8 October 2020, 152 consumer groups/organizations applied to the registration authority for the establishment of the Consumer Council. Today, the Council has 194 members. This is a uniquely Thai experiment. It is hoped that Thai consumers will obtain even greater protection thanks to the establishment of the Consumer Council.

<sup>178</sup> The Establishment of Consumer Council Act B.E. 2562 (2019), s 9

<sup>179</sup> The Establishment of Consumer Council Act B.E. 2562 (2019), s 11

<sup>180</sup> The Establishment of Consumer Council Act B.E. 2562 (2019), s19

<sup>181</sup> The Establishment of Consumer Council Act B.E. 2562 (2019), s 14

<sup>182</sup> The Establishment of Consumer Council Act B.E. 2562 (2019), s 13

<sup>183</sup> Foundation for Consumers. (2020, July 22). *One year lost, the delay of the Consumer Council [In Thai]*. Retrieved from [www.consumerthai.org/news-consumerthai/consumers-network/4496-632207\\_1year.html](http://www.consumerthai.org/news-consumerthai/consumers-network/4496-632207_1year.html) (accessed 25 September 2020)

## 3. OTHER LAWS OF PARTICULAR IMPORTANCE TO CONSUMER PROTECTION

### 3.1 The Unfair Contract Terms Act B.E. 2540 (UCTA 1997)

The Unfair Contract Terms Act B.E. 2540 (UCTA 1997) was promulgated to provide Thai courts with guidelines to judge the fairness of contracts that seek to restrict or exclude liability. An unfair contract is defined as one that grants an unreasonably excessive advantage to one party. Such a contract is enforceable only insofar as it is fair and reasonable.

The UCTA 1997 is applicable in all cases of unfair contractual terms in any form of contract between consumers and businesspersons, whether written or not. The decision shall be made on a case-by-case basis, depending on the facts of the case and the court's discretion.

The principle of good faith is a primary criterion in the courts' determinations on the fairness and enforceability of contracts. The courts are required to take into consideration all circumstances of the case, including good faith, bargaining power, economic status, knowledge and understanding, adeptness, anticipation, guidelines previously observed, other alternatives, and all advantages and disadvantages of the contracting parties based on actual conditions. The parties' benefits and disadvantages are to be determined on the basis of actual conditions and ordinary custom and usage applicable to such type of contract and the time and place where the contract is entered into and performed.<sup>184</sup>

This is reinforced by the requirement that the court:

In determining whether the terms ... cause the person, whose right or freedom has been restricted, to bear more burden than that could have been anticipated, consideration shall be given to the scope and period of restriction of the right or freedom, including the ability and opportunity to profess an occupation or to execute a legal deed in another form or with another person, as well as all legitimate advantages and disadvantages of the contracting parties.<sup>185</sup>

The determination is whether a term "possesses the character or produces the effect of requiring the other party to render a performance or assume a burden greater than usually expected" and the standard to be applied is that of a "reasonable person".

The UCTA 1997 provides an indicative, but not exhaustive, grey list of terms in relation to standard form contracts that 'may' be deemed as unfair:

- (1) a term excluding or restricting liability for breach of contract;
- (2) a term imposing liability or a burden greater than that imposed by law;
- (3) a term allowing a contract to be terminated without justifiable reason or entitling termination of the contract without material breach by the other party;
- (4) a term entitling non-performance of any of the terms of the contract or a delayed performance without justifiable reason;
- (5) a term entitling one party to demand or require the other party to bear more burdens than those undertaken at the time of the contract;
- (6) a term, in a sale with the right of redemption, under which the buyer fixes the price of redemption at a sum exceeding the price of the sale plus interest at the rate of fifteen percent per annum;
- (7) a term, in a hire-purchase, fixing an excessively high hire-purchase price or imposing on the hirer an excessively high burden;
- (8) a term, in a credit card contract, requiring the consumer to pay interest, penalties, expenses or any other benefits in an excessively high amount in the event of default of payment or in connection therewith;
- (9) a term establishing a method for the calculation of compound interest in a manner causing the consumer to bear excessively high burdens is provided to guide the courts in their assessment of the fairness of a contract.<sup>186</sup>

<sup>184</sup> The Unfair Contract Terms Act B.E. 2540 (1997), s 10

<sup>185</sup> The Unfair Contract Terms Act B.E. 2540 (1997), s 5 para 2

<sup>186</sup> The Unfair Contract Terms Act B.E. 2540 (1997), s 4

The Supreme Court has, in addition, determined that the following terms are unfair:

- a term requiring the buyer to pay the full price of an apartment as specified by the contract even where the size of the room is different from that specified in the contract;<sup>187</sup>
- a term requiring the hire purchaser to pay a fixed amount of compensation for the full price of the car for a breach of contract without distinguishing the culpability of the purchaser or the type of contract breach.<sup>188</sup>
- a term requiring the credit card holder to pay for the full amount charged on the card when the card is used by a third person without the consent of the cardholder in cases where the card is lost or destroyed.<sup>189</sup>

The UCTA 1997 also lists five types of contracts other than standard-form consumer contracts to which the Act applies. These are contracts causing restraint of trade,<sup>190</sup> contracts for excluding or restricting professional liability of a trader or professional for construction defects,<sup>191</sup> contracts for forfeiture of deposits paid,<sup>192</sup> contracts for excluding or restricting liability in tort or contract in the event of death, bodily harm or harm caused to health as a consequence of wilful or negligent acts,<sup>193</sup> and for consent by an injured person to acts prohibited by law which are contrary to public order or good morals.<sup>194</sup>

The UCTA 1997 also introduced a novel feature into Thailand's contract law. It provides that the agreement or consent of the injured party to an action clearly prohibited by law, or which is contrary to public order or good morals may not be raised as a defence to exclude or restrict the tortious liability.<sup>195</sup> It is hoped that the courts will harness the full potential of this provision of the Act.

The approach adopted in the UCTA 1997 is that of case-by-case determination of unfairness. A legal challenge and a determination by a court is required to establish

the fairness of a contractual term. This is distinct from the proactive approach required by the CPA 1979. As noted in section 2.1 above, the Contracts Committee regulates standard form contracts and specifies the terms of contracts to be included in selected areas of commerce. Nevertheless, the approaches are mutually complementary. In practice, judges tend to determine the unfairness of a contract under the UCTA 1997 by following the regulations of the Contracts Committee. The Committee, in turn, bars clauses deemed unfair by the courts.

A major part of the UCTA 1997 deals with business-to-consumer contracts. However, section 4 of the Act reads as follows:

A term in a contract as between a consumer and a trader or a professional or in a standard-form contract or in a sale with the right of redemption which renders the trader or professional or the *proferens* of the standard form contract **or the buyer to have an unreasonably excessive advantage over the other party** is an unfair contractual term and shall be enforceable only insofar as it is fair and reasonable in a particular case. (Emphasis added.)

And section 5 of the Act deals with contracts causing restraint of trade. The courts have therefore held that the Act, including the provisions on standard form contracts, applies to all contractual relations.<sup>196</sup>

### 3.2 The Act Governing Prices of Goods and Services B.E. 2542 (1999)

This Act applies to all business activities in Thailand apart from those of central, provincial, and local agencies and certain activities exempted by ministerial regulations.

The Act established the Central Board Governing Prices of Goods and Services with authority to:

- prescribe which goods and services are regulated under the act;
- fix the sale/purchase prices of controlled goods and services;
- ensure that there is sufficient supply of goods or services to meet domestic demand;

<sup>187</sup> Thai Supreme Court Decision no.4566/2561

<sup>188</sup> Thai Supreme Court Decision no.4340/2559

<sup>189</sup> Thai Supreme Court Decision no.1989/2552

<sup>190</sup> The Unfair Contract Terms Act B.E. 2540 (1997), s 5

<sup>191</sup> The Unfair Contract Terms Act B.E. 2540 (1997), s 6

<sup>192</sup> The Unfair Contract Terms Act B.E. 2540 (1997), s 7

<sup>193</sup> The Unfair Contract Terms Act B.E. 2540 (1997), s 8

<sup>194</sup> The Unfair Contract Terms Act B.E. 2540 (1997), s 9

<sup>195</sup> The Unfair Contract Terms Act B.E. 2540 (1997), s 9

<sup>196</sup> Thailand Supreme Court Decision no.7364/2558 no.16694/2555 and no.69/2552

- consider complaints of distress or damage arising from unfair price practices;
- issue regulations governing the payment of rewards and money; and
- impose rules, procedures, and conditions regarding the display of prices for goods and services.<sup>197</sup>

The Act applies primarily to goods or services declared from time to time to be classified as “controlled”.<sup>198</sup>

In addition, the Act covers all “unfair pricing” of products and services and related conduct. Consequently, it prohibits:

- stockpiling of controlled goods in excess of the amount established by notification of the commission;
- storing of controlled goods at a place other than a place of storage declared to a competent official;
- failure to distribute controlled goods that are held for distribution or normal sale; and
- refusal to distribute or delay in distribution or delivery of controlled goods without reasonable grounds.<sup>199</sup>

A business operator that performs a controlled service is prohibited from halting normal services, refusing to provide services, or delaying the provision of services without reasonable grounds.<sup>200</sup>

A general provision not confined to the pricing of only controlled goods or services prohibits business operators from doing anything that would cause the prices of goods or services to be **too low or too high**, or that may cause confusion regarding the prices of any such goods or services.

Penalties imposed by the Act can include fines of up to THB 140,000, imprisonment for up to seven years, or both.<sup>201</sup> The same penalties may be imposed on the directors and/or management if the offender is a legal entity.<sup>202</sup>

<sup>197</sup> Price of Goods and Services Act B.E. 2542 (1999), s 9

<sup>198</sup> Price of Goods and Services Act B.E. 2542 (1999), s 24

<sup>199</sup> Price of Goods and Services Act B.E. 2542 (1999), s 25

<sup>200</sup> Price of Goods and Services Act B.E. 2542 (1999), s 31

<sup>201</sup> Price of Goods and Services Act B.E. 2542 (1999), s.37

<sup>202</sup> As amended by The Criminal Liability of Representatives of Legal entities Amendment Act (B.E. 2560) (2017)

### 3.3 Laws on E-commerce

Thailand has enacted several laws designed to facilitate e-commerce and create confidence in local e-marketers. The Electronic Transactions Act B.E. 2544 (2001) is the principal law for these purposes. It sets out the legal framework for the validity of electronic signatures and electronic transactions. The Act includes a mix of provisions from several international models and key sections follow the UNCITRAL Model Law on Electronic Commerce.<sup>203</sup>

Guideline 63 of the UNGCP 2015 require member states to work towards enhancing consumer confidence in electronic commerce through the continued development of transparent and effective consumer protection policies, to ensure a level of protection that is not less than that afforded in other forms of commerce. Guideline 64 requires that member States should, where appropriate, review existing consumer protection policies to accommodate the special features of electronic commerce and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace.

The Act established the Electronic Transaction Commission to enforce the law. The Electronic Transactions Commission consists of the Minister of Information and Communication Technology acting as the Chair and twelve other members from the private sector appointed by the Cabinet. The Act requires that two members be appointed from each of the following six fields: finance, electronic commerce, law, computer science, science or engineering, and social science.<sup>204</sup> The Director of the National Electronics and Computer Technology Centre of the National Science and Technology Development Agency is a member and the secretary of the Electronic Transactions Commission.<sup>205</sup>

The Commission is authorized to propose to the Minister of Information and Communication Technology the enactment of Royal Decrees relating to electronic transactions.<sup>206</sup> The following Royal Decrees have since been issued:

<sup>203</sup> National Electronics and Computer Technology Centre. (n.d.). The Electronic Transaction Act B.E. 2554 [In Thai]. Available at [http://itpolicy.dol.go.th:8081/dolsurvey/dolsecure/Document/Law-MICT/explain\\_reg.pdf](http://itpolicy.dol.go.th:8081/dolsurvey/dolsecure/Document/Law-MICT/explain_reg.pdf) (accessed 19 September 2020)

<sup>204</sup> Electronic Transactions Act B.E. 2544 (2001) s 36

<sup>205</sup> Electronic Transactions Act B.E. 2544 (2001) s 43

<sup>206</sup> The Electronic Transactions Act B.E. 2544, s 37.

- Royal Decree on Security Procedures in Electronic Transactions B.E. 2553 (2010)
- Royal Decree Prescribing the Rules and Procedures applicable to the Public Sector's Electronic Transactions B.E. 2549 (2006)<sup>207</sup>
- Royal Decree Regulating Electronic Payment Services B.E. 2553 (2010) and
- Royal Decree Regulating Electronic Payment Services of Certain Financial Institutes B.E. 2559 (2016)

The Commission has overall power to approve strategic plans, promote and support state and private entities, and determine technological standards for electronic transactions.

In 2019, an Electronics Transactions Development Agency (ETDA) was established to supervise and regulate electronic transaction businesses – in effect an authority for market conduct.<sup>208</sup> The ETDA has set up the “Online Complaint Centre or 1212 OCC” for giving advice, receiving complaints from consumers and forwarding them for resolution to the competent authority such as the OCPB, FDA, DBD and CCIB<sup>209</sup> From 1 January-31 August 2021, the OCC received 28,393 complaints, mainly relating to online selling (62.9 per cent) and illegal websites (27.06 per cent).<sup>210</sup>

The Decree of the Ministry of Commerce on the registration of the e-commerce B.E. 2553 requires all electronic businesses to be registered with the Ministry of Commerce.<sup>211</sup> Additionally, The Direct Sales and Direct Marketing Act B.E. 2545 (2002) defined the term ‘direct marketing’ broadly, and the Direct Sale and Direct Marketing Act (No. 3) B.E. 2560 (2017) amended its definition to read as follows: “Direct

marketing” means marketing with respect to goods or services which comprises offering information to promote the sale of such goods or services, or direct sales of such goods to consumers located at a far distance, which require response from the consumer for the purchase of goods or services from the direct marketing business operator. Meanwhile, sale-purchase of such goods or services through *electronic commerce is not considered as direct marketing* and is subject to standards and terms specified in Ministerial Regulations.

The Ministerial Regulations referred to in the amendment clarified that only electronic commerce conducted by the following are exempted from registration as direct marketing businesses:

- A natural person who has not registered as a direct marketing operator and earns no more than THB 1.8 million per year from selling products or services through an electronic commerce platform.
- A Small- or Medium-sized enterprise which legally registers in accordance with the Small and Medium Enterprises Promotion Law.
- A community enterprise and their networks which legally register in accordance with the Community Enterprise Promotion Law.
- An entity registered in accordance with the Law on Cooperatives.<sup>212</sup>

Registered direct marketing operators are required to arrange for sale and purchase agreements and have these delivered to their customers upon delivery of the goods or service(s). The sale and purchase agreement must comply with the requirements of the Direct Sale and Direct Marketing Act B.E 2545 (2002) and hence be in the Thai language and be easy to understand.

Online marketers must also comply with the Ministry of Commerce Notification No 44 B.E. 2560 (2017) on Displaying of Price and Details of Goods and Services Sold via E-commerce System or Online. This notification requires all business operators to display the price and the details of goods and services, with the unit price indicated. The penalty for non-compliance is a fine of up to THB 10,000.<sup>213</sup>

<sup>207</sup> The following Decrees issued earlier have been abrogated by the Amendment Act: Royal Decree Regulating Electronic Payment Services B.E. 2553 (2010), Royal Decree Regulating Electronic Payment Services of Certain Financial Institutes B.E. 2559 (2016).

<sup>208</sup> Establishment of the Electronic Transactions Development Agency (ETDA) Act B.E. 2562 (2019)

<sup>209</sup> Electronic Transactions Development Agency. (2016). *1212 OCC Service [In Thai]*. Available at <https://www.1212occ.com/home> (accessed 1 December 2021)

<sup>210</sup> Electronic Transactions Development Agency. (2021, September 22). *DES reveals that online consumers are deceived, cheated, products that don't match the cover daily [In Thai]*. Available at <https://www.etcha.or.th/th/pr-news/1212-Online-Complaint-Center-Proactive-Response.aspx> (accessed 8 December 2021)

<sup>211</sup> Decree of Ministry of Commerce on the registration of the e-commerce B.E. 2553 (2010), s 5.

<sup>212</sup> Ministerial regulation concerning the classification of certain electronic transactions which are not considered as the direct marketing B.E. 2561 (2018)

<sup>213</sup> Price of Goods and Services Act B.E.2542 (1999), s 40

The Civil and Commercial Code (CCC) is the main statute that generally applies to private transactions. The CCC follows the principles of freedom of contract. These principles give the contracting parties autonomy in concluding agreements, provided that the purpose of the agreement is not prohibited by law, contrary to good morals, or against public policy.

Under a click-wrap contract, a purchaser is typically prompted to accept or reject the vendor's terms and conditions, and therefore, there could be a clear acceptance of the terms. However, browse-wrap contracts (where terms of use for the website bind the user by virtue of browsing the website) and shrink-wrap contracts (where terms only come to the user's attention when the product is received) may give rise to questions as to whether the purchaser has been notified of and has expressly accepted the terms and conditions.

This was clarified by a new section inserted by the Electronic Transactions Act (No. 3) B.E. 2562 (2019) amendment<sup>214</sup> to the Electronic Transactions Act B.E. 2544 (2001), which reads as follows:

A proposal to conclude a contract made through one or more electronic communications which is not addressed to any specific person, but is accessible to persons in general making use of information systems, including proposals that make use of interactive applications for the placement of orders through information systems, is to be considered as an invitation to make offers, unless the proposal to conclude a contract clearly indicates the intention of the person making the proposal to be bound in case of acceptance.<sup>215</sup>

A contract between a business operator and consumers will also be subject to the Unfair Contract Terms Act B.E. 2540 (1997). Advertisements considered distorted, forged, or false, in a manner that is likely to cause harm to another person or the public, would be a criminal offence under the Computer-Related Crime Act B.E. 2550 (2007).<sup>216</sup> However, there is no law that regulates digital advertising, online behavioural advertising, or influencer marketing.

Thailand has begun the development of site accreditation to confirm that a website has complied with minimum cybersecurity standards. The Ministry

of Commerce has, for this purpose, established [www.trustmarkthai.com](http://www.trustmarkthai.com). E-commerce business operators may apply to the Department of Business Development at the Ministry of Commerce (DBD) for a Registered Mark or DBD Verified Mark.

Thailand initiated a National e-Payment Master Plan in 2015 and the Promptpay or Any ID system in July 2016. Promptpay facilitates fund transfer to or from a bank account by using a Thai ID card number or mobile phone number of the account owner (instead of a bank account number). A Thai national can choose to register the ID card number or mobile phone number with one bank account held with any bank in Thailand.

Since January 2017, corporate entities can apply to participate in Promptpay by registering their 13-digit corporate registration number with an account held with any bank in Thailand. A QR Code Payment System was launched in November 2017 to enable customers to use mobile phone applications for cashless purchases and payment for goods and services. Payment could be charged to their credit card, savings account, or e-wallet.<sup>217</sup>

The Payment Systems Act B.E. 2560 (2017) (PSA) requires service providers to be registered with the Bank of Thailand. E-payment businesses are categorized as important payment systems, regulated payment systems, regulated payment services, and regulated through various sets of rules. Numerous notifications have been issued by both the Ministry of Finance and the Bank of Thailand for this purpose.<sup>218</sup>

The Court of Justice has established a new department of the Civil Court to hear cases involving electronic commerce that will make extensive use of electronic tools in all its proceedings. New regulations have been adopted that require consumer cases in the Civil Court that involve online sales to be tracked separately from other consumer cases.<sup>219</sup>

<sup>217</sup> Teoh, S L, & Jongsaritwang, S (2021, February 25). The consumer finance law review Thailand. Available at <https://thelawreviews.co.uk/title/the-consumer-finance-law-review/thailand> (accessed 1 January 2022)

<sup>218</sup> Notification of the Ministry of Finance Re: Stipulation on Designated Payment Systems B.E. 2561 (2018) and Notification of the Ministry of Finance Re: Stipulation on Designated Payment Services B.E. 2561 (2018). Notifications of the BOT Nos. SorNorChor. 3/2561, SorNorChor 5/2561, SorNorChor 16/2561 and SorNorChor. 17/2561. Notifications of the BOT Nos. SorNorChor. 2/2561, SorNorChor. 4/2561 and SorNorChor. 10/2561

<sup>219</sup> Announcement of Judicial Administration of Commission on the establishment of the department for electronic-commerce in the Civil Court B.E. 2564

<sup>214</sup> The Electronic Transactions Act (No.3) B.E. 2562 (2019)

<sup>215</sup> The Electronic Transactions Act B.E. 2544 (2001), s 13 (1)

<sup>216</sup> As amended by the Computer-Related Crime Act (No. 2) B.E. 2560 (2017), s 14

Thailand does not specifically regulate business-to-consumer e-commerce. This is dealt with in section 5 below on focus areas for reform.

### 3.4 The Personal Data Protection Act B.E. 2562 (2019)

The Personal Data Protection Act B.E. 2562 (2019) seeks to protect personal data use in both the government and business sectors.<sup>220</sup> The drafters of the Act were influenced by the European Union General Data Protection Regulation 2016/679 (GDPR).<sup>221</sup> The Act establishes the Personal Data Protection Commission (“PDPC”) and the Office of the PDPC to issue and enforce implementation rules.<sup>222</sup>

Personal data is broadly defined and means any information relating to a natural person, which enables the identification of a person, whether directly or indirectly; it does not include information relating to a deceased person.<sup>223</sup>

The Act limits the collection, use and disclosure of personal data by data controllers or data processors only when they have the explicit consent of the data subjects (except for a few stated exceptions).<sup>224</sup> Only necessary personal data may be collected and for the ‘lawful purposes of the data controller’. Such data may only originate from the data subject and not from any other source.

Data controllers are required to inform data subjects of the purposes and timeframe for collecting their personal data, and the types of persons or authorities to which the collected personal data will be disclosed. The data subject is required to be informed of his/her rights. This includes the right to access the data collected, to make a copy, to raise objections, to request destruction or cessation of the use of their personal data.

Data controllers and data processors are required to implement appropriate measures to protect and secure collected personal data.<sup>225</sup> They are to notify the Office of PDPC 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 right and freedom of the data subject.<sup>226</sup>

It is an offence to transfer personal data from Thailand to a foreign country or an international organization. If such transfer is required to be made, it must be made with the consent of the Personal Data Protection Commission and may only be made if the country or organization to which it is being transferred has sufficient standards of personal data protection and may only be for purposes<sup>227</sup> and in a manner specified by the Act.<sup>228</sup>

Data controllers and data processors who violate provisions of the PDPA and cause harm to data subjects are liable for civil compensation and punitive damages to the data subject who suffers the harm. The foregoing is in addition to criminal liabilities.<sup>229</sup>

A large portion of this law has not yet been enforced. Even though the data protection law has not been fully implemented, businesses are concerned about consumer data privacy.<sup>230</sup> Numerous publications have been produced with a focus on the Act and several training courses and seminars have been conducted by stakeholders.<sup>231</sup>

<sup>220</sup> Personal Data Protection Act B.E. 2562 (2019), s 43-45

<sup>221</sup> Regulation EU 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of such Data, and Repealing Directive 95/46/EC

<sup>222</sup> Personal Data Protection Act B.E. 2562 (2019), s 8

<sup>223</sup> Personal Data Protection Act B.E. 2562 (2019), s 6

<sup>224</sup> Personal Data Protection Act B.E. 2562 (2019), s 19

<sup>225</sup> Personal Data Protection Act B.E. 2562 (2019), s 37

<sup>226</sup> Personal Data Protection Act B.E. 2562 (2019), s 37(4)

<sup>227</sup> Personal Data Protection Act B.E. 2562 (2019), s 28

<sup>228</sup> Personal Data Protection Act B.E. 2562 (2019), s 28-29

<sup>229</sup> Personal Data Protection Act B.E. 2562 (2019), s79-81

<sup>230</sup> The Personal Data Protection Act B.E. 2562 (2019) of Thailand (“PDPA”) was published in the Government Gazette on 27 May 2019. Its provisions on establishing regulatory and enforcement bodies come into force from 28 May 2019. The Act should have become fully effective on 27 May 2020 however the Thai Cabinet postponed its enforcement to 31 May 2021. This date was not met, and the rest of the law is yet to be implemented.

<sup>231</sup> There are many papers, articles and clip videos concerning the Act available on the website of the Electronic Transactions Development Agency (ETDA) and website of the Office of the Personal Data Protection Committee, please see: Electronic Transactions Development Agency (2020). Home [In Thai]. Available at <https://www.etda.or.th/content/personal-data-protection-by-etda> (accessed 30 November 2021)

## 4. DISPUTE RESOLUTION FOR CONSUMERS

Thailand has in place a variety of channels for consumer dispute resolution both via the judicial process and alternative schemes offered by Government agencies and civil society. This process began with the adoption of the CPA 1979 and has been facilitated by statutes enacted by Parliament and changes to court rules by the judiciary. The Government agencies, civil society organizations and even the courts have now begun to integrate the use of information and communication technology into their dispute resolution processes.

This section, firstly, describes the litigation process in the courts for consumer disputes (4.1). It then describes the alternative dispute resolution schemes offered by Government agencies (4.2) and those offered by civil society groups (4.3). The final part of this section describes the provisions of the recently adopted Dispute Mediation Act B.E. 2562 (2019) which has the potential to fundamentally alter the availability and delivery of mediation services in Thailand (4.4). The focus areas for reform in the dispute resolution area are included in section 5.

### 4.1 Litigation in the Courts

The judicial system of Thailand is comprised of four courts - the Constitutional Court, the Military Court, the Administrative Court, and the Courts of Justice. Of significance for consumer dispute resolution are the Administrative Court and the Court of Justice.

The Administrative Court deals with administrative disputes between a state organization exercising administrative power and another state organization, a private sector organization or a private individual. The Court of Justice has the power to adjudicate all cases except for those assigned by law to the jurisdiction of other courts. The Court of Justice operates at three levels: the courts of first instance, the appellate courts and the Supreme Court.<sup>232</sup>

The complex procedural and evidentiary rules that govern court proceedings have led to demands for

simplified rules for consumer cases. In response, Parliament enacted the Consumer Case Procedure Act B.E. 2551 (2008) providing for the sought-after simplified rules.

#### 4.1.1 Consumer Case Procedure Act B.E. 2551 (2008)

The Consumer Case Procedure Act (2008) mandates pre-litigation mediation in all cases that are filed under the Act. Hence even where a party files a case without applying for mediation, the court will order both parties to conduct the mediation process on the trial date.<sup>233</sup>

The Act has facilitated consumer litigation. It created the position of “Case Officer” to assist in the handling of cases to make certain that parties were adequately represented.<sup>234</sup> The Act requires good faith performance of legal obligations by sellers and manufacturers<sup>235</sup>

If the plaintiff and defendant are satisfied with the resolution, the mediator will draft a settlement agreement and the court will issue the judgment based on the settlement agreement. If the mediator considers that the mediation cannot be done on the trial date, the Case Officer can postpone the mediation date up to three times, but each postponement period is subject to a limit of seven days.<sup>236</sup>

#### 4.1.2 Class Actions for consumer cases

In 2015, the Civil and Commercial Code was amended to permit class actions by a representative plaintiff who is a member of a class having the same interests and rights.<sup>237</sup> Class actions were permitted for a wide range of actions: tort, breach of contract, and other laws including consumer protection, competition, environment, labour, and securities and stock exchange matters.

<sup>233</sup> Consumer Case Procedure Act B.E. 2551 (2008), s 24

<sup>234</sup> Consumer Case Procedure Act B.E. 2551 (2008), s 4

<sup>235</sup> Consumer Case Procedure Act B.E. 2551 (2008), s 12

<sup>236</sup> Regulation of the President of Supreme Court on the process of the consumer procedure case and the functions of the Case official B.E. 2551(2008)

<sup>237</sup> Act Amending the Civil Procedure Code (No. 26), B.E. 2558 (2015) by inserting section 222/1 – section 222/49

<sup>232</sup> Constitution of The Kingdom of Thailand, Chapter X Part I



The class action law attempts to increase judicial efficiency by aggregating a large number of individualized claims into one lawsuit where judgments will be binding on all class members. This facilitates the aggregation of individual low value consumer claims that otherwise would not be cost-effective to litigate.

The court has the power to allow, define the scope or characteristics of the relevant class, inquire into, and terminate a class action. The court must find that it is in the interest of justice, and efficiency, to create a class of plaintiffs before it certifies the class action. To facilitate the process, the court will appoint a class action case officer to assist the court in a class action.<sup>238</sup> Class members may opt out of the class action<sup>239</sup> and pursue individual claims.

There are financial requirements for class actions. The plaintiffs must deposit funds with the court that will cover the actual costs of the class action. However, plaintiff attorneys can be awarded more than 30 per cent of the judgment amount, which is higher than usual in Thai courts. After a class action is filed, it will generally follow the same procedures as a traditional civil case which requires mediation.

A judgment is binding on all parties and members of the class. A plaintiff (or attorney) has the power to proceed with enforcement of the judgment on behalf of all members of the group. Defendants may be held liable for the plaintiffs' attorney fees.

Since the introduction of the Class actions, there have been numerous consumer class actions filed. The following are examples of cases that were decided in favour of consumer plaintiffs:

- the case of the defective vehicles bought from Ford Motor Company Thailand. The Civil Court rendered the judgement ordering the company to pay 291 car owners compensation ranging from THB 20,000 to 200,000 (THB 23 million in total) for the sale of substandard vehicles in 2018,<sup>240</sup>

- the cases involving unfair mobile phone contracts concerning the method of calculating price.<sup>241</sup>
- the case involving an unsafe cosmetic product causing disfigurement.<sup>242</sup>

### 4.1.3 Mediation under Section 20 (tri) of the Civil Procedure Code

Initiation of a civil court proceeding normally begins when an attorney files a Plaintiff on behalf of a client. If the Plaintiff is accepted by the court, an officer of the court serves a summons and a copy of the Plaintiff to the defendant. A pretrial hearing is held after the defendant has filed its defence brief. It is at this juncture, usually more than 60 days after the Plaintiff is filed, that the judge will ask the parties if they wish to mediate their dispute.

In 2020, the Court of Justice introduced a new section 20 (tri) to the Civil Procedure Code to facilitate pre-litigation mediation.<sup>243</sup> As stated in the explanatory note to the amendment, the reason for the promulgation of the new provision is to promote mediation as an alternative for civil disputes prior to a lawsuit which may be settled without the need for lengthy legal proceedings.

The amendment enables the parties to file a petition with a court of competent jurisdiction requesting the appointment of a mediator to mediate matters between the two parties. If the court accepts the petition, and once it has ascertained that both parties are willing to mediate, the court will appoint a mediator.

If through mediation the parties agree on terms of settlement that the court considers as "... abiding by the intent of both parties, made with good faith, and not contrary to the law", both parties will be required to sign a binding written agreement. The parties may

<sup>238</sup> "Class action case officer" means a person appointed by the Secretary of the Office of the Court of Justice. Section 222/1 to 222/49

<sup>239</sup> Act Amending the Civil Procedure Code (No. 26), B.E. 2558 (2015) s 222/16

<sup>240</sup> Judgment of the Civil Court Black no.492/2560 dated on 21 September 2018

<sup>241</sup> Three cases have been launched by the NGOs (the Foundation for Consumers) against three mobile operators in 2018. During the mediation, one operator agreed to compensate the consumers in 2019. The cases against the others two operators are still in the court consideration. Please see: Foundation for Consumers. (n.d.). *The class action against three operators [In Thai]*. Please see: Foundation for Consumers (n.d.). The class action against three operators [In Thai]. Available at [https://www.consumerthai.org/consumers-news/consumers-%20news/talacomnews/4485-630610\\_dtac.html](https://www.consumerthai.org/consumers-news/consumers-%20news/talacomnews/4485-630610_dtac.html) (accessed 20 September 2020)

<sup>242</sup> Judgment of the Satun Provincial Court Ref no.3550/2561

<sup>243</sup> Royal Decree on Amendments to the Civil Procedure Code (No. 32) B.E 2563 (2020)

request the court to issue an immediate judgment.<sup>244</sup>If one of the parties fails to follow through on the settlement agreement, the other party may file a lawsuit in court to have the agreement enforced within ten years.<sup>245</sup>

The procedure does not require the participation of attorneys and no fees are payable to the court. The process can thus make dispute resolution expeditious, without the involvement of attorneys and inexpensive and a court order issued under the provisions of this new section is final.<sup>246</sup>

With the introduction of the section 20 (tri) mediation process, all consumer cases can first be subject to pre-litigation mediation.

Number of mediations conducted by all the Courts of Justice from October 2020 to 31 August 2021.

**Online:** 51,082 cases,

31,823 successfully mediated

**Section 20 (tri):** 264,010 cases,

206,642 successfully mediated

**Mediation Act 2019:** 1,121 cases,

349 successfully mediated

#### 4.2 ADR via the CPB and the OCPB

The CPA 1979, which created the Consumer Protection Board (CPB) and the Office of the Consumer Protection Board (OCPB) provides as the first of their powers and duties:

“To consider complaints from consumers who suffer hardship or injury resulting from the acts of business persons;”<sup>247</sup>

As discussed in section 2.1, the CPA 1979 provides that the CPB may directly institute legal proceedings where the rights of a consumer or category of consumers have been infringed and the Board is of the opinion that the institution of legal proceedings will be beneficial to consumers as a whole. This power has been further enhanced by the 2019 amendments to the CPA 1979. The CPB can now even take legal action on behalf of individual consumers who have incurred harm as a result of conduct by a business person. Legal action by the CPB may be taken by a public prosecutor from the Department of Public

Prosecutions or by a qualified officer of the OCPB. The proceeding may be civil and/or criminal in nature and the responsible officer has the power to claim property or damages for the complainant and all costs for this purpose are exempt.<sup>248</sup>

The 2013 amendments to the CPA 1979 prescribed that the CPB duties include:

(1/1) to mediate or compromise disputes in connection with violation of rights of consumers in reliance on an agreement concluded by the consumer and the business operator prior to the institution of an action in court, in accordance with the rules prescribed by the Board and published in the Government Gazette;

In accordance with the abovementioned provisions, the CPB has issued three Regulations relating to consumer dispute resolution, namely:

- The regulation of the CBP on mediation in the event of a violation of a consumer's rights dispute (B.E. 2559);
- The regulation relating to the role of the office of the CPB in providing services to the public (B.E. 2562); and
- The regulation concerning the provincial consumer protection sub-committee's performance of public services (B.E. 2562)

These three Regulations explain the process for receiving, managing, and mediating consumer complaints, as well as the powers and responsibilities of the officers involved.

Consumers may file complaints under these Regulations through a variety of methods provided by the OCPB – walk-in, by phone, e-mail or via the OCPB website. Often, the process is hybrid, beginning with a walk-in to an office of the OCPB or a phone call or e-mail but is then handled entirely online via the newly established online dispute resolution (ODR) system of the OCPB.<sup>249</sup>

The official who receives the complaint registers it and then forwards it to the appropriate division within the OCPB (advertising, labelling, contracts, or direct sale and direct marketing). If the complaint is deemed to fall within the jurisdiction of an authority other than the

<sup>244</sup> Civil Procedure Code s 20 (tri)

<sup>245</sup> Civil and Commercial Code, s 193/32

<sup>246</sup> Civil Procedure Code, s 20(tri)

<sup>247</sup> Consumer Protection Act B.E. 2522 (1979), s 10 (1) and 20 (1)

<sup>248</sup> Consumer Protection Act B.E. 2522 (1979), s 39

<sup>249</sup> Consumer Protection Act B.E. 2522 (1979), s 39

OCPB under applicable legislation, the case is referred to that authority for the resolution of the dispute.

All complaints received, regardless of the channel through which they are received, are now registered in the web application of the OCPB and classified in accordance with its classification system. All complaints can therefore now be tracked through the web application.

The CPB regulations specify the types of complaints that the OCPB will not handle. Included in this category are cases in which:

- the complainant is not considered a consumer under the CPA 1979,
- the consumer has already filed a lawsuit in court,
- the consumer has joined a class action lawsuit pursuant to section 222/18 of the Civil Procedure Code,
- the business operator is in bankruptcy or rehabilitation proceedings under applicable laws,
- there is insufficient information, detail, or proof,
- the complainant seeks redress for the sale of illegal goods, and
- the complainant is determined to be the party at fault.<sup>250</sup>

The OCPB has yet not clarified whether it will also not accept a complainant where the complainant has initiated mediation under The Dispute Mediation Act B.E. 2562 (2019).

To register a complaint with the OCPB, the complainant must fall within the definition of the term consumer under CPA 1979, i.e., the statute that created the CPB and the OCPB and which they give effect to. The difficulties posed by the definition of the term 'consumer' have been discussed in section 2. Suffice it here to note once again that the restrictive interpretation given by the OCPB to the term denies protection to many 'consumers' in need of assistance.

When a complaint is forwarded to the competent division/authority, the officer assigned to handle the complaint has the power and responsibility to investigate, including by requesting more information from the relevant persons. This could involve several instances of communication between the officer assigned and the parties.

Prior to initiating the mediation, the assigned officer must obtain the approval of all parties.<sup>251</sup> The mediation itself could be completed quite speedily or could involve several stages. In a complex case, it could even be conducted by different parties at each stage. The officer in charge 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 level. Where a mediation does not succeed or specific concerns cannot be resolved, the complaint will be escalated to the aforementioned higher levels.

In practice, the OCPB has delegated its powers of mediation to five divisions based on their expertise, including the advertisements division, the labels division, the direct sales and direct marketing division, the contracts division, and the foreign relations and cooperation division.

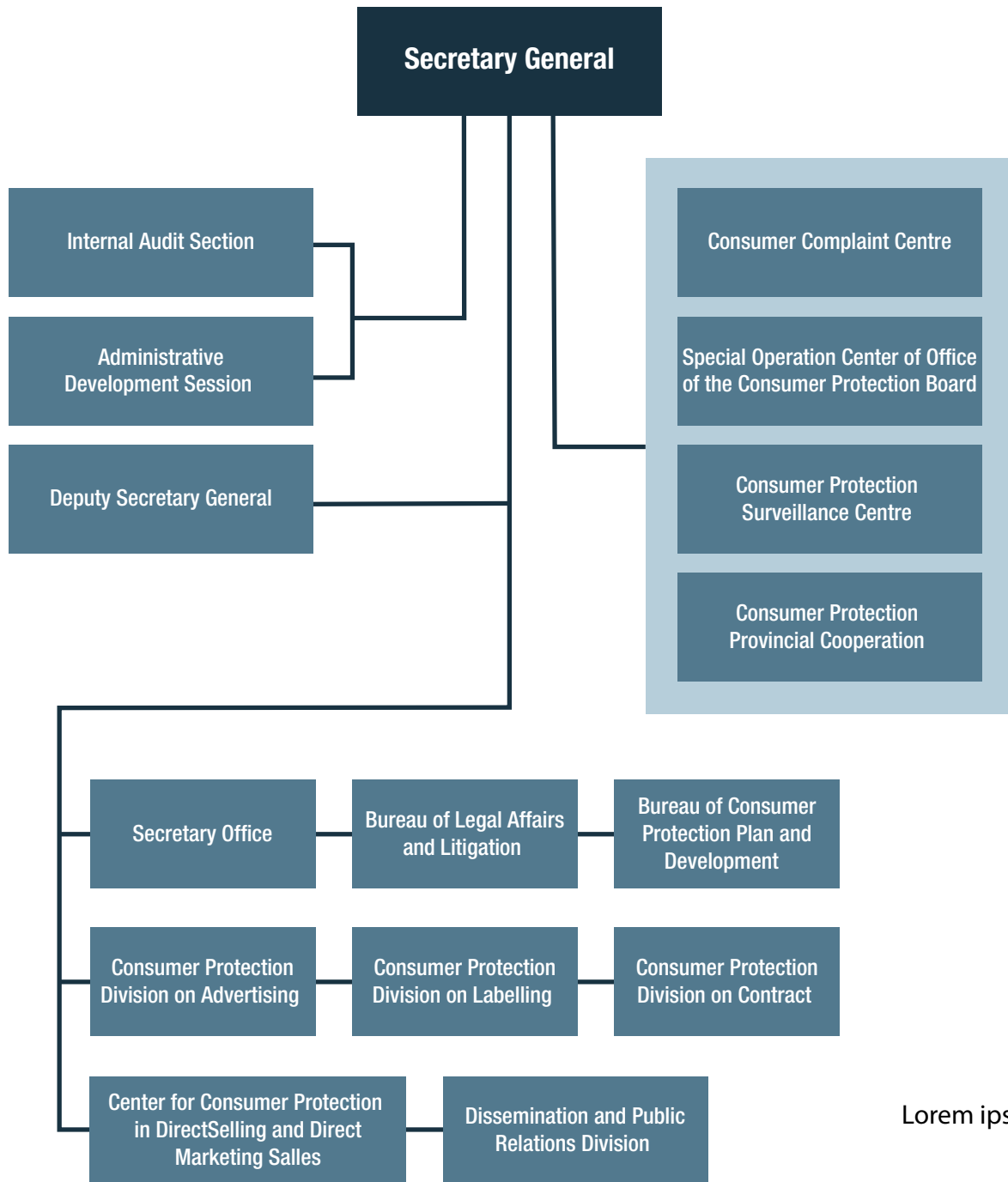
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<sup>250</sup> Section 17 of the regulation relates to the role of the office of the consumer protection board in providing the services to the public B.E. 2562 and section 14 of the regulation concerning the provincial sub-committee for consumer protection's performance of public services B.E. 2562

<sup>251</sup> The regulation of the CBP on the mediation in the event of a violation of a consumer's rights dispute B.E. 2559 (2016), s 5-6

OCPB's Organigram

ORGANISATION CHART OF THE OFFICE OF THE CONSUMER PROTECTION BOARD



Source: Thai Consumer Authority

In the provincial areas, the local officer of the OCPB can mediate and report the findings to the supervisor. If the supervisor is of the opinion that the business operator has breached the CPA, the case will be referred to the subcommittee based in Bangkok for examination and determination of the sentence. The amendment permits the local official to decide and permits the local office to retain any fines imposed. The consequent amendments to the relevant regulations are yet to be made.<sup>252</sup>

The consumer who files the claim retains the right to sue the defendant. All parties have the right to terminate the mediation procedure at any stage. If both parties are satisfied with the outcome of the mediation, the officer is required to draft a settlement agreement or memorandum of understanding. This agreement establishes new rights and obligations between the parties in place of the previous ones. The parties can sue one another in case of breach of the agreement.

The OCPB does not impose any limitations on the value of a claim that it will seek to resolve. A consumer claim however small in monetary value is processed by the OCPB. When there are numerous claims on a matter, even where the claim value is small, the OCPB may institute a collective or class action if recommended by the CPB or its specialized Committees.

The OCPB is aware that the complaints it receives are a valuable indicator of the remedial measures that need to be initiated (by way of law reforms, policy initiatives, enforcement, consumer awareness-raising, etc.).<sup>253</sup>

- In 2021, the OCPB received 22,591 complaints of which the OCPB handled 21,290 and forwarded the remaining 1,301 complaints to other Government agencies.
- In 2020, the OCPB received 22,263 complaints of which it handled 20,994 and forwarded the remaining 1,269 to other Government agencies. Of the total complaints received by the OCPB, 15,530 were received from other Government agencies. They were received principally from the Damrongdham Centre (1567), the Hotline of the Prime Minister's Office (1111) and the Online Complaint Centre of the OCC (1212).

The redirecting of the complains received absorbs considerable resources of the complaint processing agencies, particularly for the OCPB which handles the largest number of complaints amongst the agencies discussed in this report.

It may be appropriate for the OCPB to forego its current approach entailing its own provision of mediation services and instead merely assist consumers when they choose to mediate their complaint. This is discussed in section 5 below.

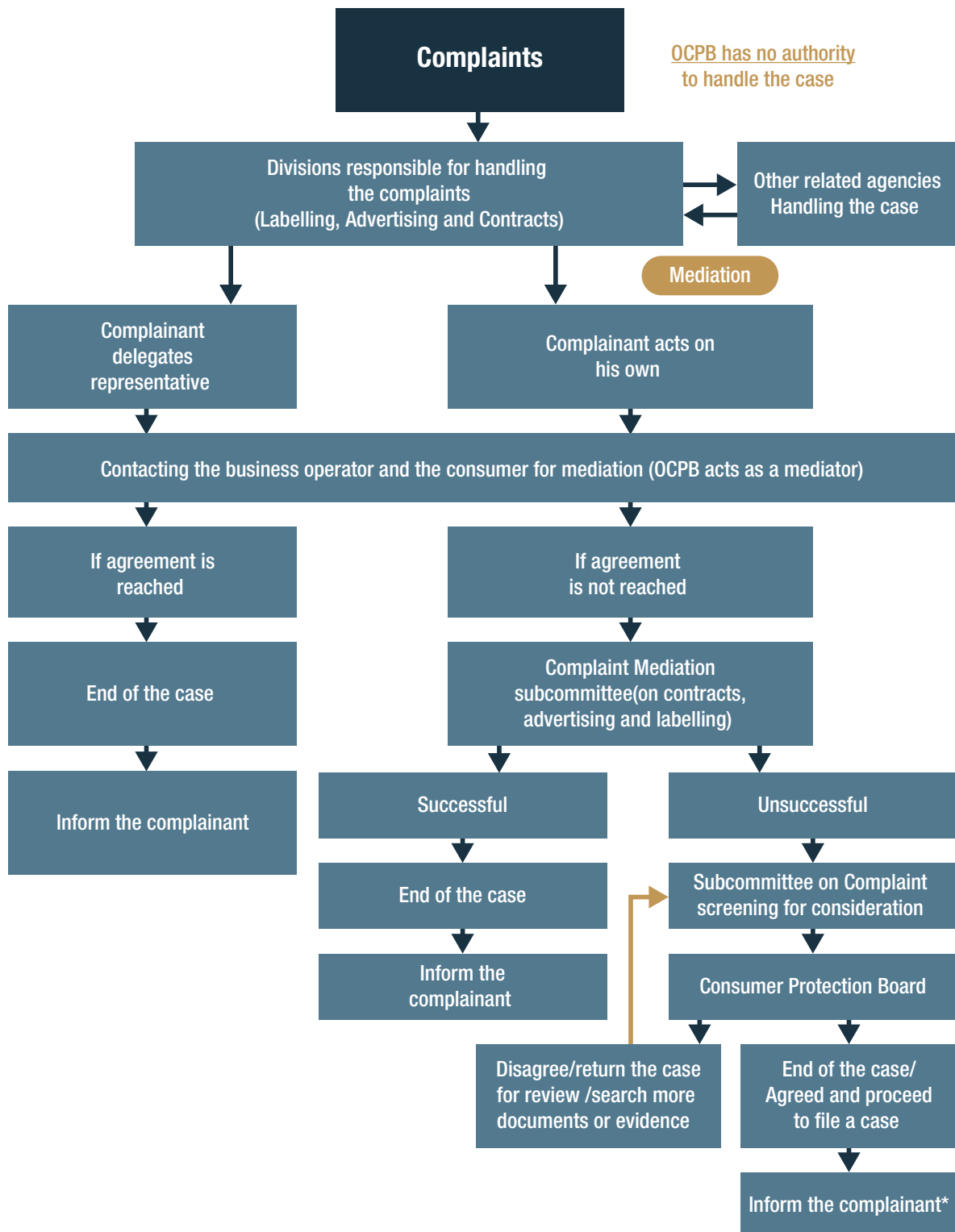
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<sup>252</sup> The regulation concerning the provincial sub-committee for consumer protection's performance of public services (B.E. 2562)2019 has not been amended yet to reflect the changes in the principal Act.

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<sup>253</sup> Fact finding online interview with the OCPB on 30 November 2021.

Complaint Handling Procedure, Office of the Consumer Protection Board



\*If the complainant is not represented by a lawyer, the OCPB will act on his behalf on a gratuitous basis.

Source: Thai Consumer Authority

### **OCPB Collaboration with other Government Agencies**

The CBP and OCPB assist consumers in obtaining redress by collaborating with other Government agencies and authorities and even business operators. The OCPB provides electronic gateways for consumers to communicate with these authorities and even assists consumers in communicating with them.

Consumers can access a number of government agencies via the OCPB's website called "OCPB Connect", including the Food and Drug Administration (FDA), the Digital Government Development Agency (DGA), the Office of the National Broadcasting and Telecommunications Commission (NBTC), the Prime Minister's Office, the Electronic Transactions Development Agency (ETDA), the Insurance Commission, the Department of Health Service Support, the Department of Tourism, and the Department of Internal Transportation.<sup>254</sup>

### **OCPB Collaboration with business operators**

Additionally, the OCPB works with business owners to develop a consumer contact centre and an internal consumer dispute resolution process. This was previously an experiment conducted by the OCPB's in-house dispute resolution system and a small number of business operators. According to the OCPB, this endeavour has helped reduce the number of complaints submitted to the OCPB.<sup>255</sup>

### **OCPB's Online ADR Initiative**

For more than a decade, consumers have been able to submit their complaints to the OCPB via its website.<sup>256</sup>

In 2019, the OCPB sought to modernize its complaint management process by building an ICT platform that collects all case data and utilizes a tracking system that allows parties to verify and monitor the status of individual cases. The platform was also meant to be a tool to gather consumer protection data. The ICT system was overhauled.

<sup>254</sup> Data from the OCPB website: OCPB Connect (2022). Complaint and check status [In Thai]. Available at <https://ocpbconnect.ocpb.go.th/OurServices> (accessed 11 January 2022)

<sup>255</sup> Fact finding online interview with Procter & Gamble / L'Oréal on 29 November 2021

<sup>256</sup> Fact-finding online interview with the Information Technology Director of the OCPB on 15 January 2022

The ICT system was developed to connect the data system of the OCPB with that of 28 other Government agencies in what is referred to as "OCPB Connect" and is supported using Big Data. It gathers data on consumers lodging complaints, the complaints and allegations lodged, company data and licences of the business operators cited in the complaints, case management information and case settlement details, including warnings and penalties imposed. All this information is now gathered within its OCPB Connect application. In addition, the OCPB launched the "P'Pokpong" application which provides a Chat Bot – "an online friend that answers various queries 24 Hours per day".

In 2019, the OCPB initiated a pilot project on online mediation for consumer complaints in three areas - sale of real estate prior to the mortgage loan applications being granted, sale of new cars prior to launch, and non-conformity of goods. The success of this pilot project led the OCPB to earmark a new budget for the Online Mediation Project of approximately THB 6 million (\$1.818.35,00) for financial year 2020. This was for software and all Information Technology infrastructure (including internet network, conference rooms, laptops, cameras, and microphones) for developing the Online Mediation Project.

In November 2021, the new ODR scheme "ocpbmediate.ocpb.go.th" was formally introduced and now all types of consumer complaints are eligible for mediation via the ODR process.

### **The OCPB ODR Process**

The rules governing the ODR process are displayed on the OCPB website<sup>257</sup>.

To submit an online mediation request, users must first read the terms and conditions of service and then confirm their acceptance by clicking the OK button on the screen, "Confirm acceptance of terms and conditions of service.". The OCPB officer will contact the relevant parties and obtain their approval to participate in the online mediation. The online mediator will send the appointment details to both parties via email and SMS to confirm their participation in the online mediation. Online mediation is limited to two sessions.

<sup>257</sup> OCPB Mediate (n.d.). Terms and conditions of service of the Online Mediation of the OCPB [In Thai]. Available at <https://ocpbmediate.ocpb.go.th/> (accessed 6 January 2022)

According to its terms and conditions, the online mediation will be considered cancelled if one of the parties does not confirm the appointment for the initial meeting for two consecutive times or if one of the parties does not join the meeting despite both parties having confirmed the initial meeting schedule.

When both parties enter the online meeting or chat room, they must provide truthful information, use polite mannerisms and language, refrain from using words that are slanderous or insulting to others under the Criminal Code, and refrain from acting in any way that would constitute a violation of the Computer Crimes Act (No. 2) BE 2560. If either party fails to comply, the online mediator will immediately terminate the mediation. Additionally, the wrongdoer may face legal consequences. Throughout the mediation procedure, the OCPB will record the video of the online mediation proceeding.

If the mediator succeeds in reaching an agreement that is acceptable to both parties, the mediator will draft a memorandum of understanding. Both parties then have three days to confirm the proposed agreement or notify the mediator of the amendments to be made. If within three days, one of the parties does not confirm the proposed agreement or notify the mediator of amendments to be made, the mediation would be considered terminated. If the mediation is unsuccessful, the mediator must draft a report setting forth all facts received during the mediation process. The complainants are also given the right to record their own views about the negotiations.

Due to the very short period that the ODR system has been operative, data on the cases handled are not yet available. As is evidenced in the section below on OCPB Collaboration with other Government Agencies, the OCPB is currently in negotiations with a number of agencies to connect with the system.

The OCPB now seeks to conduct research on the possible use of artificial intelligence in the ODR process and management of the complaints data collated.

The OCPB is of the view that ODR benefits all parties involved because it facilitates managing time and cost. Mediation can be conducted anywhere and at any time at a lower cost, especially for those who have laptops or smartphones. This allows for flexibility in scheduling. The OCPB experience is that in the absence of face-to-face meeting of the parties, they are more relaxed. The system provides the parties

more time to consider their options. This is particularly beneficial when the parties are not on equal footing in terms of education levels and presentation skills.

However, there are significant obstacles to ODR, particularly when it involves complainants in the rural areas of the provinces where literacy levels and Information Technology skills are lower. The support of local NGOs can help overcome some of the difficulties and the OCPB is working to formalize the involvement of NGOs. The support of provincial heads and mayors is necessary to increase the number of consumer protection officers in the provinces.

As noted earlier, the 2019 amendment to the CPA allows for the appointment of local officers at the provincial level to act with powers similar to that of OCPB officers and to be paid out of the fines collected at the provincial level. This may facilitate the appointment of more officers who can support the work of the OCPB at the local level, including by assisting consumers during the online sessions. A further difficulty to address is the absence of the required ICT infrastructure at the provincial level.

### **4.2.2 ADR via Specialized Government Agencies**

Section 21 of the CPA 1979 provides that where another law specifically applies to a particular matter, the provisions of the CPA shall apply only to the extent that they do not repeat or conflict with the provisions of the other specifically applicable law. This part of the section discusses ADR conducted by Government agencies other than the CPB and OCPB.

#### **Insurance Commission (IC) and Office of Insurance Commission (OIC)**

The Insurance Commission Act B.E. 2550 (2007) established the Insurance Commission (IC) and the Office of the Insurance Commission (OIC). The IC is responsible for establishing policies and promoting, developing, and regulating the insurance business. It is now responsible for enforcing insurance-related laws, including the Life Insurance Act (No. 2) B.E. 2551 (A.D. 2008), the Casualty Insurance Act (No. 2) B.E. 2551 (A.D. 2008) and the Motor Accident Victims Protection Act (No. 5) B.E. 2551 (A.D. 2008). These laws require that all insurance companies, their policies, agents, and brokers be licensed by the IC.<sup>258</sup>

<sup>258</sup> Insurance Commission Act B.E. 2550 (2007), s 12



The IC has issued several regulations and rules to govern insurance practices and promote consumer rights. These include:

- Notification on rules, procedures, conditions, and timelines for preparing report and information related to investment and business operations of life insurance companies B.E. 2564 (2021),
- Regulation on receiving and considering complaints about violations of or non-compliance with the law B.E. 2564 (2021), and
- Regulation on receiving and considering complaints about violations of or non-compliance with the law B.E. 2564 (2021).

The latest of these specified the method of filing complaints and authority for OIC officers in cases that are not complex, to immediately negotiate with the insurance company if the complainant opts to do so. If the matter is not resolved at this point, the consumer may choose from a variety of ADR options, including online negotiation or mediation. Where during the dispute resolution process, the OIC officer discovers that there has been a breach of a law, the officer can file a case to investigate this breach.

The OIC offers a variety of ways for consumers to submit complaints, including online resources such as the OIC website, the OIC mobile app, social media platforms, and chat boxes, as well as walk-ins to the OIC's headquarters or provincial offices, and phone calls to the OIC's hotline. The walk-in is the method most preferred by consumers.<sup>259</sup>

The OIC has developed two different ADR mechanisms for resolving complaints: mediation<sup>260</sup> and arbitration by third parties.<sup>261</sup>

The OIC mediation process provided at its mediation centre in Bangkok since 2016 is established and governed by special legislation on insurance mediation which sets forth the applicable rules and regulations on insurance mediation conducted by OIC-certified mediator.<sup>262</sup> The OIC has set a time limit of 30 days for

the mediation procedure, but this may be extended by up to 15 days a maximum of two times.

Since the establishment of the Insurance Mediation Centre in April 2016 until September 2020, the centre received 1,167 cases for mediation, of which 927 were resolved (79.73 per cent)<sup>263</sup>.

The OIC has now begun to use online resources such as Google forms and social media applications such as LINE and Microsoft Teams to facilitate and conduct insurance mediation<sup>264</sup>. From its establishment in April 2016 until September 2020, the Insurance Mediation Centre received 1,167 cases for mediation, of which 927 were resolved (79.73 per cent).

Since 2008, the OIC has required that all insurance providers permit the inclusion of a clause in insurance contracts that allows the insured to choose between arbitration and litigation in the event of a dispute. The OIC has published various regulations of its own to govern insurance arbitration.<sup>265</sup>

These OIC regulations on arbitration define the criteria, the procedure, and the qualifications of arbitrators. Both parties are required to pay the deposit amount and are responsible for the arbitration costs. The parties have the option of appointing their own arbitrators. According to OIC regulations, the period for concluding the insurance arbitration process and reaching an award is not to exceed 90 days, though the arbitrator is permitted to extend such term in exceptional circumstances.<sup>266</sup>

The OIC has established offices for insurance arbitration in three locations: Bangkok, Chiangmai and Songkhla. In 2020, the OIC built a system for electronic arbitration (E-arbitration) which permits for the submission of requests for arbitration, the objections of the defendant, if any, and the e-payment of the deposit.<sup>267</sup> It has also employed videoconferencing

<sup>259</sup> Fact-finding interview online with the OIC on 3 November 2021

<sup>260</sup> Regulation of the OIC concerning the mediation for the insurance dispute B.E. 2559 (2016)

<sup>261</sup> Regulation of the OIC concerning the arbitration B.E. 2551 (2008), No.2 B.E. 2553 (2010) and No.3 B.E. 2563(2020)

<sup>262</sup> Regulation of the OIC concerning the mediation for the insurance dispute B.E. 2559 (2016)

<sup>263</sup> RYT9 (2020, October 23). OIC opens a forum "Arbitrators - Mediators" to take lessons from insurance disputes [In Thai]. Available at <https://www.ryt9.com/s/doi/3170912> (accessed 12 January 2022)

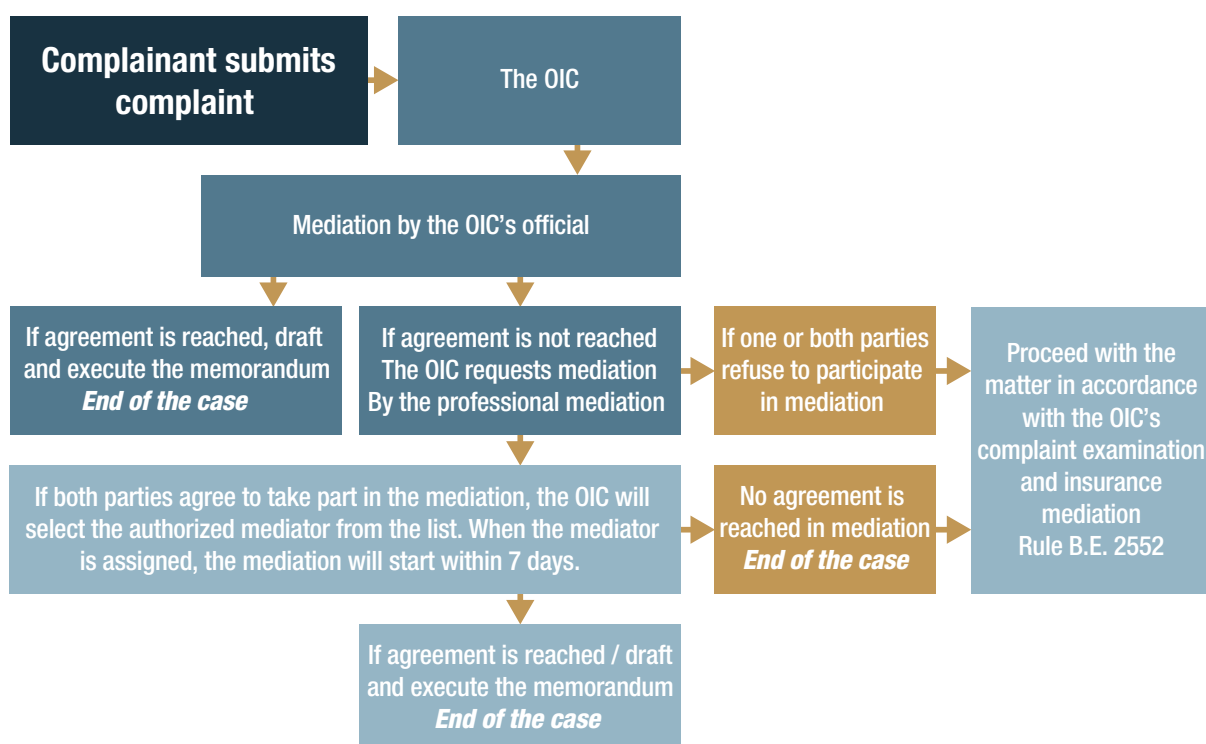
<sup>264</sup> Announcement of the OIC concerning the direction for practices on receiving and handling complaints, the mediation and the arbitration B.E. 2563 (2020)

<sup>265</sup> Announcement of the OIC concerning arbitration B.E.2551 (2008) and N.2 B.E.2553(2010)

<sup>266</sup> Regulation of the OIC concerning the arbitration B.E. 2551 (2008), s 28

<sup>267</sup> Siam Rath (2020, September 14). OIC tutors arbitrators, prepares to introduce the E-Arbitration system used to increase strength [In Thai]. Available at <https://siamrath.co.th/n/182108> (accessed 18 December 2021)

The Insurance Dispute Mediation by Professional Mediator of the OIC



to enable the arbitrators to examine witnesses and assess the case.<sup>268</sup>

From the establishment of the arbitration process in 2008 until October 2020, the OIC received 6,245 cases for arbitration of which 5,608 were successfully resolved (89.80 per cent). Of these 5,608 cases, 2,774 were resolved by negotiation before commencement of the arbitration process and 2,854 by arbitration.<sup>269</sup>

**The National Broadcasting and Telecommunication Commission (NBTC) and the Office of the National Broadcasting and Telecommunication Commission.**

The Organization for Assignment of Radio Frequency and Regulation of Broadcasting and Telecommunications Services Act B.E. 2553 (2010) established the National Broadcasting and Telecommunication Commission (NBTC)

and the Office of the National Broadcasting and Telecommunication Commission for the purpose of supervising radio and television broadcasting businesses, telecommunications businesses, and promoting public participation in the operation of public mass media.

The Act empowers the NBTC to promote consumer rights<sup>270</sup> by establishing two subcommittees for consumer protection, one for the broadcasting sector and the other for the telecommunications sector. These subcommittees are responsible for issuing judgments and recommendations on topics relevant to the lodged complaints, as well as other responsibilities as may be assigned by the NBTC and the Office of the NBTC for the receipt and review of complaints.<sup>271</sup>

The Office of the NBTC established the Telecommunications Consumer Protection Bureau (TCPB) to address consumer protection concerns. It has issued the Rule on the process of receiving and reviewing consumer complaints regarding

<sup>268</sup> Siam Rath (2021, January 29). OIC turns a new dimension. Insurance arbitration process! Witness testimony via video conference [In Thai]. Available at <https://siamrath.co.th/n/215810> (accessed 15 December 2021)

<sup>269</sup> RYT9. (2020, October 23). OIC opens a forum "Arbitrators - Mediators" to take lessons from insurance disputes [In Thai]. Available at <https://www.ryt9.com/s/doi/3170912> (accessed 12 January 2022)

<sup>270</sup> Organization for Assignment of Radio Frequency and Regulation of Broadcasting and Telecommunications Services Act B.E. 2553 (2010), s 31

<sup>271</sup> Organization for Assignment of Radio Frequency and Regulation of Broadcasting and Telecommunications Services Act B.E. 2553 (2010), s 57

telecommunications services B.E.2559 (2016). This rule details the procedure, the criteria, and the way consumer complaints will be handled. Strict timelines are set for processing the dispute: the TCPB must contact the relevant business operator within three days of receiving a complaint and the operator must respond within seven days; the TCPB must then inform the consumer within three days of the proposed solution. If the complainant is satisfied with the proposed resolution, the complaint is considered settled.<sup>272</sup>

If, on the other hand, the consumer is dissatisfied with the business operator's response or the business operator has refused the consumer's request, the parties may agree to begin mediation under the rules for mediation specified in the regulation on mediation between the licensed operator and the complainant B.E. 2555 (2012).<sup>273</sup> The consent of all relevant parties is required for external mediation in the telecommunication sector. The mediator must be approved by the TCPB within 30 days (this may be extended twice for periods up to 15 days on each occasion). The mediator must provide a report on the mediation to the Office of the NBTC if the parties reach an agreement or if the mediation does not succeed.<sup>274</sup>

The Office of the NBTC currently has authorized a panel of 23 mediators.<sup>275</sup> If the external mediators are unable to resolve the matter or if one of the parties refuses to participate in mediation, the TCBP will continue to handle the case. If there is a prior ruling or if the issue is not difficult, the complaint will be categorized and examined by the NBTC's secretariat.<sup>276</sup> In any other situation, the case will be referred, within 15 days, to the subcommittee for consumer protection in telecommunication services. A decision on the cases by the NBTC's subcommittee or the secretariat must be published.<sup>277</sup> The law however is silent as to when or where the publication should be made.

<sup>272</sup> Rule on the process for receiving and considering consumer complaints regarding telecommunications services B.E. 2559 (2016), s 15

<sup>273</sup> Section 16 of the Rule on the process for receiving and considering consumer complaints regarding telecommunications services B.E. 2559 B.E. 2559 (2016), s 16

<sup>274</sup> Regulation on mediation between the licensed operator and the appellant B.E. 2555 (2012), s 42-445

<sup>275</sup> Announcement of the Office of NBTC concerning the list of mediators B.E. 2563

<sup>276</sup> The Rule on the process for receiving and considering consumer complaints on the telecommunications service B.E. 2559, s 17-18

<sup>277</sup> The Rule the process for receiving and considering consumer complaints on the telecommunications service

Today, the TCBP, like the OCPB and the OIC, has established multiple channels for receiving complaints. According to the TCBP's website, there were 2,268 complaints received between 1 January and 31 October 2021 as compared to 1,745 complaints in 2020 and 1,658 in 2019.<sup>278</sup> The complaints related mainly to spam SMS, incorrect billing, contract revocation, poor service standards, and time restrictions on service use. Most complaints received in 2021 were by phone call (1,270 cases).

### Complaints Processing Agencies

Several state agencies do not resolve consumer complaints but have established mechanisms to receive complaints and assist consumers in contacting the competent authorities or in communicating with business operators. The Bank of Thailand has offered this service since 2012 when it established the Financial Consumer Protection Centre (FCC).

The FCC supervises the conduct of financial institutions. It performs three primary functions aimed at promoting the rights of consumers of financial services: (1) receiving complaints and giving advice (2) providing education about financial services; and (3) raising awareness on consumer issues and making recommendations to other bodies or authorities responsible for setting consumer protection policies.

The FCC has established different avenues for the filing of consumer concerns: online<sup>279</sup>, by fax, e-mail, or the designated phone line 1213, and even walk-in. The dedicated phone line 1213 is the most frequently used avenue.<sup>280</sup> At the outset, the FCPC will require the customer to file a preliminary complaint with the financial institution concerned. If no resolution of the dispute is reached with the financial institution, the FCPC may assist in seeking mediation through a third party, such as a court-run mediation centre or the

B.E. 2559, s 20-21

<sup>278</sup> Bureau of Complaints and Consumer Protection in Telecommunications (n.d.). Complaints statistics of the Bureau of Complaints and Consumer Protection in Telecommunication of the NBTC' [In Thai]. Available at <http://tcp.nbtc.go.th/website/home/category/MTQ=/Mg==/th> (accessed 2 November 2021)

<sup>279</sup> Financial Consumer Protection Centre (n.d.). Guidelines for receiving and considering complaints [In Thai]. Available at <https://www.1213.or.th/th/aboutfcc/complainhandling/Pages/complain-condition.aspx> (accessed 15 December 2021)"

<sup>280</sup> *ibid.*

OCPB. The FCC itself will not conduct mediation or render a decision on the complaint.

There were 1,158 complaints received by the FCC in 2018, 1,340 complaints in 2019, and 2,168 complaints in 2020, with most cases relating to financial lending.<sup>281</sup> The total number of complaints sent to the business operators themselves numbered 491,713 in 2019 and 565,430 in 2020.<sup>282</sup>

The FCC received a flood of concerns in 2020 concerning the new soft loan aid and other measures in support of debtors afflicted by the COVID-19 pandemic which the government had required the Bank of Thailand to introduce. As a result, the Bank of Thailand, the financial institutions, the OCPB, the Court of Justice and the **Legal Execution Department** have collaborated in launching a new campaign of online financial mediation. This project began with personal loans and consumer credit in February-June 2021 and included car leasing in June-August 2021. Consumer feedback on this initiative has been extremely positive.<sup>283</sup>

There are also other government agencies responsible for collecting complaints and referring them to the appropriate authorities. The Government Contact Centre: GCC 1111, the *Damrongdham Centre* 1567 receives all types of complaints and forwards them to the appropriate Government agency for resolution. The Online Complaint Centre: OCC 1212 only handles complaints relating to e-commerce and cybercrime.<sup>284</sup> These three authorities submit consumer complaints to the OCPB or to the agency that has jurisdiction over the subject matter of the complaint. The problem of having a variety of complaint receiving centres is that it increases the number of duplicated complaints.

<sup>281</sup> Financial Consumer Protection Centre. (n.d.). *Report and analysis of complaints [In Thai]*. Available at <https://www.1213.or.th/th/aboutfcc/knownfcc/Pages/stats.aspx> (accessed 7 December 2021)

<sup>282</sup> Financial Consumer Protection Centre (n.d.). *Report and analysis of complaints [In Thai]*. Available at <https://www.1213.or.th/th/aboutfcc/knownfcc/Pages/stats.aspx> (accessed 7 December 2021)

<sup>283</sup> Financial Consumer Protection Centre (n.d.). *Mediation Expo for credit card and unsecure personal loan debts [In Thai]*. Available at <https://www.1213.or.th/th/pages/debtmediation.aspx> (accessed 5 December 2021)

<sup>284</sup> Electronic Transactions Development Agency (2021, February 1). *Statistics of Online Complaint Centre for December 2020 (1212 OCC), December 2020 [In Thai]*. Available at <https://www.1212occ.com/news/detail/index/itemid/242> (accessed 28 November 2021)

### 4.3 Dispute Resolution by Consumer Associations and Networks

Consumer associations, consumer networks, and other non-governmental organizations (NGOs) all contribute to the growth of consumer protection in a variety of ways, including dispute resolution.

The Foundation for Consumers (FFC) is one of Thailand's most well-known consumer organizations.<sup>285</sup> It established a Complaint and Legal Assistance Centre in 1996 for the purpose of receiving consumer complaints and assisting plaintiffs in resolving disputes through mediation or by filing a lawsuit against business operators.

The FFC lacks the legal authority to compel business operators to engage in voluntary negotiation or mediation with their customers. However, its established reputation motivates many business operators to engage with the FFC in voluntary negotiation or mediation and respond promptly to complaints. This is especially attributable to FFC's large membership and established network of social action organizations. It also has significant media support and presence. This incentivizes many corporations which are watchful of their brand and reputation to be responsive.

Unlike the OCPB or other government agencies, the FFC accepts all types of 'consumer cases' including those that are declined by the OCPB, such as a taxi driver's complaint as regards a damaged car or even those brought by small and micro-enterprises, enterprises such as massage centres and *tuk-tuk* (autorickshaw) riders.

The FFC collaborates closely with a range of government agencies, including the Bank of Thailand, the OCPB, and the Court of Justice to address consumer complaints and difficulties.

The FFC works with vulnerable consumers, including those with disabilities by supporting its network partners. One major victory was the court order for damages to disabled persons for failure to build an

<sup>285</sup> Munger, F. W. (2014). *Revolution Imagined: Cause Advocacy, Consumer Rights, and the Evolving Role of NGOs in Thailand*. In *Articles & Chapters*. 1134. Retrieved December 20, 2021, from [https://digitalcommons.nyls.edu/fac\\_articles\\_chapters/1134/](https://digitalcommons.nyls.edu/fac_articles_chapters/1134/) (accessed 20 December 2021)

elevator for the urban train system.<sup>286</sup> Its outreach to rural residents is carried out *via* its network of rural NGOs.

The FFC marshals a variety of channels to receive consumer claims, including via e-mail, web applications, social media, phone calls, and walk-ins.<sup>287</sup> Where a dispute is not resolved through ADR, the FFC will support consumers who wish to file an action before the courts with the assistance of a lawyer from its own panel or that of its network partners. The FFC has sought to register to be a Mediation Centre under the Dispute Mediation Act B.E. 2562 (2019).

From 1 January until 15 December 2021, the FFC provided advice to and received complaints from a total of 3,321 consumers. The complaints relate to media and communications (1,816 complaints, 55 per cent), finance/banking/insurance issues (740 complaints, 22 per cent) and general products and services issues (400 complaints, 12 per cent).<sup>288</sup> In 2020, the FFC received 1,294 complaints of which 1,062 were settled, and 51 resulted in the filing of lawsuits.<sup>289</sup>

As noted in section 2, the Consumer Council of Thailand is established by statute, and is comprised of consumer organizations. The Act requires the Consumer Council to support and assist member organizations to mediate or settle disputes relating to the infringement of consumer rights, prior to and during court proceedings. Nevertheless, the Council is considering whether it should also establish a dispute resolution centre or whether this function should remain with its founding members, including the Foundation of Consumers.

Included amongst the powers of the Council is dispute resolution and, in particular, the power to commence legal proceedings. Such legal proceedings may involve civil, criminal, administrative, or consumer cases.<sup>290</sup> The Act though does not specify the type of cases the Consumer Council should pursue. Members of the Council interviewed for this report indicated that the Council would, as a priority, pursue cases where numerous consumers are affected, or where commencing legal proceedings would be in the public interest.<sup>291</sup>

#### 4.4 The Dispute Mediation Act B.E. 2562 (2019)

The Dispute Mediation Act B.E. 2562 (2019) was adopted to encourage and regulate the use of mediation in both civil and criminal cases prior to litigation in court. It distinguishes between Government Agency Mediation Centres and those offered by other providers which are termed Public Sector Dispute Mediation Centres.<sup>292</sup> State agency mediation centres can mediate civil cases with amounts at stake up to THB 5 million (\$160,000).<sup>293</sup> Public mediation centres, however, can only mediate civil cases with amounts at stake up to THB 500,000 (\$16,000).<sup>294</sup>

The Dispute Mediation Act B.E. 2562 (2019) is important in that it invites Government agencies, private organizations and civil society organizations, including consumer associations not yet authorized to provide

<sup>286</sup> Foundation for Consumers (2021, September 15). Bangkok court decides to pay damages for disabled people in the case of building an elevator in the BTS Skytrain System after more than 5 Years [In Thai]. Available at <https://www.consumerthai.org/consumers-news/public-society/4633-ffc-bts15-9-64.html> (accessed 8 January 2022)

<sup>287</sup> Foundation for Consumers. (n.d.). *Complain to other channels [In Thai]*. Available at <https://www.consumerthai.org/go-to-online-complaint/%E0%B8%A3%E0%B9%89%E0%B8%AD%E0%B8%87%E0%B9%80%E0%B8%A3%E0%B8%B5%E0%B8%A2%E0%B8%99%E0%B8%8A%E0%B9%88%E0%B8%AD%E0%B8%87%E0%B8%97%E0%B8%B2%E0%B8%87%E0%B8%AD%E0%B8%B7%E0%B9%88%E0%B8%99.html> (accessed 19 December 2021)

<sup>288</sup> Foundation for Consumers (n.d.). Consumer Foundation reveals the consumer situation in the year 64, found that 55 percent of the sms problems are disruptive, rising to the number 1 spot [In Thai]. Available at <https://www.consumerthai.org/consumers-news/ffc-news/4667-ffc-consumersituation2021.html> (accessed 10 December 2021)

<sup>289</sup> Foundation for Consumers. (n.d.). *Annual Report Year 2020 of the FCC [In Thai]*. Available at <https://www.consumerthai.org/file/reports/ffc/%E0%B8%AA%E0%B8%A3%E0%B8%B8%E0%B8%9B%E0%B8%9C%E0%B8%A5%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%94%E0%B8%B3%E0%B9%80%E0%B8%99%E0%B8%B4%E0%B8%99%E0%B8%87%E0%B8%B2%E0%B8%99%E0%B8%9B%E0%B8%B5-2563.pdf> (accessed 19 December 2021)

<sup>290</sup> Establishment of Consumer Council Act B.E. 2562 (2019), s 14(7)

<sup>291</sup> Fact finding with Consumer Council of Thailand on 3 December 2021

<sup>292</sup> Dispute Mediation Act B.E. 2562 (2019), s 68

<sup>293</sup> Dispute Mediation Act B.E. 2562 (2019), s 20

<sup>294</sup> Dispute Mediation Act B.E. 2562 (2019), s 69. Mediation centres not governed by this law do not have such a limitation of jurisdiction.

mediation services, to register as Dispute Mediation Centres. However, those operating under any other law, such as the OCPB under the CPA, can continue to operate outside of the Dispute Mediation Act.<sup>295</sup>

The Act protects the parties' rights to pursue court action if the mediation is unsuccessful. If the limitation period for court action has expired during the mediation of the dispute or is about to expire within sixty days of termination of the mediation, the limitation period shall be extended for another sixty days.<sup>296</sup>

The Act specifies that the Rights and Liberties Protection Department of the Ministry of Justice acts as the Registrar and shall promote and encourage the establishment of Public Sector Dispute Mediation Centres and ensure their compliance with the Act.<sup>297</sup> The Department is authorized to grant financial support for funding the operational costs of public sector dispute mediation centres.<sup>298</sup>

To serve as a mediator under this Act, an individual must have completed dispute mediation training through a program accredited by the National Commission for Justice Administration Development<sup>299</sup> and must not be prohibited from serving as mediator by any law.<sup>300</sup> The Commission is required to ensure that mediation centres established under the Act, both Government Agency Dispute Mediator Centres and Public Sector Dispute Mediation Centres, are able to administer competent mediation. The Rights and Liberties Protection Department of the Ministry of Justice has issued a regulation for implementation of the Dispute Mediation Act B.E.2564. The regulation establishes the Committee for Promoting and Directing Public-Sector Dispute Mediation Centres. The National Commission for Justice Administration Development has issued a very detailed set of guidelines for this purpose.<sup>301</sup>

<sup>295</sup> Dispute Mediation Act B.E. 2562 (2019), s 68

<sup>296</sup> Dispute Mediation Act B.E. 2562 (2019), s 6

<sup>297</sup> Dispute Mediation Act B.E. 2562 (2019), s 68

<sup>298</sup> Dispute Mediation Act B.E. 2562 (2019), s 70

<sup>299</sup> Regulation of the Rights and liberties protection department on the mediation of the public dispute mediation centres B.E.2562 (2019), s 19

<sup>300</sup> Dispute Mediation Act B.E. 2562 (2019), s 10

<sup>301</sup> Fact-finding online interview with the Consumer Council of Thailand on 3rd December 2021

Mediation centres established under the Act are permitted to mediate civil disputes for claims not exceeding THB 500,000 (\$151,036,90), or such other amount as may be prescribed in a Royal Decree. A Royal Decree may also provide that other civil disputes also fall within the jurisdiction of the mediation centres established under the Act.<sup>302</sup>

A memorandum of settlement agreement will be made in writing by the mediator when the parties reach an agreement. The agreement must be signed by both parties and meet specified requirements.<sup>303</sup> If one of the parties fails to comply with any of the terms of the settlement agreement, the other party may bring an action in court to have the agreement enforced. Such a request must be filed within three years of the settlement agreement's effective date.<sup>304</sup>

The Act protects the right of the parties to pursue court action if the mediation is unsuccessful. If the limitation period for court action has expired during the mediation of the dispute or is about to expire within sixty days of termination of the mediation, the limitation period shall be extended for another sixty days.<sup>305</sup>

Until 19 November 2021, the Department of Rights and Liberties had registered 532 public sector mediation centres and 82 Government agency mediation centres under the Act as dispute mediation centres pursuant to the Act. During the same period, 1,808 mediators were registered for Government agency mediation centres and 1,940 for public-sector mediation centres.<sup>306</sup> Numerous consumer organizations have also submitted applications to serve as public-sector dispute resolution centres.

<sup>302</sup> Dispute Mediation Act B.E. 2562 (2019), s 69. The jurisdiction of the public sector mediation centres established under the Act for criminal disputes is as specified in the Dispute Mediation Act B.E. 2562 (2019) s 35

<sup>303</sup> Dispute Mediation Act B.E. 2562 (2019), s 30

<sup>304</sup> Dispute Mediation Act B.E. 2562 (2019), s 31

<sup>305</sup> Dispute Mediation Act B.E. 2562 (2019), s 6

<sup>306</sup> The data from the website of the Department of Rights and Liberties: Conflict Management Division (2021, October 14). Department of Rights and Liberties. Available at <https://www.rlpd.go.th/%E0%B8%81%E0%B8%AD%E0%B8%87%E0%B8%AA%E0%B9%88%E0%B8%87%E0%B9%80%E0%B8%AA%E0%B8%A3%E0%B8%B4%E0%B8%A1%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%A3%E0%B8%B0%E0%B8%87%E0%B8%B1%E0%B8%9A%E0%B8%82%E0%B9%89%E0%B8%AD%E0%B8%9E%E0%B8%B4%E0%B8%9E%E0%B8%B2%E0%B8%97/Content?ContentID=VnORUhxN> (accessed 30 October 2021)

The Court of Justice and the Ministry of Justice have established mediation facilities under the Act both in Bangkok and the provinces. These provincial state mediation centres are housed in the Court of Justice and Department of Justice branches in the provinces. Therefore, mediation is now available to all residents in the provinces.

To make mediation more accessible, the Department of Rights and Liberties has created a dedicated website to help users locate nearby mediation centres, apply for the mediation online, and even submit a request for the establishment of a mediation centre.<sup>307</sup>

The existence of the mediation procedure under the Act could also serve to proactively address disputes at agencies confronted with a large number of disputes. The Student Loan Fund, which has a large number of defaulters, is an example. On 17 November 2021, the Ministry of Justice and the Student Loan Fund collaborated to establish a mediation method to help debtors settle disputes prior to the Fund's filing a case in court.<sup>308</sup> The Ministry has also entered a MOU with the OCPB to promote mediation, the training of mediators, and the sharing of mediation knowledge.<sup>309</sup>

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<sup>307</sup> Department of Rights and Liberties (n.d.). Available at <https://emediation.rlpd.go.th/mediation/request> (accessed 30 October 2021)

<sup>308</sup> Student Loan Fund. (n.d.). *Eng. together with the Department of Rights and Liberties Protection. Prepare to organize a mediation event to help debtors who are overdue [In Thai]*. Available at <https://www.studentloan.or.th/th/event/1637135871> (accessed 3 December 2021)

<sup>309</sup> Department of Rights and Liberties (2021, March 12). Memorandum of Cooperation. Available at <https://ww2-api.rlpd.go.th/File/Documentcontent/3f1e9205-3215-4942-88fd-08d9b081895d/20211126092447.pdf> (accessed 30 October 2021)

## 5. FOCUS AREAS FOR REFORM

### 5.1 Defining the beneficiary of consumer law

#### CPA 1979

The CPA 1979, as amended in 1998 and currently in use, sets forth a very broad definition of the term “consumer”:

“consumer” means a person who purchases or receives a service from a business operator or a person who receives an offer or a solicitation from a business operator for the purchase of goods or the receipt of a service and includes a person who duly uses goods or receives a service from a business operator despite no payment of consideration on his part;<sup>310</sup>

The definition covers buyers and users of goods and services. However, the definition does not specify that to be classified as a consumer:

- the purchase must be by a natural person (as opposed to a legal entity), and
- the goods or services must be purchased and used for personal, family or household purposes.

This is different from the definition of ‘consumer’ set forth in section 3 of the Unfair Contract Terms Act B.E. 2540 (1997):

“consumer” means a person entering into a contract as a buyer, hirer, hirer on hire-purchase, borrower or the insured or a person entering into any other contract for acquiring property, services or any other benefits in exchange for consideration, provided that the entry into the contract shall not be for the purpose of trade of such property, services or other benefits, and shall also include a person entering into a contract as a guarantor of the said person when it is not entered into for the purpose of trade.

The OCPB, the courts and the consumer organizations grapple with the definition set forth in the CPA 1979 to determine the beneficiaries of their services.

The OCPB uses a more restrictive definition than that provided under the CPA 1979. It requires that the purchase be by a natural person and for personal and/or household purposes in order for a complaint it receives to be treated as a consumer case. Unless these two criteria are met, the OCPB will decline to process the claim.

The Court of Appeal, however, has adopted a more nuanced approach as evidenced in its decisions in two cases. Both cases related to the purchase of a pick-up truck. In the first case, the purchase was of a new high-end pick-up truck and used by the purchaser in his business and for personal use.<sup>311</sup> The court held that this did not qualify as a consumer case. In the second case, the purchaser bought a second-hand truck and also used it for his business. The court held that this was for a consumer purpose. The court differentiated the latter case on the basis that the buyer purchased the second-hand pick-up to supplement his income, not to operate a significant business.<sup>312</sup>

Consumer organizations welcome this nuanced approach, even if it does not provide for legal certainty. It grants them the required latitude to assist taxi-drivers and other micro-business operators.

The UNGCP 2015 Guideline 3 provides as follows:

For the purpose of these guidelines, the term “consumer” generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs.

Several Asian countries, including India, South Korea, the Philippines and China have extended consumer protection to specific disadvantaged and vulnerable persons other than those who purchase goods and services only for personal and household purposes. India extends consumer protection also to those who use products for the purpose of earning a livelihood by means of self-employment.<sup>313</sup> South Korea extends

<sup>311</sup> Decision of the President of the Court of Appeal 894/2561

<sup>312</sup> Decision of the President of the Court of Appeal 935/2561

<sup>313</sup> India, Consumer Protection Act 2019 section 2 (7)

<sup>310</sup> The Consumer Protection Act B.E. 2522 (1979), s 3



protection to those who use the products for arable and pastoral farming and small-scale fishing.<sup>314</sup> China extends the protection to rural farmers who purchase goods for direct agricultural production.<sup>315</sup> The Philippines extends protection to those who purchase goods for agricultural purposes.<sup>316</sup>

The primary definition of consumers in the statutes of each of these countries requires that they be natural persons and that they purchase the goods or services for personal, family or household purposes. The extension to other categories is done by way of exceptions provided under the law itself or by Presidential decree.

### **Consumer Case Procedure Act**

The Consumer Case Procedure Act B.E. 2551 (2008) was enacted to protect consumers and facilitate their access to the courts by establishing simplified rules of procedure and evidence. The definition section of the Act states:

“Consumer” means a consumer under the law on consumer protection, and shall also include an injured person under the law on liability for damage arising from unsafe goods;

“Consumer Case” means

(1) a case between a consumer or a person having standing to file a lawsuit on the consumer’s behalf under section 19 or as per other law and a business owner, involving a dispute concerning a legal right or obligation related to the consumption of goods or service;

(2) a civil case under the law on liability for damage arising from unsafe goods;<sup>317</sup>

It would be presumed that the plaintiff in a consumer case would have to be a consumer as defined above. However, section 17 of the Consumer Case Procedure Act B.E. 2551 (2008) provides as follows:

In the case where a Business Operator intends to take legal action against a Consumer as a Consumer Case, and the former is entitled to

submit a case to the court within the territorial jurisdiction where the Consumer is domiciled and to other courts as well, the Business Operator must submit the case only to the court within the territorial jurisdiction where the Consumer is domiciled.

The Court of Appeal has relied on this section 17 to allow for the following:

- the possibility for a business person to file an action against another business person, not only when both are natural persons but also when they are legal entities,<sup>318</sup> and even
- the possibility for a business operator to file an action against a consumer who is a natural person.<sup>319</sup>

Such interpretations by the Court of Appeal of the term ‘consumer case’ substantially increase the number of cases filed under the Consumer Case Procedure Act B.E. 2551 (2008) and cause delays in the handling of cases under this procedure.

More seriously, the Consumer Case Procedures Act B.E. 2551 (2008) has become the chosen mode for banks and other lending institutions to collect from consumers debts and penalties under lending laws. An Act meant to be a shield for consumers has become a sword used against consumers. Section 17 and the Court of Appeal case law on such Section are the subject of extensive criticism by both legal scholars and consumer organizations.<sup>320</sup>

Countries that have introduced simplified procedures for consumer cases have done so to address the particular problems faced by consumers in the context of court litigation: costs, delays, formalities, complex procedural and evidentiary rules, etc. In order to avoid backlogs of such cases, these countries have confined cases heard to only those in which the consumer is the plaintiff. None of them has permitted the use of truncated and simplified procedures to be used against consumers, and certainly not to facilitate debt collection.

<sup>314</sup> South Korea, Framework Act on Consumers 2011 Article 2 (1) (the provision was already contained in the Framework Act of 2008) and Enforcement Decree.

<sup>315</sup> China, Law of the People’s Republic of China on the Protection of Consumer Rights and Interests, Articles 2 and 54

<sup>316</sup> The Consumer Act of the Philippines, Republic Act No. 7394 April 13, 1992, Article 4 (n) and (q)

<sup>317</sup> The Consumer Case Procedure Act B.E. 2551 (2008), s 3

<sup>318</sup> Ruling of the President of the Court of Appeal no. 50/2551

<sup>319</sup> Ruling of the President of the Court of Appeal no. 50/2551, no.56/2551 and no. 33/2552

<sup>320</sup> Nontawat Nawatrakulpisut. (2020). Amendment of the Consumer Protection Law: Important steps forward for improvement towards more efficient protection [In Thai]. *Thammasat Law Journal*, 49(2 (June 2020)): 157–189.

## 5.2 Law on Consumer Guarantees and Warranties

Consumers generally lack adequate information on the reliability, durability and running costs of products. They also often lack a clear understanding as to the exact nature of their post-purchase rights against the seller. This is compounded by manufacturer and seller warranties that are written in complex and often confusing language.

Thailand does not have a law governing warranties on consumer goods and services. The Civil and Commercial Code is of little assistance in cases of non-conformities or faulty goods and unsatisfactory services. The Code is based on the principle of freedom to contract and hence does not provide adequate protection.<sup>321</sup>

There have been two proposals aimed at resolving the issue. The first is to have a stand-alone Consumer Guarantees Act which would specify implied warranties.<sup>322</sup> For the supply of goods, such implied warranties could be acceptable quality, fitness for a particular purpose, a match to the description given or to the sample or demonstration model, reasonable price, prompt delivery and good condition of goods, and availability of spare parts and repair facilities for a reasonable period of time.

For services, the implied warranties could be that the service is carried out with reasonable care and skill, is fit for a particular purpose as notified by the consumer to the seller, is carried out within a reasonable time if no time frame was agreed upon, and that the price and charges are reasonable if not specified in the contract.

The second approach proposed would entail the enactment of a law on non-conformity of goods along the lines of that of the European Union and its member countries<sup>323</sup> or the United States lemon

law<sup>324</sup>. Such legislation would include provisions to assist consumers, such as defining the buyer not only as the person who buys goods but also as a person who receives the products or the right to the goods, for personal or household purposes, and would specify the remedies that a buyer might request.

The OCPB's proposal is to amend the CPA 1979 to establish a Warranties Committee and have the Committee specify standards on consumer warranties.<sup>325</sup> Such an approach would be a good fit within the legislative architecture that already exists in Thailand for consumer protection. The provision on warranties must be capable of addressing substantive fairness as well as procedural fairness and must ensure that these may not be excluded by opt-out clauses or disclaimers in consumer contracts.

## 5.3 Law to Protect E-commerce Consumers

E-commerce is not exempt from any of the provisions of Thailand's consumer protection laws. By the same token, there are no consumer protection laws specific to business-to-consumer e-commerce.

Thailand does not have comprehensive data on consumer complaints on e-commerce providers; no one agency compiles this data. The information obtained from the Electronic Transactions Development Agency (ETDA) and the Online Complaint Centre OCC 1212 are therefore merely indicative.

The ETDA received 29,626 complaints in 2018, 42,947 complaints in 2019, and 44,159 complaints in 2020. From 1 January-31 August 2021, the OCC 1212 received 28,393 complaints, principally relating to online selling (62.9 per cent) and illegal websites (27.06 per cent).<sup>326</sup>

The OCPB does not indicate on its website the number of e-commerce related complaints that

<sup>321</sup> For a discussion of the protection available under the Civil and Commercial Code, see for instance Paphon Pariponponchanapisuti. P (2014). Consumer protection: The right to return goods purchased in stores in Thailand (Master of Law Thesis). Thammasat University. Available at [http://ethesisarchive.library.tu.ac.th/thesis/2014/TU\\_2014\\_5401040364\\_1665\\_1097.pdf](http://ethesisarchive.library.tu.ac.th/thesis/2014/TU_2014_5401040364_1665_1097.pdf) (accessed 19 December 2021)

<sup>322</sup> Similar to the New Zealand Consumer Guarantees Act 1993

<sup>323</sup> Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC

<sup>324</sup> Plengsaeng, S (2020, September 25). Liability for defects: A draft lemon law that must wait [In Thai]. Available at <https://www.bangkokbiznews.com/blogs/columnist/126095> (accessed 8 January 2022)

<sup>325</sup> <https://www.ocpb.go.th/download/Draft%20Consumer%20Protection%20Act.pdf>

<sup>326</sup> Electronic Transactions Development Agency (2021, September 22). DES reveals that online consumers are deceived, cheated, products that don't match the cover daily [In Thai]. Available at <https://www.eta.or.th/th/pr-news/1212-Online-Complaint-Center-Proactive-Response.aspx> (accessed 8 December 2021)

are referred to it by other agencies. The Consumer Protection for E-commerce division of the OCPB itself received directly from consumers 13,574 complaints from January 2019 to December 2021.<sup>327</sup>

Facebook sales are deemed by the OCPB and the consumer organizations as particularly problematic. Consumers increasingly choose to shop online via Facebook Marketplace or Facebook Live streaming. A common allegation is that some vendors on these platforms resort to a variety of unfair trading practices. The OCPB has attempted to obtain data from Facebook to resolve consumer complaints but has been rebuffed by Facebook on the grounds that it required a court order to disclose the requested information. The OCPB is therefore constrained in taking action against Facebook.<sup>328</sup>

Facebook specifies Seller Terms for commerce service users. The Terms of Service and other terms and policies, such as the Instagram Terms of Use are applicable to all commerce service users who sell, lease or rent goods or services to Facebook users on or through Facebook Products, including Facebook Pay. Besides the general terms that apply to traders from all countries, special terms are specified for those from the US, the EU, Brazil and Thailand.<sup>329</sup> The special terms for Thailand are as follows:

### **Sellers in Thailand**

25. If you are a resident of or have your principal place of business in Thailand and you use a Seller Commerce Feature, then the following terms apply to your sales from Product Listings where a User initiates the payment from a Facebook Product.

- a. All such sales are subject to our Purchase Protection Policy.
- b. Any transaction may be refunded or cancelled if we believe that it violates these Seller Terms, the Purchase Protection Policy or our Terms of Service, or if we believe that cancellation may prevent financial loss. Other actions that

may be taken on your account include, as permitted by applicable law: placing a delay on a payment for a period of time, limiting payment methods for a transaction, limiting your ability to make a sale or deactivating your account.

- c. You agree to the terms of service of the payment processor that we have selected, which is currently Kasikorn Global Payment<sup>330</sup>.
- d. To allow the payment processor that we have selected to assess your application to use their services and monitor your use of their services on an ongoing basis, we may share some information about your use of Facebook Products for commerce activity with the payment processor.

It would be advisable to determine if the terms imposed by Facebook are in compliance with the Payment Systems Act B.E. 2560 (2017) and the Trade Competition Act B.E. 2560 (2017).

The Electronic Transactions Act 2001 B.E. 2544 (2001) has been the subject of many amendment proposals, including a proposal to require foreign corporations engaging in e-commerce in Thailand to maintain a representative office in Thailand and to register in order to engage in e-commerce.<sup>331</sup> This proposal is not included in the version finally approved by the National Legislative Assembly in January 2019.<sup>332</sup> However, the amendments did introduce a new section which provides that a Royal Decree can require that the operation of any particular service business involving electronic transactions be subject to prior registration in accordance with the rules, procedures and conditions prescribed in the Royal Decree.<sup>333</sup>

A Royal Decree may in the future provide for the registration and regulation of foreign corporations.

<sup>327</sup> OCPB Connect (n.d.). OCPB statistical data consumer protection [In Thai]. Available at [https://ocpbconnect.ocpb.go.th/Report/Detail?report\\_id=A6D09F01-E7F1-4582-A365-169405DB7DE0](https://ocpbconnect.ocpb.go.th/Report/Detail?report_id=A6D09F01-E7F1-4582-A365-169405DB7DE0) (accessed 5 January 2022)

<sup>328</sup> Online interview with Director of Direct Sales of the OCPB on 14 December 2021

<sup>329</sup> Facebook (2020, November 19). Commerce Product Seller Agreement. Available at [https://www.facebook.com/legal/commerce\\_product\\_merchant\\_agreement](https://www.facebook.com/legal/commerce_product_merchant_agreement) (accessed 24 December 2021)

<sup>330</sup> Kasikorn Global Payment is a new payment model offered exclusively by Kasikorn Bank, Thailand

<sup>331</sup> Baker McKenzie. (2019, April 3). *Thailand - Amendments To Electronic Transaction Act Have Finally Been Enacted – Adding Digital ID Concept And Revising The Criteria For E-signatures, E-transactions, And E-service Businesses*. Available at <https://www.conventuslaw.com/report/thailand-amendments-to-electronic-transaction-act/> (accessed 4 December 2021)

<sup>332</sup> Amendment to Electronic Transaction Act (No. 3), B.E. 2562 (2019)

<sup>333</sup> Electronic Transactions Act B.E. 2544 (2001) s 32 as amended by the Electronic Transactions Act (No. 3), B.E. 2562 (2019)

Thailand could consider expanding the scope of the decree to beyond its mere focus on online direct sellers and marketers. There needs to be a focus on all online ‘business practitioners’ (websites engaging in retail, classified ads, price comparisons and daily deals, etc.) and ‘intermediary service providers’ (business entities or individuals providing engine, hosting, or caching services). The Decree should:

- encourage domestic products prioritization;
- make explicit that online commerce is subject to all consumer protection laws and emphasize the need to comply with the law on unfair contractual terms, misleading advertising and labelling, guarantees and warranties and prohibition of opt-out clauses;
- require high standards of data protection and security, and
- permit a wide range of payment modes (cash, credit and debit cards, e-wallets, etc.) and cater to the unbanked;
- impose a gate keeper role and third-party liability on e-commerce platform providers, for the conduct of online sellers who use their platforms, and
- specify minimum standards of consumer complaint handling services.

E-commerce laws recently enacted in Indonesia, Cambodia, China, and India have many novel features that may be considered in drafting the new E-commerce law in Thailand.<sup>334</sup> China,<sup>335</sup> and India,<sup>336</sup> and in ASEAN Cambodia<sup>337</sup> and Indonesia,<sup>338</sup> see online marketplace providers as gatekeepers who can be required to regulate the online marketplace. These countries have succeeded in imposing duties on these marketplace providers.

<sup>334</sup> Relationship e-commerce

<sup>335</sup> E-Commerce Law of the People’s Republic of China (Adopted at the Fifth Session of the Standing Committee of the 13<sup>th</sup> National People’s Congress on August 31, 2018)

<sup>336</sup> India, Consumer Protection (E-Commerce) Rules, 2020 and Consumer Protection (E-Commerce) (Amendment) Rules, 2021

<sup>337</sup> Cambodia, Law on Electronic Commerce, 2 November 2019.

<sup>338</sup> Indonesia, Digital Business Laws and Regulations 2021

## 5.4 Focus on disadvantaged and vulnerable consumers

The UNGCP 2015 calls for special focus on the needs of disadvantaged and vulnerable consumers. As is the case in most countries, consumer protection law in Thailand did not make special provisions to meet the needs of disadvantaged and vulnerable consumers. One exception lies in the efforts to protect children and the aged. For instance, the Food and Drug Administration relies on the Criteria for Food Advertisement B.E. 2561 (2018) to regulate advertising of food for infants and children.<sup>339</sup>

The Consumer Protection Act (No. 4) B.E. 2562 (2019) for the first time referred to “consumers who are especially at risk from the consumption of goods, such as children, pregnant women, the elderly, patients, and the disabled” as a criterion to determine the safety of goods offered to consumers.<sup>340</sup>

In Thailand, Government agencies that serve consumer protection interests have offices in the urban centres, but have a less uniform presence in the rural areas of the provinces. The OCPB endeavours to maintain at least two officers in each province, but this target has not been met and there are provinces without any OCPB officers.<sup>341</sup> It is undeniable that in these areas, consumers have very limited access to the services of the OCPB. Consumer organizations and their network partners do attempt to fill this gap and to maintain service centres in rural areas.

The CPA 1979 amendments of 2019 now enable designated provincial officials to be conferred the same powers as OCPB officers to undertake the functions normally performed by OCPB officers.<sup>342</sup> In an effort to incentivize local authorities to take part in this initiative,

<sup>339</sup> Infant Food and Food of Uniform Formula for Infant for infants of 6-12 months. Supplementary food for infants specified some provisions relating to the use of advertisement with children such as the advertisement of the Food for Infant and Food of Uniform Formula for Infant indicated age of 6- 12 months and advertising of Supplementary food for infants is prohibited. Advertising of Ready-to-eat gelatin and jelly dessert may not be directed at children less than 3 years of age. Advertisements of Cow’s milk, Flavoured milk, Milk products, Milk beverages and Soya milk must be for children of than 3 years of age. Clause 9 of the Announcement of the Food and Drug Administration Re: Criteria for Food Advertisement B.E. 2561 (2018)

<sup>340</sup> Consumer Protection Act B.E. 2522 (1979) amended B.E. 2562 (2019), s29/2

<sup>341</sup> Fact finding online interview with the OCPB on 30 November 2021

<sup>342</sup> Section 8 CPA

the amendment also stipulates that the fines collected by such officers will accrue to the local authorities<sup>343</sup>. This may help foster enhanced protection of rural consumers.

Thailand provides support for its disabled persons. It adopted the Persons with Disabilities Empowerment Act B.E. 2550 in 2007 before ratifying the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2008. As noted by Donruedee Srisuppaphon *et.al*, the Act adopted a very enlightened definition of persons with disabilities in line with the UNCRPD:<sup>344</sup>

“Person with Disabilities” means a person who has a limitation in performing his or her daily activities or in fully participating in society due to visual, hearing, mobility, communication, mental, emotional, behavioural, intellectual, learning or other impairments, in combination with various obstacles, and has special needs to obtain specific assistance in order to perform daily activities or participate in society like persons without disabilities, on the basis of the types and criteria of disabilities established by the Minister of Social Development and Human Security;<sup>345</sup>

The Act falls within the purview of the Ministry of Social Development and Human Security and its National Office for Empowerment of Persons with Disability. The Act states that anyone who encounters limitations through an impairment has the right to receive legal or personal assistance, sign language interpreters, medical services, home modifications for better accessibility and education free of charge. They can also receive tax exemptions, discounts on public transportation fees, interest-free loans for self-employment and a monthly allowance of THB 800 (\$24.24).

About 3 per cent of the population (slightly over 2 million people) have a disability card. The top three conditions are mobility disabilities (about 50 per cent), hearing impairments (around 18 per cent) and visual impairments (approximately 10 per cent).

Other disabilities include other physical impairments, psychological disorders, autism and learning disabilities.<sup>346</sup>

The UNGCP does not provide a definition of the terms disadvantaged and vulnerable or how the needs of disadvantaged and vulnerable consumers can be met. The International Standards Organization standard ISO 22458 provides useful guidance. Thailand was an observer member on the ISO committee that developed the ISO 22458. It is hoped that Thailand will adopt the standard and enforce it to ensure that disadvantaged and vulnerable consumers are even better served.

Considering the ever-increasing use of ICT services by government agencies and the corporate sector for the supply of goods and services, as well as online complaints handling and dispute resolution, special attention should be paid to those with limited access to ICT services. The disabled who are less likely to be in a position to use ICT services will be even more disadvantaged and vulnerable unless ICT services become more inclusive. ISO has issued a standard to specifically address the need for inclusion of the disabled and aged in the supply of ICT services: ISO 30071-1 Code of practice for creating accessible ICT products and services. This standard, as well as the Web Content Accessibility Guidelines (WCAG)<sup>347</sup>, need to be widely adopted. This matter calls for advocacy by the OCPB and consumer organizations.

Collaboration between the OCPB and the National Office for Empowerment of Persons with Disability would be beneficial for disadvantaged and vulnerable consumers.

### 5.5 Ensuring Quality in Mediation

The use of mediation in consumer cases dates back to the CPA1979. The OCPB was the first regulatory agency in Thailand to offer mediation services, and this was later emulated by other regulatory agencies. Consumer organizations too attempt mediation, although they are not officially authorized to do so.

<sup>343</sup> Section 62-63 CPA

<sup>344</sup> Srisuppaphon, D, Sriboonroj, A, Riewpaiboon, W, & Tangcharoensathien, V (2017). Effective implementation of the UNCRPD by Thailand State Party: Challenges and potential remedies. *BMC International Health and Human Rights*. 17(15(2017)). doi:10.1186/s12914-017-0123-5

<sup>345</sup> Persons with Disabilities Empowerment Act B.E. 2550 (2007) s 4

<sup>346</sup> Burton, M. (2021, February 9). *Disability and poverty in Thailand*. Available at <https://borgenproject.org/disability-and-poverty-in-thailand/> (accessed 18 November 2021)

<sup>347</sup> The Web Content Accessibility Guidelines are part of a series of web accessibility guidelines published by the Web Accessibility Initiative of the World Wide Web Consortium, the main international standards organization for the Internet.

The Court of Justice has always had the inherent power to require mediation at any stage of the litigation process. The pre-litigation mediation process in the courts was formalized and made mandatory by the Consumer Case Procedure Act B.E. 2551 (2008).

The Dispute Mediation Act B.E. 2562 (2019) has made pre-litigation mediation widely available through Government agencies, private establishments and civil society groups, including consumer organizations. The pre-litigation mediation process in the courts has also been formalized by amendments to the Civil Procedure Code.

These developments bode well for improved access to dispute resolution and redress for consumers.

However, there remain concerns that the various channels created for mediation may prove confusing to consumers and may potentially offer poor quality justice.

Mediation is a science and an art. Not all mediation skills may be taught. Expertise in particular areas of law may be more readily assessed than other required qualities, many of which are intangible. The courts grapple with similar issues but are advantaged because the 'judicial culture' has been long established by law and precept.

The onerous task of determining whether mediators are 'fit for their role' has been given to the National Commission for Justice Administration Development. A mandatory training program is required for all mediators seeking registration and detailed guidelines have been issued for their use. There has not yet been any pronouncement as to the tools that will be employed to assess their continued fitness and to enhance their skills and capabilities. These have to be developed as a matter of urgency.

The quality of each mediation centre is to be assessed each year by the Rights and Liberties Protection Department of the Ministry of Justice. Any centre that fails two consecutive quality assessments will have its registration terminated.<sup>348</sup>

It is uncertain how the courts will view the mediation conducted under the Dispute Mediation Act B.E. 2562 (2019). There is doubt, for instance, as to

whether parties filing claims before the courts may once again be required to take part in pre-litigation mediation under the provisions of the Consumer Case Procedure Act or the new section 20 (tr) provisions of the Civil and Commercial Code. It is also not certain whether those who have taken part in mediation, in accordance with the Mediation Act, conducted at the mediation centres established by the Court of Justice and the Justice Department would be treated differently. These matters need to be clarified.

The Court of Justice may also wish to issue identical rules, if feasible, to govern mediation under the Dispute Mediation Act B.E. 2562 (2019) and section 20 (tr) of the Code.

There are Government agencies, including the OCPB, OIC and the NTCB, that will continue to operate under their own laws. They are not required to be subject to the quality control measures introduced by the National Commission for Justice Administration Development. There needs to be a quality assessment of these mediation agencies as well.

### 5.6 Developing ODR at OCPB

The OCPB's use of ICT in dispute resolution has evolved from merely a means of supporting participant involvement by facilitating access to the complaint centre, e-mail for information exchanges and texted meeting appointments. The OCPB now has a webpage for complaints tracking, video conferencing and use of Big Data for storage of comprehensive complaints handling data and for linking to other Government agency complaints centres. The OCPB is now researching the use of disruptive technologies such as blockchain and artificial intelligence.

#### Harmonization with ASEAN

The establishment of an ASEAN Online Dispute Resolution (ODR) Network is provided under Outcome 3.2 under the ASEAN Strategic Action Plan on Consumer Protection (ASAPCP 2016 – 2025). The ASEAN Committee of Consumer Protection (ACCP) has played a significant role in guiding the ASEAN states towards harmonization *in the establishment of ODR. It seeks to* develop the ASEAN Online Dispute Resolution Network by 2025 and has commissioned several studies towards achieving this goal.

In October 2021, it launched *The ASEAN Alternative Dispute Resolution (ADR) Guidelines for Consumer*

<sup>348</sup> Regulation of the Rights and Liberties Protection Department on Dispute Mediation by a Public Sector Dispute Mediation Centre B.E.2562 (2019), s 19

*Protection* and in December 2021 launched the *Feasibility Study: ASEAN Online Dispute Resolution (ODR) Network*. A pilot testing of the ACCP Online Complaints Function is embedded in the ACCP website.

Thailand has complied with the recommendations and is today a leader in ODR development in ASEAN.

The Feasibility Study contains a useful summary of ODR approaches followed in the EU, Brazil, Germany, China, and Thailand. It also includes an assessment of the advantages and disadvantages of the various approaches.

The following commentary will not reiterate what has already been covered in the Feasibility Report. It merely suggests focus areas for consideration by the OCPB based on the research and interviews conducted for the peer review.

### **Legal basis for on-line mediation**

The OCPB is of the view that the existing OCPB standards and guidelines on mediation are adequate for its online mediation as well since Thailand already has adequate laws and regulations governing Information Technology transactions, personal data protection, and online security. The OCPB prefers to manage online mediation in a flexible manner by directly and autonomously establishing the terms and conditions of its online mediation.<sup>349</sup>

This is not a view that is endorsed by all legal experts. Sirilak Arunpraditkun, a judge of the Central Intellectual Property and International Trade Court, for instance, contends that “(e)xisting laws do not mention online mediation at all. As a result, it is crucial to revise Thai laws or regulations so that settlement agreements reached through online mediation can be enforced.”<sup>350</sup>

### **Serving the disadvantaged and vulnerable**

An online system may pose challenges for the disadvantaged and vulnerable; yet this need not be the case. In fact, ODR can be improved in order to better serve the disadvantaged and vulnerable, also

with respect to traditional ADR if appropriate measures are in place.

The OCPB is aware that the provincial population does not benefit uniformly from the OCPB's consumer protection measures. Though the OCPB attempts to have at least two of its officers in each province, it has not yet been able to achieve this goal. The 2019 amendment to the CPA 1979 enables local authority officers exercise the powers of OCPB officers. These officers could also be designated as the contact point for consumer complainants. They could manage the OCPB online facilities at their local offices and assist consumers who wish to avail themselves of the OCPB's ODR facility.

Both the Court of Justice and the Ministry of Justice have established mediation facilities under the Mediation Act. In the provinces, these centres are housed in the Court of Justice and Department of Justice branch offices. The OCPB may wish to enter into an arrangement with these entities to facilitate access to its own ODR facility. However, the OCPB must ensure that the required ICT infrastructure is provided at the provincial centres and that the staff are adequately trained.

### **Platform connectivity with Businesses**

The OCPB is already working with some business owners on the development of a consumer contact centre and an internal consumer dispute resolution process. The OCPB is of the view that this endeavour has helped reduce the number of complaint cases reported to the OCPB.<sup>351</sup> The enhanced ICT capacity at the OCPB can be harnessed to further develop its engagement with business operators with a view to developing their in-house complaints processing facility, also providing on their websites an easily accessible link to the OCPB's ODR platform. Where the contractual offer to the consumer is made via e-mail, the business operator could also be required to provide the link the OCPB platform. Reference to the OCPB should also be included in the general terms and conditions of agreements contracted online.

### **Rationalizing complaints handling and educating Consumers**

The developments in the use of ICT at the OCPB are under way at a time when the courts, the regulatory

<sup>349</sup> Fact-finding online interview with the Information Technology Director of the OCPB on 15 January 2022

<sup>350</sup> Arunpraditkun, S (n.d.). Can online dispute resolution meet challenges of Thai electronic consumer disputes? Available at <https://oia.coj.go.th/th/file/get/file/20190208e4da3b7fbcc2345d7772b0674a318d5142753.pdf> (accessed 3 January 2022)

<sup>351</sup> Fact-finding online interview with the OCPB on 30 November 2021.

agencies, business entities and civil society in Thailand are all overwhelmed with large numbers of consumer complaints.

The OCPB performs a range of functions related to consumer complaints handling. It assists those consumers who are not familiar with ICT use, particularly in the provinces. It informs and educates consumers who lodge their complaints with other agencies that lack jurisdiction over their disputes. And it also has to contend with those who lodge their complaints simultaneously with several complaint processing centres. It will only be in a position to address these issues if there is clarity amongst the complaint processing agencies as to where consumers should take their complaints, and if there exists a coordinated process amongst the agencies to help resolve consumer complaints.

The OCPB now handles almost 25,000 complaints per year, i.e. approximately one hundred each working day. Close to two-thirds of these are referred to it by other Government agencies. The OCPB requires resources to ensure the satisfactory management of such large numbers of complaints. There is even a suggestion that there should be a new one-stop agency specifically dedicated to handling consumer complaints.<sup>352</sup> The enhanced use of ICT and ODR by

the OCPB may obviate the need for such a one-stop agency.

As noted in the discussion on dispute resolution above, the 2013 amendments to the CPA 1979 prescribed that the CPB's duties include:

to mediate or compromise disputes in connection with violation of rights of consumers in reliance on an agreement concluded by the consumer and the business operator prior to the institution of an action in court, in accordance with the rules prescribed by the Board and published in the Government Gazette;<sup>353</sup>

The section does not require the CPB to offer a mediation service in which the OCPB officer will act as mediator. The section requires the OCPB officer to assist the consumer during a mediation process prior to the institution of an action in Court. Since the 2019 amendment to CPA 1979, the CPB can undertake court action on behalf of an aggrieved consumer. It would place the CPB in an unfair position to act as both mediator and, if that fails, prosecutor on behalf of the consumer. For this reason, the CPB cannot act as mediator, but rather must only assist the consumer during the mediation process conducted by a mediation facility independent of the CPB.

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<sup>352</sup> Makbua, P. (2019). Establishment of One-Stop Service Organization for Consumer Protection in Thailand\* *Thammasat Business Law Journal* Vol.9 2019, p 345 - 357

<sup>353</sup> Consumer Protection Act B.E.2522 (1979) s 10 (1/1)



It would be appropriate for the OCPB to reconsider the scope of its services concerning its mandated role of handling consumer complaints and mediation. The OCPB currently receives all consumer complaints directly from consumers and other agencies that receive complaints. The collation and analysis of the complaints are vital for its research and policy development role.

The complaints received are sorted based on whether or not they fall within the OCPB's jurisdiction. The complaints falling outside its jurisdiction are then directed to the relevant other agencies.

The processing of the complaints within the OCPB's ambit progresses to mediation if not otherwise resolved and if both parties agree to take part in mediation. Mediation is a resource-intensive process.

Mediation facilities, both court-initiated and those under the Dispute Mediation Act 2019, are now widely available, including in the rural areas of the provinces. It would be appropriate for the OCPB to consider refocusing its functions on enforcement, education, research and policy development, and law reform,

leaving complaints handling and dispute resolution to the Sub-Committee on the Provincial Consumer Protection at Provincial Hall, District Administration, and the Municipality Office. To fulfil this mission, the reinforcement of capacities and resources at the local level should be considered.

Finally, the Government should consider the possibility of increasing the OCPB's budget, especially on the basis of comparisons with other countries. According to UNCTAD's World Consumer Protection Map<sup>354</sup>, the OCPB has a staff of 350 persons and an annual budget of \$6,900,000. The Consumer Authority of Italy has a team of 226 persons and a budget of \$69,800,000. In comparison, the authority of the Republic of South Africa has an annual budget of \$4,080,000 and a staff of 85 persons, and the consumer authority of Colombia has a team of 98 persons and an annual budget of \$63,308,891. An increase in the OCPB's annual budget could significantly improve efforts on consumer information, education, and access to justice. It would also positively impact the support provided to Thailand's provinces and the activities dedicated to vulnerable and disadvantaged consumers.

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<sup>354</sup> <https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map>

## 6. SUMMARY OF RECOMMENDATIONS

Thailand has over forty years of experience in consumer protection law and policy. It is the second member state of the Association of Southeast Asian Nations, following Indonesia (2019), to undergo a voluntary peer review of consumer protection law and policy conducted by UNCTAD. The voluntary peer reviews use the United Nations Guidelines for Consumer Protection (UNGCP) as a framework for analysis and other international instruments and initiatives commonly recognized as best practices.

This review provides an external assessment of the effectiveness of consumer protection law and policy, identifying the challenges and the areas for improvement in the legal and institutional frameworks. The recommendations focus on enhancing the quality and efficiency of the national consumer protection legislation and policy in line with the country's economic and developmental needs and priorities.

The report focused on the priorities identified by Thailand, and namely: the consumer protection law of Thailand, the national consumer protection policy, the existing consumer dispute resolution process with a special focus on alternative and online dispute resolution.

Based on the report and its Annex II containing an assessment of the UNGCP, UNCTAD found that Thailand has a comprehensive legal framework on consumer protection, which engages several different authorities. Thailand also engages in constructive dialogue and cooperation with businesses and consumer groups. For example, the OCPB initiative to target the 25 largest businesses in the country to enhance their internal complaint mechanisms for consumers was effective. It succeeded in reducing the number of consumer complaints received by OCPB.

At the institutional level, the OCPB serves as the focal point on consumer protection in Thailand. It cooperates with several other authorities such as regulators, the Office of the Court of Justice and the Bank of Thailand.

### 6.1 Legal and Policy Frameworks

The Thai Constitution, in article 57 (B.E. 2540), recognises that “the right of a person as a consumer shall be protected as prescribed by the laws.”. Section 61 of the Thai Constitution establishes that “The State shall provide efficient measures or mechanisms

to protect and safeguard the rights of consumers, including knowledge of truthful information, safety, fair contracts, and any other aspects which are beneficial to consumers”. The Consumer Protection Act 1979 (CPA), most recently amended in 2019, is the principal law for consumer protection, establishing the main consumer rights and consumer protection principles.

In addition to the Consumer Protection Act and the Thai Constitution, there are several specific laws dedicated to related areas: the Direct Sales and Direct Marketing Act (2002), the Thai Product Liability Act (2008), the Consumer Case Procedure Act (2008), and the Act on the Establishment of the Consumer Organization Council (2019).

Although the Thai legal framework provides for a broad set of consumer protection rights, the report identified areas that could benefit from regulation or greater precision or improvement. These include: 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 (thus excluding business plaintiffs), regulating all consumer contracts, or regulating the concept of unsafe services.

Thailand does not have a law on consumer goods and services warranties, and the Civil and Commercial Code provide only superficial regulation on non-conformities and faulty goods and services.

The OCPB proposed to amend the CPA to establish a Warranties Committee and specify standards on consumer warranties. It is recommended that the law on Consumer Guarantees and Warranties be revised, and that the CPA be amended to better address substantive and procedural fairness and to ensure that opt-out clauses may not exclude warranties in consumer contracts.

The need to adapt laws and policies to the special features of e-commerce directly impacts consumer protection laws. In particular, Thailand could expand the Electronic Transaction Act's scope to address issues specific to the digital economy, such as the liability of platforms, online payments, use of data, and online complaints handling. Although electronic transactions are not exempt from the existing consumer protection laws, Thailand lacks specific business-to-consumer e-commerce regulations, which would be useful for

regulating matters such as digital advertising, online behavioural advertising (influencer marketing).

Clarity would also be welcome when examining the rules of burden of proof in product liability cases in order to ensure optimal protection of consumers. The Direct Sale and Direct Marketing Act requires regulatory development to specify which goods are excluded from cooling-off periods and other return procedures.

## 6.2 Public Policy and Institutional Framework

The Thai institutional framework on consumer protection comprises several public authorities. The framework entails that all these authorities provide consumer dispute resolution channels. Both Court of Justice and the Ministry of Justice have established mediation facilities in the provinces. Consumer associations also receive and process consumer complaints. Thailand is a leader in the development of online dispute resolution for consumers in Asia. The OCPB provides consumers with various different channels for obtaining information, filing complaints and accessing dispute resolution, including e-mail, text messages, a dedicated website, video conferencing and linkage with other Government agencies' complaints centres.

Following the UNGCP recommendations on attending to the needs of vulnerable and disadvantaged consumers, Thailand has crafted special policies directed at children and elderly consumers. There is room for improvement in addressing rural consumers, consumers with disabilities and financial consumers, calling for cooperation among several governmental agencies, and namely the OCPB and the National Office for Empowerment of Persons. Improving the ICT infrastructure of the Courts of Justice and the Ministry of Justice would also enhance consumers' access to justice in all provinces.

Considering the OCPB's primary role as regulator and policymaker, it would be advisable for the OCPB to take on the role of overseeing a national consumer system allowing for local authorities to handle consumer complaints, instead of directly handling over 20 thousand consumer complaints a year. A national policy based on the Dispute Mediation Act, B.E. 2562 (2019) could be a valuable strategy to deliver better consumer protection focusing on consumer access to justice. The Act also allows other agencies to deliver dispute resolution services to consumers, easing the burden on OCPB. OCPB could transfer the responsibility over dispute resolution to the other relevant agencies and NGOs, freeing up the OCPB

front office to focus on policymaking. In addition, such a model would also provide the OCPB with the necessary market intelligence for policymaking. The 2019 amendment to the CPA allows for the appointment of provincial-level officers endowed with powers similar to those of OCPB officers. The amendment also allows locally collected fines to finance the hiring of local officers, thus supporting the OCPB's work at the local level. In this sense, special attention should be focused on addressing the lack of necessary ICT infrastructure at the provincial level.

Considering the OCPB's 20 years of experience in complaints handling and in its role as the national consumer protection system coordinator, the Board is highly qualified to train local officials (OCPB and other agencies) to act as mediators, handling complaints and conducting mediation. It is recommended that the OCPB share its mediation experience and knowledge with the related authorities. It is also recommended that capacity building initiatives be undertaken with regard to members of the judiciary, focusing on consumer protection matters.

Considering the OCPB's importance as a regulator, investigator and researcher, it is crucial to raise its annual budget to a level comparable to countries with a similar level of development.

The Commission on National Development of Justice Administration is entrusted with guaranteeing the competence of mediators who may also handle consumer cases. Therefore, it is important that it publishes the tools it uses to ensure that mediators have access to continuous learning and the continuous assessment of their skills and expertise.

The OCPB should pursue its partnership with business and consumer groups to strengthen educational and awareness-raising campaigns for consumers on their rights and on avenues for seeking dispute resolution and redress, including online dispute resolution mechanisms. Businesses should be encouraged to make available internal complaints-handling mechanisms that are expeditious, fair, transparent, inexpensive, accessible, speedy and effective, without unnecessary costs or burdens, and should provide links to the OCPB's online consumer complaints and dispute resolution services. Finally, the OCPB should cooperate with the Personal Data Protection Commission to pursue the full implementation and enforcement of the Personal Data Protection Act.

The following table lists the recommendations stemming from the analyses set forth in this report.

## Voluntary peer review of consumer protection law and policy: THAILAND

Subject matter	Recommendations	Target audience
<b>Legal and policy frameworks</b>	Improve legal certainty by unifying the definition of “consumer” across all pieces of legislation. Further address the specific 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 the support of Consumer Protection Board (CPB) and the Office of the Consumer Protection Board (OCPB)
	Consider revising the Consumer Protection Act B.E. 2522 (1979) to explicitly address the needs of vulnerable and disadvantaged consumers. Consider the adoption of ISO standards 22458 on the Requirements and guidelines for the design and delivery of inclusive services and 30071-1 on the Code of practice for creating accessible ICT products and services.	
	Limit the Consumer Case Procedure Act B. E. 2551 (2008) to cases where consumers are the plaintiffs to avoid exploitation of its simplified procedures by businesses.	
	Empower the Contracts Committee to regulate all consumer contracts through contractual terms and prohibitions of general application.	
	Enact legislation on warranties for consumer goods or services and establish a Warranties Committee to set standards.	
	Consider revising the law on Consumer Guarantees and Warranties and amendment of CPA 1979 to address substantive and procedural fairness in consumer contracts.	
	Review existing consumer protection policies to accommodate the special features of electronic commerce and to ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace. In this sense, consider enacting legislation or policies on digital advertising, including behavioural and influencer advertising. Revise the Amendments to Electronic Transaction Act (No. 3), B.E. 2562 (2019) to include: Encouraging domestic products prioritization; Making explicit that online commerce is subject to all consumer protection laws, emphasizing the need to comply with the law on unfair contractual terms, misleading advertising and labelling, guarantees and warranties and prohibition of opt-out clauses; Requiring high standards of data protection and security; allowing a wide range of payment modes (cash, credit and debit cards, e-wallets, etc.) and cater to the unbanked; Imposing a gate keeper role and third-party liability on e-commerce platform providers, for the conduct of online sellers who use their platforms, Specifying minimum standards of consumer complaints handling services.	
	Consider complementing the definition of unsafe products with that of unsafe services in the Consumer Protection Act.	
	Unify the criteria for establishing the burden of proof under the Unsafe Product Liability Act B.E. 2551(2008).	
	Develop the Direct Sale and Direct Marketing Act B.E. 2545 (2002) by specifying the goods and services excluded from the seven-day cooling-off period and the procedures for returning goods.	

## Voluntary peer review of consumer protection law and policy: THAILAND

Subject matter	Recommendations	Target audience
<b>Institutional framework</b>	Pursue efforts to reach and protect vulnerable and disadvantaged consumers, through various means, including the establishment of OCPB offices in all provinces and/or partnering OCPB with other institutions such as the National Office for Empowerment of Persons	OCPB and the National Office for Empowerment of Persons
	Improve ICT infrastructure of Courts of Justice and the Ministry of Justice to enhance access to justice of consumers in all provinces.	Executive and Judicial branches
	Reconsider OCPB's role in complaints handling and mediation to strengthen its mandate as regulator. Consider transferring to local authorities, tasks and responsibilities related to complaints handling and mediation. To fulfil this mission, consider reinforcing capacities at the local level.	CPB and OCPB and relevant stakeholders (academia, consumer associations, experts from regulation authorities)
	Establish mechanisms to distribute complaints among Government agencies.	OCPB, OIC, NTCB and relevant Stakeholders
	Ensure high quality mediation by issuing the tools needed to ensure the continuous assessment and learning of mediators and subjecting Government agencies (including OCPB, OIC and NTCB) to quality assessment.	Commission on National Development of Justice Administration
	Encourage businesses to make available internal complaints-handling mechanisms that provide expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary costs or burdens; and to provide links to OCPB online consumer complaints and dispute resolution services.	OCPB and businesses
	Increase the OCPB's budget to improve capacities for law enforcement, litigation on behalf of consumers, product testing, education, research and policy development.	Legislative and Executive branches
	Strengthen educational and awareness-raising campaigns for consumers, including in cooperation with businesses and consumer groups, on consumers' rights and on avenues to seek dispute resolution and redress (including online dispute resolution mechanisms).	OCPB, businesses and consumer groups
Pursue the full implementation and enforcement of the Personal Data Protection Act.	OCPB and Personal Data Protection Commission	

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Price of Goods and Services Act B.E. 2542 (1999) [Thailand]

Regulation concerning the provincial sub-committee for consumer protection's performance of public services B.E. 2562 (2019) [Thailand]

Regulation EU 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of such Data, and Repealing Directive 95/46/EC [European Union]

Regulation of the CBP on the mediation in the event of a violation of a consumer's rights dispute B.E. 2559 (2016) [Thailand]

Regulation of the OIC concerning the arbitration B.E. 2551 (2008), No. 2 B.E. 2553 (2010) and No. 3 B.E. 2563 (2020) [Thailand]

Regulation of the OIC concerning the mediation for the insurance dispute B.E. 2559 (2016) [Thailand]

Regulation of the President of Supreme Court on the process of the consumer procedure case and the functions of the Case official B.E. 2551 (2008) [Thailand]

Regulation of the Rights and Liberties Protection Department on Dispute Mediation by a Public Sector Dispute Mediation Centre B.E. 2562 (2019) [Thailand]

Regulation on mediation between the licensed operator and the appellant B.E. 2555 (2012) [Thailand]

Royal Decree on Amendments to the Civil Procedure Code (No. 32) B.E 2563 (2020) [Thailand]

Royal Decree Regulating Electronic Payment Services B.E. 2553 (2010) [Thailand]

Royal Decree Regulating Electronic Payment Services of Certain Financial Institutes B.E. 2559 (2016) [Thailand]

Royal Decree on Security Procedures in Electronic Transaction B.E. 2553 (2010) [Thailand]

Royal Decree Prescribing the Rules and Procedures of the Public Sector's Electronic Transactions B.E. 2549 (2006) [Thailand]

Rule of the Supreme Court of Justice concerning the proceeding and the duties of the Case official in consumer case B.E. 2551 (2008) [Thailand]

Rule on the process for receiving and considering consumer complaints regarding telecommunications services B.E. 2559 (2016) [Thailand]

Ruling of the President of the Court of Appeal no. 33/2552 [Thailand]

Ruling of the President of the Court of Appeal no. 50/2551 [Thailand]

Ruling of the President of the Court of Appeal no.56/2551 [Thailand]

Telecommunications Business Act B.E. 2544 (2001) [Thailand]

Thailand Supreme Court Decision no. 4829/2558 [Thailand]

Thailand Supreme Court Decision no.16694/2555 [Thailand]

Thailand Supreme Court Decision no.1989/2552 [Thailand]

Thailand Supreme Court Decision no.4340/2559 [Thailand]

Thailand Supreme Court Decision no.4566/2561 [Thailand]

Thailand Supreme Court Decision no.69/2552 [Thailand]

Thailand Supreme Court Decision no.7364/2558 [Thailand]

Trade Competition Act B.E. 2560 (2017) [Thailand]

Unfair Contract Terms Act B.E. 2540 (1997) [Thailand]

Unsafe Product Liability Act B.E. 2551 (2008) [Thailand]

Water Resources Act B.E. 2561 (2018) [Thailand]

Weights and Measures Act B.E. 2542 (1999) [Thailand]

## **INTERVIEWS**

Fact-finding online interview with Procter & Gamble / L'Oréal on 29 November 2021

Fact-finding online interview with the Consumer Council of Thailand on 3 December 2021

Fact-finding online interview with the Information Technology Director of the OCPB on 15 January 2022

Fact-finding online interview with the OCPB on 30 November 2021

Fact-finding online interview with the OIC on 3 November 2021

Online interview with Director of Direct Sales of the OCPB on 14 December 2021



## ANNEX 1

### Institutions Interviewed for the Report

#### Public Bodies

OCPB - International Cooperation Section  
OCPB - Consumer Protection on Labelling Division  
OCPB - Consumer Protection Provincial Cooperation  
OCPB - Consumer Protection on Contract Division  
OCPB - Consumer Protection on Direct Selling and Direct Marketing Division  
OCPB - Consumer Protection on Advertising Division  
OCPB - Legal Affairs and Litigation Division  
OCPB - Consumer Complaint Centre  
OCPB - Technology Crime Suppression Division  
OCPB - Consumer Protection Police Division  
Office of the Court of Justice  
Office of Insurance Commission  
Department of Business Development  
Bank of Thailand  
The National Broadcasting and Telecommunication Commission  
Electronic Transactions Development Agency

#### Business, company, and professional associations

L'oreal  
Procter and Gamble  
Thai Direct Selling Association

#### Civil Society

Foundation for Consumers (FFC)  
Thailand Consumers Council  
Study Centres, Academia and Media

## ANNEX 2

### UNITED NATIONS GUIDELINES FOR CONSUMER PROTECTION DOMAINS

#### CONSUMER PROTECTION AGENCY

Refer section 2.1: Consumer Protection Act B.E. 2522 (1979)

#### ESSENTIAL GOODS AND SERVICES

##### Health & pharmaceuticals

Thailand achieved Universal Health Care in 2002. The whole population is covered by one of three public health insurance schemes: (1) the Civil Servant Medical Benefit Scheme for government employees and retirees and their dependents; (2) Social Health Insurance for private-sector employees; and (3) the Universal Coverage Scheme (UCS) for the remaining population (75% of total) who are not covered by the other two schemes.

The comprehensive benefits package, including high-cost interventions notably chemotherapy, radiation therapy, dialysis and anti-retroviral treatment, and no co-payment at point of care, contributes to the low level of out-of-pocket expenditure and low incidence of catastrophic spending and impoverishment.

Strategic purchasing contributes to cost containment and health systems efficiency. Zero co-payment is possible as insurance funds provide full cost subsidies to healthcare providers.

The full cost subsidy is achieved due to a large proportion of domestic general government health expenditure to current health expenditure.

The full geographical coverage of health delivery systems, in particular primary healthcare at district and sub-district level with provincial hospital referral backups assures, equitable utilization of health services by all.

The poverty incidence after spending for healthcare, measured by the percentage of households living below the national poverty line, increased from 32.9% in 1996 to about 38.5% in 2000. After UHC

was achieved in 2002, poverty incidence decreased by about six-fold to 6.6% in 2015. The incidence of impoverishment as a result of payment for medical bills in 2015 also shrank by four-fold, from 1.3% in 2002 at the beginning of UHC, to approximately 0.3% in 2015.<sup>355</sup>

Thailand's very successful UHC is supported by the work of the Bureaus of Drug Control.

The Drug Act of B.E. 2510 (1967) and the Ministerial Regulation on Drug Registration B.E. 2555 (2012) are currently in effect. The Drug Act has been amended on four occasions: 1975, 1979, 1984 and 1987. A further amendment, the Drug Act B.E.2546 (2003) is in the final stage of promulgation. The new Act will substantially change the rules governing the manufacture, import, registration, prescription and dispensation of drugs in Thailand,

According to the Drug Act, a Drug Committee appointed by the Minister of Public Health advises the Minister on both regulatory and technical aspects of the administration and control of pharmaceuticals. The committee is also authorized to approve or withdraw pharmaceutical registration, standard specifications, criteria and guidelines, including suspending or withdrawal of licences to manufacture, import, distribute or sell. The Committee appoints subcommittees, currently twenty, to assist with its various tasks.<sup>356</sup>

The 2021 Nelson Mandela Award for Health Promotion (awarded by the South Africa Mandela Foundation) was presented to the Thai Health Promotion Foundation (ThaiHealth) for its achievements in improving the health of every Thai citizen.<sup>357</sup>

<sup>355</sup> Tangcharoensathien, V, Tisayaticom, K, Suphanchaimat, R, Vongmongkol, V, Viriyathorn, S, & Limwattananon, S (2020). Financial risk protection of Thailand's universal health coverage: Results from series of national household surveys between 1996 and 2015. *International Journal for Equity in Health*. 19(163 (2020)). doi:10.1186/s12939-020-01273-6

<sup>356</sup> Ministry of Public Health (2016). Bureau of Drug Control. Available at [https://www.fda.moph.go.th/sites/fda\\_en/SitePages/Drug.aspx?IDitem=LawsAndRegulations](https://www.fda.moph.go.th/sites/fda_en/SitePages/Drug.aspx?IDitem=LawsAndRegulations) (accessed 5 January 2022)

<sup>357</sup> World Health Organization (2021, May 28). 20 years of building healthier communities in Thailand. Available at <https://www.who.int/news-room/feature-stories/detail/20->

### Food Security

Food security is not easily measured. The Global Hunger Index (GHI) uses three dimensions (inadequate food supply; child mortality; and child undernutrition, which is composed equally of child stunting and child wasting).<sup>358</sup>

In the 2021 Global Hunger Index, Thailand ranks 53rd out of the 116 countries with sufficient data to calculate 2021 GHI scores. With a score of 11.7, Thailand has a level of hunger that is moderate.

Singapore and Brunei were not included in the index. Thailand ranked the best amongst the remaining eight ASEAN countries. (Malaysia 12.8, Vietnam 13.6, Philippines, 16.8. Cambodia 17.0, Myanmar 17.5, Indonesia 18.0 and Laos 19.5.)<sup>359</sup>

### Food Safety

The National Food Committee Act B.E. 2551 (2008) established the National Food Committee as the principal state organ for the development and the promotion of national strategies and policies on key aspects of food and the food chain - namely food quality, food safety, food security and food education.<sup>360</sup>

The Ministry of Agriculture and Cooperatives is responsible for safety and quality of farm production of both fresh and processed food through standards setting and control of the use of the standards. It performs this function through three departments: Department of Agriculture, Department of Livestock Development and the Department of Fisheries. The Ministry enforces six Acts relating to various aspects of agricultural production.<sup>361</sup>

years-of-building-healthier-communities-in-thailand (accessed 28 December 2021)

<sup>358</sup> World Health Organization (2022). Global Hunger Index (GHI). Available at [https://www.who.int/data/nutrition/nlis/info/global-hunger-index-\(ghi\)](https://www.who.int/data/nutrition/nlis/info/global-hunger-index-(ghi)) (accessed 10 January 2022)

<sup>359</sup> von Grebmer, K, Bernstein, J, Delgado, C, Smith, D, Wiemers, M, Schiffer, T, . . . Fritsche, H (2021). 2021 Global Hunger Index: Hunger and food systems in conflict settings. Bonn: Welthungerhilfe and Dublin: Concern Worldwide. Available at <https://www.globalhungerindex.org/pdf/en/2021.pdf> (accessed 10 January 2022) & World Health Organization (2022). Global Hunger Index (GHI). Available at [https://www.who.int/data/nutrition/nlis/info/global-hunger-index-\(ghi\)](https://www.who.int/data/nutrition/nlis/info/global-hunger-index-(ghi)) (accessed 10 January 2022)

<sup>360</sup> National Food Committee Act B.E. 2551 (2008), s 4

<sup>361</sup> Fisheries Act B.E. 2490 (1947), Animal Epidemic Act B.E. 2490 (1956), Feed Quality Control Act B.E. 2525 (1982), Animals and Animal Carcasses Act B.E. 2544 (2001), Plant Quarantine Act B.E. 2507 (1964) and the Plant Varieties Protection Act B.E. 2542 (1999).

The Food and Drug Administration (FDA) of the Ministry of Public Health administers the Food Act B.E. 2522 (1979) and has primary responsibility for the safety and quality of food in the Thai marketplace, both imported and locally produced.

The FDA sets standards and supervises. The FDA's pre-marketing control focuses on import and manufacturing licences, reviews and approves product registration, sets standards and issues regulations for food labelling, packaging and advertisements. Post-marketing control includes inspection of food factories, food importer premises and regulatory enforcement to ensure compliance with the Food Act and regulations issued thereunder.

The level of food safety supervision depends on the risk level of the food category and the size of the production facility. For this purpose, the FDA classifies food products into 4 groups, depending on the risk level of the food, as follows: specially controlled food, standardized food, food with labelling and general food.

At a basic level, all food manufacturing companies must adhere to specified "good manufacturing practices" issued as notifications by the Ministry of Public Health. These are mandatory and are food product specific.

The standard labelling requirements are in themselves detailed and even require information for food allergies, name and number of additives pursuant to the international numbering system (INS), and nature of odour added.

Foods with nutritional claims, food for specific groups of consumers and other foods prescribed by the FDA are in addition subject to nutrition labels in the prescribed format and in the Thai language.<sup>362</sup> Genetically modified foods are not prohibited from manufacture, importation or sale in Thailand. GM Foods are governed by the Food Act. Additionally, they are required to display that the food is obtained from GM.<sup>363</sup>

<sup>362</sup> Notification of the Ministry of Public Health (No. 182) B.E. 2541 (1998), Notification of the Ministry of Public Health (No. 219) B.E. 2544 (2001); and Notification of the Ministry of Public Health (No. 374) B.E. 2559 (2016) Re Foods Required to Display Nutrition Label and Energy, Sugar, Fat and Sodium Values in GDA.

<sup>363</sup> Notification of the Ministry of Public Health (No. 251) B.E. 2545 (2002) Re Display of Label of Foods Obtained from Genetic Modification or Genetic Engineering Techniques

In 2016, the FDA introduced a voluntary front-of-pack logo program that identifies healthier food options for food that has been examined and certified as such by the supplier. The FDA uses a scoring system and assesses the energy, fat, sugar and sodium content of the food.<sup>364</sup>

### PUBLIC UTILITIES

#### Water

Thailand has achieved high accessibility to clean water (98%) and improved sanitation facilities (96%).<sup>365</sup>

Rapid economic development has resulted in huge increases in water demand in Thailand. This has occurred at a time of more droughts and floods due to climate change and deforestation. The Thai government sees the country's water shortage problem as also being caused by both increased human demand in rural and urban areas and water overuse in many sectors.<sup>366</sup>

Thailand has sought to restructure its water management strategy, approving a 20-year national strategy in 2018. The Office of National Water Resources (ONWR) is the new and singular government agency that regulates integrated national water resources management. By 2030, the ONWR plans to provide clean water to over 75,000 villages in 66 areas covering 5.5 million hectares by building more than 541,000 small dams to restore watershed areas at risk due to flood and drought.

The Water Resources Act B.E. 2561 (2018) seeks to streamline water management across 40 government agencies that had previously managed water with overlapping mandates.

#### Energy

Access to electricity (% of population) in Thailand was reported at 99.9 per cent in 2019, according to the world bank.<sup>367</sup>

The Energy Industry Act B.E. 2550 (2007) established the energy regulatory commission to regulate the energy industry including preventing abuse of power and consumer protection and those negatively affected by energy industry operations.<sup>368</sup>

Thailand has established the Department of Energy Development and Efficiency (DEDE) inside the Ministry of Energy to oversee the development and conservation of alternative energy. The DEDE is responsible for promoting and implementing all energy plans and policies, including Thailand's integrated energy blueprint, the alternative energy development plan, and the energy efficiency plan.

According to Thailand's alternative energy situation report 2020, final consumption of alternative energy has increased steadily as a result of the government's push for alternative energy and energy efficiency initiatives. There are comprehensive procedures in place to promote alternative energy in all areas and to reduce fossil fuel consumption. Alternative energy development in Thailand has relied on domestic energy production which emphasizes solar, wind, small and large hydro energy, biomass, biogas, municipal solid waste, geothermal power and biofuel including ethanol and biodiesel for electricity, heat and biofuels. In 2020, Thailand's alternative energy consumption accounted for 15.51 percent of total final energy consumption, resulting in a BHT 116,303 million reduction in energy imports and a 36.73-million-ton reduction in CO2 emissions.<sup>369</sup>

#### INTERNET

According to the International Telecommunications Union, internet use in Thailand has grown exponentially in the past decade. In 2010, 28.94 per cent of Thais used the internet, by 2020 this had grown to 78.84 per cent.<sup>370</sup>

Thailand is the leader in 5G rollout in ASEAN. A March 2021 study of internet access found that there is near-universal 5G coverage in the capital city of Bangkok. However, it is limited elsewhere, particularly in rural

<sup>364</sup> Notification of Ministry of Public Health (No. 373) B.E. 2559 (2016) Re: Display of Nutrition Logo on Label

<sup>365</sup> Open Development Thailand (2018, July 16). SDG 6 clean water and sanitation. Available at <https://thailand.opendevelopmentmekong.net/topics/sdg-6-clean-water-and-sanitation/> (accessed 10 January 2022)

<sup>366</sup> Manorom, K (2020, March 20). Thailand's water shortage and inequality crisis. Retrieved January 9 2022, from <https://www.eastasiaforum.org/2020/03/20/thailands-water-shortage-and-inequality-crisis/> (accessed 9 January 2022)

<sup>367</sup> World Bank (2022). Access to electricity (% of population) - Thailand. Available at <https://data.worldbank.org/indicator/>

SP.POP.TOTL?locations=TH (accessed 14 January 2022)

<sup>368</sup> Energy Industry Act B.E. 2550 (2007), s 10-11

<sup>369</sup> Department of Alternative Energy Development and Efficiency (2020). Thailand alternative energy situation 2020. Available at <https://anyflip.com/rbuvc/nscv/> (accessed 6 January 2022)

<sup>370</sup> World Bank (2022). Individuals using the internet (% of population). Available at <https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=TH> (accessed 10 January 2022)

areas: 99 per cent of *tambons* (sub-districts) outside of Bangkok had 4G coverage, but only 4.19 per cent of these areas had a 5G presence.<sup>371</sup> According to the October 2021 report of the Office of the National Broadcasting and Telecommunications Commission (NBTC), broadband penetration as a percentage of the population is 18.69 percent in 2021, 16.85 percent in 2020, and 14.87 percent in 2019.<sup>372</sup>

The Office of the National Broadcasting and Telecommunications Commission (NBTC) is responsible for the telecoms and broadcasting sectors in Thailand. The NBTC recommends policies and regulating legislation to maintain the efficiency and availability of communications for the Thai people.

The most complained of consumer problems to the Commission are: (1) the number of online advertisements (2) the low speed of internet connection and (3) inaccurate online-information sharing.<sup>373</sup>

### EDUCATION

The Constitution of Thailand entitles all children within Thailand to enrol in school, regardless of their background or nationality.<sup>374</sup>

Around 95 per cent of primary-school age children in the country attend school. Unfortunately, disparities in access are more pronounced at the secondary school level. About 14 per cent of secondary-school age children are not in school. The largest proportion of children not in school are from disadvantaged communities, migrants or children living with a disability.

The quality of education is also a major challenge. Of the 72 countries covered by the 2015 Programme for International Student Assessment (PISA), Thailand ranked 54th in science and 57th in mathematics. Results from the 2016 national tests in nine core

subjects for Grade 12 students revealed that students in Thailand failed eight out of nine subjects on average. This level of competency is likely to have a serious, long-term impact on the country's future if not quickly addressed.<sup>375</sup>

According to the World Bank the adult illiterate population, 15+ years, of both sexes in Thailand was reported at 3,589,297 persons in 2018,<sup>376</sup> i.e. approximately 6.2 per cent of those in that age group.

### FINANCIAL SERVICES

Consumer finance is regulated via the Financial Institutions Act 2008 and the Bank of Thailand Act 1915 as amended and subsidiary rules and regulations issued under these.

The regulations and rules cover payment, deposit and lending services to consumers. The Civil and Commercial Code governs legal relationship between consumers and service providers.

Pursuant to the Consumer Protection Act 1979 minimum standard terms and conditions are required in specified financial contracts – credit cards, hire purchase and personal loans.

Pawnshops are regulated under the Pawnshop Act B.E. 2505 (1962).

The Deposit Protection Agency Act B.E. 2551 (2008) established the Deposit Protection Agency provides protection for deposits of money with financial institutions up to specified limits.

The Debt Collection Act B.E. 2558 (2015) regulates collection practices and penalizes unfair deceptive and violent practices in debt collection.

The Act Prohibiting the Collection of Interest at an Excessive Rate B.E. 2560 (2017) addresses loan shark debts and usury loan problems focusing on unreasonably high interest rates that mostly occur between individual lenders and individual borrowers. Interest rates permitted by Thai laws differ. Loans for consumption under the Civil and Commercial Code

<sup>371</sup> Thinking Machines (2021, March 1). 2020 didn't stop Thailand's 5G rollout but here's how access can improve. Available at <https://stories.thinkingmachin.es/thailand-5g-rollout/> (accessed 14 January 2022)

<sup>372</sup> National Broadcasting and Telecommunications Commission (2022). Report of the internet users available [In Thai]. Available at <http://webstats.nbtc.go.th/netnbtch/HOME.php> (accessed 15 January 2022)

<sup>373</sup> Electronic Transactions Development Agency (n.d.). Thailand internet user behavior 2020 [In Thai]. Available at <https://www.etda.or.th/Useful-Resource/publications/Thailand-Internet-User-Behavior-2020.aspx> (accessed 7 January 2022)

<sup>374</sup> Section 54 Para 1: The State shall ensure that every child receives quality education for twelve years from pre-school to the completion of compulsory education free of charge. ra 1:

<sup>375</sup> UNICEF Thailand (n.d.). Education: All children should have access to quality education. Available at <https://www.unicef.org/thailand/what-we-do/education> (accessed 13 January 2022)

<sup>376</sup> Trading Economics. (2022). Thailand - Adult Illiterate Population, 15+ Years, Both Sexes. Available at <https://tradingeconomics.com/thailand/adult-illiterate-population-15-years-both-sexes-number-wb-data.html> (accessed 14 January 2022)

must not exceed 15 percent per year, loans with commercial banks could be higher, as permitted by specific legislation, such as the Interest Rates for Loans from Financial Institutions Act B.E. 2523 (1980) and the BOT's notification subject on interest, fees, and surcharge for personal loans. Interest rates for nano-loans have been set at 33% during the pandemic as compared to 35 per cent previously.

In 2018, Bank of Thailand began offering a basic account scheme: banks waive entry fees, annual fees and other charges for the 11.4 million welfare card holders and those aged over 65.

### **WEIGHTS AND MEASURES**

The Measurement Act, B.E. 2542 (1999) as variously amended regulates matters relating to weights and measures. The Act established a Committee for Weights and Measures and a Central Bureau of Weights and Measures in the Department of Internal Trade, Ministry of Commerce with branch bureaus in the provinces. The Committee has oversight over control of measurement gauges, certification and the Inspectorate of Weights and Measures and specifies the powers of the Inspectors.

The Minister of Commerce is empowered to issue Notifications prescribing the kind of packaged goods in which the packer must indicate the quantity of goods packaged, as per prescribed rules and procedures, pack the goods in the specified quantity. Indication of quantity displayed on the package must be accurate. Importer liable for goods not repacked locally.

### **PRODUCT SAFETY**

Refer section 2.1: Consumer Protection Act B.E. 2522 (1979) (*Product Safety*)

### **PRODUCT LIABILITY**

Refer section 2.2: Unsafe Product Liability Act B.E. 2551 (2008)

### **CONSUMER CONTRACTS**

Refer sections

2.1: Consumer Protection Act B.E. 2522 (1979) (*Contracts*)

2.3: Direct Sale and Direct Marketing Act B.E. 2545 (2002)

3.1: Unfair Contract Terms Act B.E. 2540 (1997)

3.2: Price of Goods and Services Act B.E. 2542 (1999)

### **MISLEADING AND DECEPTIVE ADVERTISING**

Refer section 2.1: Consumer Protection Act B.E. 2522 (1979), (*Advertising*) & (*Labelling*)

### **DATA PROTECTION AND PRIVACY**

Refer section 3.4: Personal Data Protection Act B.E. 2562 (2019)

### **E-COMMERCE**

Refer section 3.3: Laws on E-commerce

### **COMPLAINTS HANDLING AND REDRESS**

Refer Part 4: Dispute Resolution for Consumers

### **ANTI-COMPETITIVE CONDUCT**

The Trade Competition Act B.E. 2560 (2017) is administered by the Trade Competition Commission (the TCC) and its Office. The Act:

- prohibits joint actions between business operators which monopolize, reduce or restrict competition (anticompetitive agreements and practices) (Sections 54 and 55 of the Act);
- prohibits the abuse of a dominant position (Section 50 of the Act);
- regulates mergers which may substantially reduce competition (Section 51 of the Act); and
- prohibits unfair trade practices (Section 57 of the Act).

### **CODES AND STANDARDS**

Thailand has adopted and applied the codes and standards for improving the qualities of the products and services. Since 1 January 1969, the Thai Industrial Standards Institute (TISI) has operated as a department inside the Ministry of Industry, pursuant to the Industrial Product Standards Act B.E. 2511 (1968). Its primary responsibility is to conduct national standardization activities to advance the development of Thai products to an acceptable level of quality, to increase Thai industry's competitiveness on the global market, to preserve the environment, and to protect consumers by ensuring the safety of lives and property. TISI has been actively involved in standardization efforts at both the regional and international levels.

At the international level, TISI's International Standardization Council participates in ISO's standards

work. The TISI also participates in the activities of the International Accreditation Forum (IAF), International Laboratory Accreditation Cooperation (ILAC), and International Electrotechnical Commission (IEC) operations. At the regional level, TISI is a member of the ASEAN Consultative Committee on Standards and Quality (ASEAN CCSQ). It is also involved in the Asia Pacific region's activities through the Standards and Conformance Subcommittee (SCSC), which is part of the Asia Pacific Area Standards Congress (PASC).<sup>377</sup>

In 1998, the Ministry of Industry founded the Management System Certification Institute of Thailand or MASCI. This not-for-profit organization serves as a certification body that certifies management systems. MASCI has been registered with several organizations as a Conformity Assessment Body or Inspection Body that provides inspection services in accordance with standards, criteria, and requirements, including the Department of Tourism (DOT), the National Bureau of Agricultural Commodity and Food Standards (ACFS), the Food and Drug Administration of Thailand (FDA), the Department of Agriculture (DOA), the Department of Labour Protection and Welfare (DLPW), the Department of Industrial Works (DIW), Thailand Greenhouse Gas Management Organization (Public Organization) (TGO) and international level organizations.<sup>378</sup>

### CONSUMER EDUCATION

Thailand has several public entities charged with enforcing consumer protection laws. Each of these authorities is responsible for educating consumers in their respective areas of administration. They adopt a similar strategy. They undertake periodic consumer protection awareness. They establish online channels for consumer education via their websites or social media. Village Health Volunteers from the Ministry of Public Health play a critical role. They assist health officers in advising and educating villagers about food and health safety issues and common ailments.<sup>379</sup>

<sup>377</sup> Please see the website: Thai Industrial Standards Institute (TISI) (2015). Thai Industrial Standards Institute (TISI). Available at <https://www.tisi.go.th/tisiinbrief> (accessed 9 January 2022)

<sup>378</sup> Management System Certification Institute (Thailand) (2019, January). Company profile [In Thai]. Available at <https://www.masci.or.th/wp-content/uploads/2019/03/masci-company-profile-2019.pdf> (accessed 12 January 2022)

<sup>379</sup> For more information about the Village health volunteers' team, visit the website: Department of Health Service Support (n.d.). VHV [In Thai]. Retrieved January 10, 2022, from <http://xn--y3cri.com/> (accessed 10 January 2022)

Several schools, colleges, and universities have integrated consumer protection knowledge into their curricula.<sup>380</sup>

Consumer organizations have made substantial efforts to increase consumer awareness. The work of the Foundation of Consumers (FCC), Thailand's most significant consumer organization, is illustrative.<sup>381</sup> The FCC publishes the Smart Buy Magazine, a monthly consumer magazine.<sup>382</sup> This publication provides consumers with a variety of educational resources, including the findings of product testing conducted by respected and trustworthy labs. Electrical appliances, cosmetic services, cuisine, and information technology tools are examples of products that have been tested. The Smart Buy magazine is now available online.

At the outset of the Covid 19 outbreak in Thailand, Smart Buy magazine released the results of an alcohol-based sanitizer test, which revealed that several product samples did not match the criteria given due to their lower alcohol content. The manufacturer sued the FCC in court. The FCC defended the test, asserting that it was conducted by trustworthy experts and that the FCC had no conflict of interest in conducting it. The court-based mediation session resolved this matter. The firm submitted a sample of its products to independent laboratories for examination. The FCC accepted the new test results but maintained that the earlier test was accurate for the earlier samples.<sup>383</sup> The wide publicity that the dispute occasioned served as excellent education for consumers and put suppliers of masks on alert as regards maintaining quality.

<sup>380</sup> There are no official curricula about consumer education; however, we can see some projects run by the cooperation between certain the public authorities. For example, the Thai Smart Young Consumer Leaders run by the Committee of the Consumer Protection Board and the Ministry of Education or the ORYORNOI run by the Ministry of Public Health

<sup>381</sup> For more information about the Foundation of Consumers (FCC), visit: Foundation for Consumers (n.d.). Main page [In Thai]. Available at <https://www.consumerthai.org/> (accessed 14 January 2022)

<sup>382</sup> For more information about the Smart Buy Magazine, visit: Smart Buy (2022). Home page [In Thai]. Available at <https://chaladsue.com/> (accessed 11 January 2022)

<sup>383</sup> FCC's announcement on 5 November 2020. Foundation of Consumers (n.d.). FCC has made a clear statement that there is no data withdrawal policy in the case of alcohols gel [In Thai]. Available at <https://www.consumerthai.org/consumers-news/consumers-news/food-and-drug/4523-630511-alcoholgel.html> (accessed 12 January 2022)

## CONSUMER ORGANIZATIONS

Refer sections:

2.5: Establishment of the Consumer Organization Council Act B.E. 2562 (2019)

4.4: Dispute Resolution by Consumer Associations

## CONSUMER COOPERATIVES

As of December 2018, there was a total of 6,837 active co-operatives in Thailand. The Ministry of Cooperatives classifies them into seven categories: agriculture, (3489) thrift and credit (1407), credit union (580), service (1092), land settlement (87)t. fisheries (78), and consumer (138). Consumer Co-operatives are those formed by consumers as shareholders and registered under the Co-operative Act B.E.2542. Members co-invest to establish co-operative stores.

The first consumer co-operative store was established in 1937 at a village in Sena district, Ayuthaya province. They are now found all over the country and are involved not only in general business but in the supply of specific goods at various places including universities, colleges, hospitals, factories and even military bases.

The spread of large local and international retail stores and franchised convenience stores have adversely impacted consumer cooperatives as also the small mom-and-pop retail shops. Particularly affected are the general cooperative stores. Many consumers cooperative stores have had to close down, particularly the larger general goods suppliers.<sup>384</sup>

## SUSTAINABLE CONSUMPTION

Thailand is a frontrunner of Sustainable Consumption and Production practice in Asia, both in terms of policy instruments as well as application by businesses, government, and civil society.<sup>385</sup> The “Sufficiency Economy” philosophy, which was initiated by His Majesty the late King Bhumibol Adulyadej, provides the

country with an overarching development framework that is based on moderation and ethical behaviour. Its key principle is moderation in line with the Buddhist ‘Middle Way’: living within one’s means, neither lacking nor excess, and hence being equipped with risk mitigation capacity and increasing resilience, or “self-immunity”. The three pillars of the philosophy are moderation, reasonableness and risk management, which forms the foundation for sustainable development in Thailand,<sup>386</sup> and is expected to lead the country toward prosperity, and economic, social and political stability.<sup>387</sup>

Yet, Thailand is characterized by the paradox between the Thai emphasis on sustainability and the national drive to industrialize the economy.

Thailand’s Greenhouse Gas Emission has grown over the years<sup>388</sup> and Thailand expects this to peak at approximately 370 MtCO<sub>2</sub>eq. in 2030 and achieve carbon neutrality by 2065. The main GHG mitigation measures identified by Thailand focus on the energy and transport sectors. Measures identified in the energy sector include energy efficiency improvement, technology switching and the adoption of renewable energy and carbon capture and storage (CCS). In the transport sector, mitigation measures include modal shift, energy efficiency improvement and the promotion of new, efficient, vehicle fleets.<sup>389</sup>

<sup>384</sup> Cooperative Promotion Department (2019, February). Annual statistics of cooperatives, agricultural groups and vocational groups in Thailand: 31st December 2018. Available at <https://app1.cpd.go.th/annual-statistics-of-cooperatives-31122561/mobile/index.html#p=53> (accessed 15 January 2022)

<sup>385</sup> Merle, K (2017). Thailand’s sufficiency economy and sustainable consumption and production. In: Schroeder, P, Anggraeni, K, Sartori, S and Weber, U, eds. *Sustainable Asia: Supporting the Transition to Sustainable Consumption and Production in Asian Developing Countries*. World Scientific: 291-325. doi:10.1142/9789814730914\_0012

<sup>386</sup> The Chaipattana Foundation (2017). Philosophy of sufficiency economy. Available at <https://www.chaipat.or.th/eng/concepts-theories/sufficiency-economy-new-theory.html> (accessed 9 January 2022)

<sup>387</sup> National Economic and Social Development Board (2016). The Twenty Year National Plan, Sustainable Development Goals and the Twelfth NESDP [In Thai]. Available at [https://www.trf.or.th/index.php?option=com\\_attachments&task=download&id=3894&option=com\\_attachments&task=download&id=3894](https://www.trf.or.th/index.php?option=com_attachments&task=download&id=3894&option=com_attachments&task=download&id=3894) (accessed 13 January 2022)

<sup>388</sup> Crippa, M, et al., E (2021). GHG emissions of all world countries - 2021 Report, EUR 30831 EN. Luxembourg: Publications Office of the European Union. Available at [https://edgar.jrc.ec.europa.eu/report\\_2021](https://edgar.jrc.ec.europa.eu/report_2021) (accessed 6 January 2022). See also Banerjee, N (2020, December 30). Thailand’s carbon dioxide emissions have significantly increased over the past 10 years. Available at <https://www.climateactioncard.org/2020/12/thailands-carbon-dioxide-emissions-have-significantly-increased-over-the-past-10-years/> (accessed 14 January 2022)

<sup>389</sup> Ministry of Natural Resources and Environment - Policy Formulation and National Focal Point (2021, October). Mid-century, long-term low greenhouse gas emission development strategy. Available at [https://unfccc.int/sites/default/files/resource/Thailand\\_LTS1.pdf](https://unfccc.int/sites/default/files/resource/Thailand_LTS1.pdf) (accessed 9 January 2022)



### **INTERNATIONAL COOPERATION**

The Government of Thailand has assigned the OCPB to be the central agency responsible for consumer protection in Thailand and the focal point for collaborating on consumer protection in ASEAN and in UNCTAD. The OCPB is responsible for driving and developing consumer protection in line with the ASEAN directions and policies.

In 2019, the OCPB served as the head of the ASEAN Committee on consumer protection. Several meetings were held during its term as head. These included the 19<sup>th</sup> ASEAN Committee on consumer protection meeting on 27<sup>th</sup>-30<sup>th</sup> May 2019. This meeting focused on several key issues: developing

consumer protection laws, cross-border remedies for consumers, Online dispute resolution (ODR), a consumer alert system and ASEAN knowledge management. Several meetings were also held to brainstorm for ODR development, cross-border remedies, drafting of the ASEAN capacity building roadmap for consumer protection 2019-2025 and improving the skills of consumer protection officials of the member countries<sup>390</sup>

The OCPB has formalized its bilateral collaboration with Australia, the European Union, Japan, the Republic of Korea, Bhutan and Laos. It actively participates in the activities of UNCTAD, the International Organization for Standardization (ISO) and the International Consumer Protection and Enforcement Network (ICPEN).

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<sup>390</sup> Office of the Consumer Protection Board (n.d.). OCPB Annual Report 2019 [In Thai]. pp 19-20. Available at <https://www.ocpb.go.th/download/article/2562.pdf> (accessed 13 January 2022)

