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THAILAND WELCOMES CLASS ACTION LAWSUITS

On 4 December 2015 Thailand's Civil Procedure Code will include provisions for class-actions, which were not previously permitted under Thailand's legal regime. Our article this month explains how typical class action legislation works and the impact this new law will have on business operators in Thailand.

We conclude by providing you with a practical step-by-step guide on how to launch class actions in Thailand. What is a "class action"? - A class action is a type of lawsuit in which one or a group of individuals sues a defendant on behalf of a larger group. There are certain elements which are common to all class actions across all jurisdictions where such laws exist.

These include:

- 1) The dispute issues are common to all members of the class; and
- 2) Those affected are so large in number, that it would be impractical (and surely a waste of the court's time) for each person to bring a separate lawsuit against the defendant.

For the benefit of those who are still probably scratching their

heads in confusion we provide some good examples of class actions:

- Consumers harmed by defective products (e.g. a car model with an manufacturing defect);
- Homeowners affected by large development projects such as dams and factories;
- A group of employees being subjected to racial, age, or gender discrimination by their employer.

The final question we ask this month is: What does this mean for business operators? At this early stage the precise impact of the new provisions remain unclear. Though the scope of a class action laws' impact can only be determined after testing in the courts, some businesses may be at a higher risk after the passage of this law than others. This higher risk will probably mean higher insurance premiums. This will affect smaller businesses more than larger corporations. And unlike bigger corporations, small businesses may not have the luxury of in-house counsel to handle class-actions. As such, higher legal costs will be involved in engaging outside legal counsel. Commentators have argued that

the introduction of a class action law in Thailand will decrease Thailand's attractiveness as a business destination and impact future foreign investments.

We don't believe this is an accurate statement. In many ways providing better legal recourse to groups affected by faulty products or other typical class action cases will improve the standing of the Thai legal system. As class action laws exist all over the world, many companies are familiar with the risks and how to address these.

It will also have a positive effect for consumers because companies will become extra cautious about introducing new products to the market since selling products which are unsafe will expose these companies to class action law suits. Corporations will have to act more responsibly and this can only be viewed as a good development.

Step by Step Guide

Thailand's class action legislation includes elements mentioned above though it varies in some respects from other U.S. and Common Law class action laws.



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Numerous international statutes permit class actions to be brought in regard to any subject matter. Thailand has decided to limit its focus on tortious claims (negligence etc.), breach of contract claims and "claims of legal rights" (which are laws generally passed to protect the public (i.e. environmental laws, consumer protection laws, labor laws and securities and exchange and trade competition laws).

The first step is to find a "class" of individuals and then, determine whether the courts will permit a class action in relation to the claim.

Step 1: Identifying a Class

To kick-off a class action one needs to satisfy certain conditions: (a) Identifying whether a class exists; (b) whether the dispute is common among the members of the class; and (c) whether the courts are willing to hear your claim as a class.

Step 2: Selecting a Court

If you have decided that a class action law suit is appropriate for you and your group's claim, the next stage is to approach the courts.

But which Court?

The jurisdiction for class actions is subject to the Court which is empowered to hear an individual on the same matter *except municipal court (kwaeng court). The class actions concerning certain specific matters such as the administrative decisions, the labor dispute and trade protection disputes, shall be brought to the relevant courts (i.e. the Administrative Court, Labour court and the Intellectual Property and International Trade Court).

Step 3: Obtaining Certification

Before proceeding with legal action, the class of plaintiffs, who have now determined which

Court to proceed under, must demonstrate to the Court that there exists a "group of people" who carry common rights, facts and base their legal claims on common ground (despite their "injury" varying from person to person).

The second point demonstrated to a Court under Section 222/8 of the Civil Procedure Code is that bringing individual actions (as opposed to actions brought as a class) would be "troublesome and inconvenient" and that bringing the action as a class of individuals will result in "better justice and efficiency". Subject to these conditions, the Court considers whether the class action should be heard.

While there may be instances where the court prevents the class action from moving forward, the Civil Procedure Code states that an interlocutory appeal can be filed to ensure that the class' facts are heard thoroughly.

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Step 4: Appointment of Class Action Officer

Once the “pre-class action phase” is successfully completed and the class action has been certified by the court, the next stage is to submit to the court the plaintiffs’ desired remedy. The Court, prior to the trial, will appoint a “class action officer” (sometimes referred to as an “executing officer”) whose job involves assisting the Court by attempting mediation, collecting and verifying evidence, meeting with witnesses and taking statements before and during the trial.

During this phase, if “class members” decide that the class action remedy does not best suit their needs, they have a period of forty-five days to withdraw from the “class”. It is not uncommon for individuals to withdraw from a “class” following a few rounds of mediation between the parties.

Step 5: Pre-trial Notification

Before the trial, it is required that notification be provided to the public that a class action lawsuit will be taking place and any other individuals (with the same facts and grievances) may apply to join the group filing the lawsuit. Notification is to be posted a public newspaper for a period of three continuous days. The court may, in its discretion,

permit such notice to be distributed via mass media or in any other form deemed appropriate by the court.

Step 6: Going to Trial

From a procedural standpoint, the trial portion of class actions is not very different from ordinary civil actions. You can expect the same process of mediation, submission of evidence, hearing of witnesses and finally a delivery of judgment.

Step 7: Obtaining a Judgment

If the court decides in the favor of the class of plaintiffs, then a judgment will include the class’ lawyer fees along with the payment of damages to all class members individually (based on the formula submitted to the Courts). Section 222/37 authorizes the court can consider and prescribe percentage of total monetary awards up to 30% as the attorney fees.

We hope that the above information has been useful to you and your understanding of class action lawsuits and their introduction into the Thai legal system.

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