

Class actions arrive in Thailand: will the law of unintended consequences prevail?

Published: 15/05/2015 at 03:30 AM

Newspaper section: [Business](#)

In December of this year, amendments to the Civil Procedure Code allowing for class-action lawsuits will come into force. If the effects on the legal systems of other jurisdictions are good indicators, the Thai legal landscape will undergo a fundamental shift. This article will introduce class actions generally and then look at the new legislation and its potential impact.

Class actions are most prevalent in the US. They conjure up images of Julia Roberts in Erin Brockovich, or late-night television commercials asking whether a product has injured "you or a loved one". If you have ever been a plaintiff in a class action, you may have received an amount less than your actual damages, while the lawyers received substantial fees.

In short, class actions allow groups of similarly situated individuals, both legally and factually, to group together as a "class" of plaintiffs in a single lawsuit against one or more defendants. Class actions have been praised for increasing the efficiency of courts, providing certainty to both plaintiffs and defendants, and allowing "good" lawsuits to be filed where individual plaintiffs could not otherwise afford to litigate.

Criticisms of the system focus primarily on minimal awards to individual class members (sometimes just coupons for additional products from the defendant), while attorneys in the same case are awarded substantial legal fees.

Whether good or bad, it is difficult to dispute the fact that class actions have forced companies to modify their behaviour. Just last year, the healthcare company Heel Group decided to exit the US and Canadian markets to avoid multiple class-action lawsuits. Less extreme reactions include companies changing warning labels and providing additional disclosures in advertisements.

Class actions have become an alternative method of regulation outside of standard government regulatory regimes, particularly where state agencies lack the funding or mandate required for effective enforcement.

Thailand's version of class actions has the same features as the majority of those in other jurisdictions, with some significant departures that are primarily procedural. One fundamental difference with jurisdictions such as the US is that there is no jury system in Thailand. This is likely to result in more predictable and limited monetary awards.

Interestingly, though, Section 222/8 of the amended Civil Procedure Code provides for the following types of class actions:

- torts (negligence);
- breach of contract; and
- cases regarding "laws respecting the environment, consumer protection, labour, securities and stock exchange, and trade competition".

Typically, laws passed to protect the public interest, such as environmental laws, are enforced by government agencies and do not allow individuals a general right to bring lawsuits directly in the courts. The language of Section 222/8 appears to open the door wider for such "direct action" lawsuits and could further complicate the regulatory environment.

For example, Thailand's own Erin Brockovich-style lawsuit concerned the contamination of Klity Creek in Kanchanaburi from a lead-mining operation. In that case, nine villagers joined together to bring a suit against a company for contaminating the creek under environmental laws.

The court ruled that the contamination had killed the villagers' livestock and caused adverse health effects on the villagers. The court awarded the villagers 38 million baht in damages. We have no indication of the plaintiffs' lawyers' fees but can safely assume they amounted to a mere fraction of the total damages.

The new class-action legislation authorises a contingency fee or lawyers' award for the plaintiffs' lawyers of up to 30% of the total damages. In typical civil actions, plaintiffs' lawyers are required to obtain legal fees and expenses directly from their clients, many of whom are indigent. The possibility of higher compensation is likely to result in more public interest and direct action lawsuits.

While the precise impact of class actions will only reveal itself through testing in the courts, what is clear is that all businesses with significant sales and operations in Thailand now face greater risks.

This increase in risk will likely manifest itself in higher insurance premiums for all, regardless of the level of actual operational risk of any particular business.

Those businesses involved in class actions, whether or not based on meritorious claims, will need to engage outside counsel to defend against these suits and will therefore face increased legal costs. For those considering investing in Thailand, the arrival of class actions may reduce Thailand's attractiveness.

In conclusion, class actions in Thailand will allow commonly situated individuals to group together and directly protect their interests in court. However, these new rights will not come without costs borne by those doing business in Thailand, and possible impact on future investment.