

Product Liability Act: Is Your Business a Potentially Liable Party?

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Thailand's Product Liability Act has been in force for six years but has not yet resulted in any landmark Supreme Court decisions. There are, however, many significant cases working their way through the legal system and business owners are beginning to feel the impact of the law, officially known as the Liability for Damages Arising from Unsafe Products Act.

Unfortunately, most business owners have limited knowledge of the Act and are unsure about what actions they can take to manage and mitigate the risk of being found liable when faced with an allegation of involvement with an "unsafe product".

Generally speaking, a potentially liable party (PLP) under the Act can be any of the following: any individual or entity that manufactures (or authorises the manufacturing of); assembles; imports (including any seller of goods where the manufacturer, hirer, or importer cannot be identified); uses the name, trade name, trade mark, or statements; or acts in any manner that can cause them to be seen as a manufacturer, hirer, or importer; and who sold goods after Feb 20, 2009.

The Product Liability Act defines a "product" as any kind of tangible good that has been manufactured or imported for sale, including agricultural products and electricity, but excluding those ruled out by the ministerial regulations. Real estate and services are excluded. But real estate buyers may still receive protection from the Civil and Commercial Code or the Consumer Protection Act.

The Act defines "unsafe products" as being any product that actually causes or may cause damage or injury due to a manufacturing defect, design defect, lack of clear warning, instruction or other information about usage, and/or maintenance or preservation of the product.

Consequently, if any unsafe product causes damage or injury to a consumer who purchased it, regardless of whether the damage was caused intentionally or negligently by the potentially liable party, every PLP will be jointly liable for the damages sustained by the consumer, with few exceptions.

Under the Act, plaintiffs only need to prove that they were damaged or injured by the PLP's product and that they had used and maintained the product properly. The plaintiff does not need to prove which PLP caused the damage or injury.

It is possible, however, for a PLP to avoid liability if it can prove the following:

- The product was not unsafe.
- The plaintiff was aware that the product was an unsafe product.
- The plaintiff misused the product, despite clear information and warnings.

It is important to note that a PLP cannot avoid liability by entering into an agreement with the consumer that has the effect of waiving or limiting the PLP's liability in advance.

Bringing a claim: The Product Liability Act provides for different methods through which an aggrieved party can bring a claim. First, the plaintiff may bring a lawsuit in any court that has jurisdiction. Second, the aggrieved party may file a complaint with the Consumer Protection Board or a foundation or association authorised by the Consumer Protection Board to accept such complaints.

Thereafter, such bodies can submit a complaint to any court having jurisdiction on behalf of the aggrieved party. Court fees are waived, but fees ordered by the court in the final case are still payable.

In cases where the court determines that the aggrieved party was damaged by an unsafe product, it will award damages. Under the Product Liability Act, the court is not restricted to awarding damages set out in the Civil and Commercial Code, but is entitled to consider other forms of compensation that are unusual under Thai law, as follows:

- The court may award damages for mental pain and suffering, as well as actual bodily harm and harm to property.
- If the unsafe product caused the death of a person, the court may award damages for the mental pain and suffering of the immediate family.
- Where the PLP was aware, or should have been aware but was not due to gross negligence, the court may award punitive damages not exceeding double actual damages.

Moreover, the Consumer Protection Board, under the Consumer Protection Act (CPA), is entitled to order business operators to recall, destroy, or cease selling any unsafe product if the business operator fails to proceed with requirements under the CPA.

The Product Liability Act is intended to protect consumers from unsafe products and attempts to accomplish this by simplifying the procedure and reducing the burdens for consumers to bring an action. The Act expands the scope of liability for entities involved in the manufacture, sale, and importation of products, while leaving few avenues for such PLP to avoid liability. PLPs should assess the potential to become involved in such lawsuits, even through the actions of others involved in providing the product to consumers.