

# CONSUMER CASE PROCEDURE ACT TAKES EFFECT

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Until recently Thailand did not have a specific law which governed court proceedings in respect of disputes between consumers and business operators. The newly adopted Consumer Case Procedure Act 2551 (2008) is truly one of a kind. Despite being designated as procedural law, the Act contains both procedural and substantive provisions. The new law took effect on August 23, 2008 and already, the media has reported numerous complaints filed by consumers against business operators for various types of violations.

Clearly, the Consumer Case Procedure Act is designed to benefit consumers. The Act simplifies and expedites the legal process for consumers to seek redress when they are injured or have sustained damage. The Act even allows consumers to file complaints orally, by having the Case Officer arrange for the recording of details of the complaint and ask the plaintiff to sign. Moreover, to ensure access to legal

remedies for all, the Act waives court fees for consumers who wish to file an action (although restrictions apply).

The court is also given considerable discretion under the Act to conduct the proceedings and to make sure that consumers receive fair treatment. Among many pro-consumer provisions implemented, Section 11 of the Act, which gives rise to a cause of action in the case where a seller makes a promise to a consumer but fails to deliver, would most likely lead to a rapid upsurge in lawsuits against business operators. Section 11 specifically states that where a business operator, through notice, advertisement, warranty, or any other actions, leads the consumer to understand that the business operator agrees to provide certain things to the consumer in addition to those concluded in the contract, then such statements, actions, or promises made by the business operator will be deemed as part of

the contract concluded, even though such terms are not in writing.

While the Consumer Case Procedure Act provides a new hope for injured consumers, companies on the other hand have to face considerable risks of liability which may frustrate the business or even put the entire operation in jeopardy. Potential costs for companies to defend consumer lawsuits alone could be substantial. Moreover, the court may award punitive damages in addition to the actual damages granted if the court finds that the business operator has deliberately taken advantage of or intentionally caused damage to consumers, or has committed gross negligence. Therefore, it is very important for companies to be more careful with the marketing and sale of their products, and to start considering *ex ante* measures to minimize the risks of liability and avoid unnecessary lawsuits. ♦