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# DRAFT SURROGACY ACT UNDER CONSIDERATION

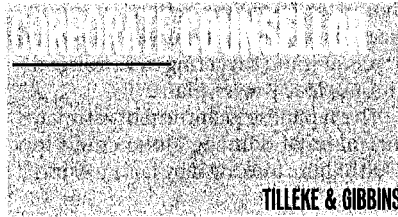
**R**ecent headlines about a company offering surrogacy services in exchange for money have brought the issue of assisted reproductive technologies back into the public eye, shedding light on the fact that Thai law has not kept up with advancements in infertility treatment.

Currently, couples in Thailand who wish to have a child, yet for whatever reason are unable to do so via natural methods, have limited options, adoption being the most common. But what about those couples who wish to have a child that is genetically theirs?

Assisted reproductive technologies such as *in vitro* fertilisation and surrogacy are also options. Parental legal rights and duties are set out in the Civil and Commercial Code, and adoption is outlined under the Child Adoption Act. But while assisted reproductive technologies exist and are used in Thailand, the matter falls into a legal grey area. A draft piece of legislation, the Surrogacy Act, seeks to specify the legal bases and clarify the issue.

The Surrogacy Act has, in fact, been in the drafting process for several years. Having already been passed by the Cabinet, it is still under review and awaiting parliamentary approval. Under the proposed legislation, legally married couples would be allowed to engage a surrogate mother to carry a pregnancy on their behalf. These are some of the conditions that must be met:

- ◆ The couple must be both mentally and physically prepared to become parents.
- ◆ The surrogate mother must not be an ancestor or descendant of the social parents.



- ◆ The surrogate mother must have previously delivered a child, and if married the husband's consent must also be granted.
- ◆ An appraisal must be carried out in accordance with the rules and conditions of the Surrogacy Act, covering environmental factors and potential diseases that could affect the newborn.

Most importantly, the Surrogacy Act sets out the rights of the social parents, surrogate mother and newborn child. Under present law, a child born via surrogacy is considered the legitimate child of the birth mother (and her husband if legally married), meaning the social parents have no legal parental rights to the child. The general method of dealing with this situation is, subsequent to delivery, for the prospective parents to go through the process of adoption. But this entails a lengthy process in dealing with government authorities and, particularly for foreign couples engaging a Thai surrogate, burdensome time and expenses.

Surrogacy arrangements have also yet to be tested in the Thai courts, and an agreement or contract entering into a surrogacy arrangement before the Surrogacy Act takes effect could be deemed a violation of provisions of public order and/or good morals.

Based on the current draft wording

of the bill, all the legal parental rights and duties will be conferred to the social parents without the need to go through the adoption process or proceed with other legally more dubious methods. In addition, the Juvenile and Family Court is granted jurisdiction to hear cases involving any disputes related to parenthood as a result of surrogacy, which is a much-needed step in the direction of protecting the rights of prospective parents — for example, in case the birth mother reneges on a surrogacy arrangement and decides to keep the child for herself.

It should be noted that as it stands, commercial surrogacy is not explicitly illegal under Thai law. However, the practice would be strictly prohibited if the Surrogacy Act passes. No payments or compensation of any kind would be allowed to be made to the surrogate mother, the exception being those related to health maintenance costs at the time of pregnancy, delivery and post-delivery, although the criteria for such have yet to be established.

Under the new law, engaging in commercial surrogacy would entail heavy penalties — a maximum of 10 years' imprisonment and a fine of up to 200,000 baht. And both brokerage and advertising, whether for commercial benefit or otherwise, would also be strictly prohibited, with violations resulting in a maximum of five years' imprisonment and/or a fine of up to 100,000 baht.

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