

CHAPTER 24 CONSUMER PROTECTION

The modern economic development of Thailand from the 1980s onwards has created demands of its own, and amongst these have been demands for greater protection for consumers in transactions affecting their everyday lives.

In this chapter, we consider a number of different Acts and regulations that have given greater protection for the interests of consumers. These are:

- the Consumer Protection Act,
- the Food Act,
- the Drugs Act,
- the Product Liability Act,
- the Consumer Case Procedure Act
- the Public Health Act,
- the Credit Data Protection Act,
- the Direct Sales and Direct Marketing Act,
- the Unfair Contract Terms Act,
- regulations concerning credit cards,
- regulations concerning loan agreements,
- regulations concerning used car dealers, and
- the Data Protection Bill;

Consumer protection in general

Consumer Protection Act (1979)

The Consumer Protection Act (1979), as amended, gives protection to consumers in relation to contracts for the sale or purchase of goods or services, and in relation to advertising and labelling of goods.

Rights of consumers A consumer has the right to:

1. receive correct and adequate information in the choice of goods or services;
2. to expect safety in the use of goods or services;
3. to receive fairness in entering into a contract; and
4. to have any loss considered and to receive compensation.

Regulation A Consumer Protection Board has been established to supervise the enforcement of the Act. This committee will itself supervise the work of three sub committees:

1. The *Advertising Committee*, which will take action against false or misleading statements in advertising.
2. The *Labelling Committee*, which will designate categories of goods as controlled goods and take action where labelling is misleading or does not describe the ingredients or components of the goods accurately.
3. The *Contracts Committee*, which may define certain categories of agreements as controlled agreements and may then prescribe that certain terms may or may not be included in such agreements.

These committees will investigate conduct considered to be a breach of duties imposed under the Act, and have power to issue regulations to deal with particular issues.

Enforcement The Act is enforced by means of notices issued by the Consumer Protection Board, by proceedings issued by it or with its authority, and by a system of fines and imprisonment for breaches of specific duties imposed by the Act.

Protection in relation to food and drugs

The Thai Food and Drugs Authority

The role of the Thai Food and Drugs Authority is to ensure that food, drugs, cosmetics, medical, narcotic substances and household hazardous substances available to consumers are of a standard quality, efficacy, and safety. The main tasks of the office are control and monitor manufacture, import, transport, storage and sale of such goods. The FDA has powers under the following Acts, as well as a number of international conventions:

1. Food Act (1979)
2. Drugs Act (1977)
3. Cosmetics Act (1984)
4. Narcotics Act (1979) as amended
5. Psychotropic Substances Act (1984) as amended
6. Volatile Substances Act (1982)
7. Medical Devices Act (1980)

Food Act (1979)

General The Act regulates various activities in relation to food manufacturing, importing and retailing:

1. Establishment of food standards, and hygiene and labelling requirements.

2. Control of the manufacture or import of food.
3. Declaration of controlled foodstuffs and their registration.
4. Advertising of food.
5. Packaging materials for food.

Licensing and registration Licenses are required to manufacture or import foodstuffs. All foodstuffs are subject to analysis. A food product that is listed as a controlled food under the Act, whether imported or manufactured, is subject to registration.

Inspection and sampling The Act enables officials to inspect food factories and premises, and to take samples for analysis.

Enforcement Enforcement of the Act is via suspension and revocation of licenses, and imprisonment or fines for breach of specific duties imposed under the Act.

Drugs Act (1977)

General The Drugs Act controls the manufacturing, sale, wholesale or import of drugs, as defined. Such activities may only be conducted by persons who have applied for a license under the Act. Qualified pharmacists are required to be on duty at places where such drugs are sold, during their normal opening hours. Drugs may only be manufactured or sold in specified places. Labelling on drugs must fulfil certain requirements. Duties are imposed on pharmacists, doctors, veterinarians and others who deal with or sell drugs. Offences are created in relation to the manufacture sale or import of counterfeit drugs, substandard drugs, deteriorated drugs, drugs not registered under the Act, or drugs whose formulas have been cancelled.

Licenses Licenses are issued by a regulatory authority called the Drugs Board.

Enforcement Enforcement of the Act is by means of notices issued or action taken by the Drugs Board, by suspension or cancellation of licenses issued, and by fines or imprisonment for breaches of specific duties imposed by the Act.

Protection from unsafe products

Product Liability Act (2008) The Unsafe Product Liability Act was passed on 13 February 2008 and came into operation on 23 February 2009. It imposes liability for unsafe products on manufacturers, sellers, importers, and others in the distribution chain.

What products are subject to the Act's requirements? The Act defines products as: *all kinds of products manufactured or imported for sale, including agricultural products and electricity, but excluding products exempted in regulations. Agricultural products means products from agriculture, including rice farming, fruit and vegetable farming, livestock farming, silk farm, lac (resin) farming, and mushroom farming, but excluding natural products.*

What does 'produce' mean? *Production* means manufacturing, mixing, preparing, assembling, inventing, transforming, re-shaping, modifying, selecting, packaging, freezing, and radiating, and includes any other action that gives a similar affect.

Who can make a claim under the Act? A person who suffers damage or loss from an unsafe product, may bring a claim.

What does loss or damage mean? *Loss or damage* means loss or damage caused by using an unsafe product, whether to life, body, health, mind, or property, but excluding loss or damage to the unsafe product itself. Mental loss means pain, suffering, fear, anxiety, depression, humiliation, or any other mental loss with the same affect.

What is an unsafe product? An *unsafe product* is one that causes or may cause injury, whether from a manufacturing defect, its design, lack of instructions, storage, warnings, or information concerning the product, or inadequate or unclear information, all in relation to the state of the product, including usage and storage under normal conditions of that product in normal circumstances.

What activities are covered? Under the Act, 'sale' includes sale, distribution, or exchange for the benefit of trade, hire, hire purchase, supplying, and persuading a person to buy, or exhibiting products for the purpose of the foregoing. *Importing* means importing or ordering products to sell in Thailand.

Who is liable? A business operator liable for the duties imposed under the Act, means:

- (1) A manufacturer or a contractor
- (2) An importer
- (3) A seller of the product who is unable to identify the manufacturer, the contractor or importer.
- (4) A person who uses a trade name, trademark, mark, articles or any means to make others believe that he is a manufacturer, contractor or importer.

In general, strict liability imposed All business operators are liable for loss or damage caused from an unsafe product, where the product has already been sold to consumers, regardless of whether the loss or damage was caused intentionally or negligently.

The injured person must prove loss For a business operator to be liable, an injured person must prove that he/she suffered loss or damage from the product, and had followed the correct instructions for use or storage in normal circumstances, but there is no need to prove which business operator caused the loss or damage.

Exclusion from liability A business operator is not liable for loss or damage caused by an unsafe product, if he can prove that:

- (1) the product is not an unsafe product
- (2) the injured person already knew that it was an unsafe product
- (3) the loss or damage was caused by incorrect usage, or storage, or failure to follow any warning, or ignoring information concerning the product which a business operator had indicated clearly and correctly.

Manufacturers and contractors A person who manufactures products under the orders of a contractor is not liable for loss or damage, if he can prove that the unsafe nature of the product was caused by the design of the contractor, or by following instructions from the contractor, since a manufacturer should not have to expect or foresee the unsafe nature of that product.

The manufacturers of a product's parts are not liable, if they can prove that the unsafe nature of the product was caused by the design, assembly or instructions for use of the product, storage, or warning or information regarding the product.

Exclusion or exemption from liability is not permitted An agreement between a consumer and a business operator made in advance before the loss or damage has occurred, or a notice of the business operator exempting or limiting liability for loss or damage caused by an unsafe product, cannot be used to exclude or limit liability. "*Consumer*" here means a person who buys or obtains services from a business operator or a person who has been offered or invited by a business operator to purchase goods or obtain services, and includes a person who uses goods or obtains services from a business operator, even though he or she does not pay remuneration for it/them.

Liability under other laws Where there are other laws that contain provisions relating to unsafe products which give greater protection than this Act, then that law or Act may be used for enforcement instead.

Consumer Protection Board has power to make claims The Consumer Protection Board, or an association or foundation certified by it, has power to make claims on behalf of an injured person. In such cases, no court fees will be charged except for court fees at the highest level. Note that an injured person still has a right to bring a claim by himself.

Assessing damages As well as assessing damages in accordance with the Civil and Commercial Code, the court may assess compensation taking into account the following matters:

- (1) Regarding damages for mental loss caused by loss or damage to the body, health or hygiene of the injured person, where the injured person has died, his/her husband, wife, parents or heirs are entitled to receive the damages.
- (2) If it appears that the business operator manufactured, imported, or sold the product, knowing that it was unsafe, or without knowledge due to his negligence, or knew that the product was unsafe after manufacture, import or sale but failed to act appropriately to prevent loss or damage occurring, the court may order the business operator to pay compensation up to twice the actual amount, taking into account matters such as: the degree of loss and damage suffered, knowledge of the unsafe product by the business operator, the length of time during which the business operator has concealed the unsafe aspects of the product, the reaction of the business operator when he knew of the unsafe aspects of the product, the benefits the business operator has received, the financial status of the business operator, how the business operator has minimized the loss or damage, and whether the injured person did anything to cause the loss or damage to occur.

Limitation period for claims The right to claim compensation expires after three years from the date that the injured person learned of the unsafe nature of the product and knew the identity of the business operator liable for loss or damage, or ten years after the date of sale of the product.

Where there is loss or damage to body or health caused by matter accumulated in the body of an injured person, or where there is a need to wait to see the symptoms, the injured person or his representative must claim within three years from the date of acknowledgement of the loss or damage, and knowledge of the business operator liable for the loss or damage, but not more than ten years from the date of acknowledgement of the loss or damage.

Effect of negotiations If there are negotiations concerning damages between a business operator and an injured person, the period of limitation applicable is suspended during negotiations, until either party terminates them.

Rights under other legislation The provisions of the Act do not limit the rights of an injured person to seek compensation under any other law.

Consumer Cases Procedure Act The Consumer Cases Procedure Act came into effect in August 2008. The purpose of the Act is to simplify the court procedures relating to actions brought by a consumer and a business operator (as defined) regarding claims for consumption of goods or services. It contains provisions regarding exemption from court fees, mediation procedure, and reverses the usual burden of proof so that the defendant is presumed liable and the plaintiff only has to prove the loss suffered. Any judgment given can be used as a precedent where another person sues the same defendant based on the same material facts. There is provision for the court to revise the damages awarded within 10 years. Punitive damages can be awarded if the breach is intentional or grossly negligent, in an amount up to twice the actual compensation. An appeal to the Court of Appeals is permitted on a point of law, or on fact where the claim exceeds 200,000 Baht, and a further appeal to the Supreme Court may be made in limited circumstances.

Public Health

Public Health Act (1992)

The Public Health Act, as amended, deals with many areas and activities where public health issues arise, including:

1. disposal of sewerage and waste;
2. repair or demolition of dilapidated buildings that may endanger health;
3. public nuisances;
4. rearing or grazing of animals;
5. markets and places where food is sold or stored;
6. street vending.

Regulation A Public Health Committee is established by the Act. It will supervise the operation and enforcement of the Act and has powers to issue regulations, and grant licenses for various activities that are regulated under the Act.

Enforcement Enforcement of the duties imposed takes place by various means. Licenses for regulated activities may be suspended or terminated. Notices may be issued against a person responsible for breaching the duties imposed by the Act. Imprisonment or fines arise for breaches of specific duties that are imposed.

Local authorities may issue local regulations to enforce the provisions of the Act and take necessary enforcement action.

Data Protection

Credit Data Protection Act (2002)

General The Credit Data Protection Act was passed on 8 November 2002 and came into force on 8 March 2003.

It imposes controls on the information that may be stored, supplied to or by banks and financial institutions, securities companies, credit card companies, insurance companies and life assurance companies concerning creditworthiness.

Definitions The Act defines the following terms:

Credit Data Business means a business relating to the control of credit data and/or credit data processing, in order that credit data can be given to the members or service users.

Credit Data Company means a company authorized to conduct the business of credit data.

Credit Data Owner means a natural or juristic person who is the owner of credit data or the owner of information on customers seeking services from members, whether for credit or any other services.

Regulation A Credit Data Commission is set up to supervise the operation and enforcement of the Act, and to issue regulations.

Exclusions from the Act The Act does not apply to data processing of personal data, or data on a group of persons or juristic persons for the specific internal benefit of such persons or businesses prescribed in regulations.

Requirements for credit data companies All business engaging in the supply or storage of credit data must apply for a license from the Commission. Credit data companies must be majority owned by Thais and the majority of directors must be Thais. Foreigners may not manage such companies.

Duties of credit data companies The Act imposes duties on credit data companies:

1. A credit data company, data controller or data processing operator may not store or use aged data, as defined.

2. No person may claim or advertise that he can revise data.
3. Duties are imposed on credit data companies and service users. They must have systems for:
 - Classification of stored data.
 - Updating of data.
 - Protection of confidentiality of data, and restrictions on unauthorised use or receipt or alteration.
 - Destruction of data.
 - Data reporting systems.
 - Data verification and revision.
 - Recording and reporting system.
 - Destruction of aged data.

Disclosure of data with consent Disclosure of data to members or service users in connection with the authorizing of credit, loss insurance, life insurance and issue of credit cards may only be made with the prior written consent of the owner.

Disclosure of data without consent Data may be disclosed without the owner's consent in the following cases:

1. A court order directs disclosure or the data is connected with litigation disclosed to the public.
2. Where there is authority from an official in connection with a criminal investigation.
3. Where there is authority from the Ministry of Finance, Bank of Thailand or Securities and Exchange Commission in connection with their supervision of financial institutions.
4. Where there is authority from the Secondary Mortgage Corporation in connection with valuation of assets for securitization.
5. Where there is authority from the Thailand Asset Management Corporation, Asset Management Corporation or an Asset Management Company in connection with valuation of assets.

Disclosure or transfer of data in the last two cases must still be approved by the Commission.

Notification of data owner After the disclosure or conveyance of the data, written notification must be given to the owner of the data within 30 days. In the case of collective data of any financial institution, notification shall be made to the relevant financial institution.

Service users Service users are subject to the following duties:

1. To use data in accordance with the Act.
2. Not to disclose or disseminate the data to other persons having no right of receipt.
3. To use the data for the benefit of that particular matter only.

Duty not to disclose data The following persons may not disclose data, unless authorized by the Act:

1. Credit data companies.
2. Data controllers.
3. Data processing operators.
4. Members.
5. Service users.
6. Persons who become aware of data through their work for entities that come under categories 1-3 above and persons who become aware of data received from persons who work in entities that come under 1-2 above.

Protection for data owners A data owner has the following rights:

1. To know what data has been kept by a credit data company.
2. To check his own data.
3. To correct his own data.
4. To contest the recording of his own data that is not correct.
5. To be notified of the result of verification of his own data.

6. To know the reasons for refusal of an application for credit or services from a financial institution, where a financial institution used the data received from a credit data company as the reason for refusal of credit or services.

Requests for verification A request for verification sent by a data owner must be considered promptly and the result of verification notified within 30 days. Where it is accepted that data is incorrect, it must be corrected promptly and any data sources, members or service users notified so that they can correct their own data.

Disputed data Where data is disputed, the credit data company shall record the subject matter of argument together with relevant evidence. In preparing a data report for members or service users, the credit data company must indicate what data is disputed. Appeals concerning disputed data can be made to the Committee.

Written reasons for refusal of credit Where a financial institution, member or service user refuses credit or takes any other course of action against a customer, causing an increase in service charges as a result of receiving his data, the financial institution, member or service user must supply written reasons to substantiate the refusal of credit or the increase in service charges, including the source of the data. A data owner has the right to verify the correctness of his own data, within 30 days.

Request for correction by data owner Where the data owner determines that the data is not correct in fact, he may submit a request together with supporting evidence to request a review of any decision to refuse credit or any other action.

Regulation A Credit Data Commission will be established to supervise the implementation of the Act, to hear appeals under the Act, and to issue regulations. The Bank of Thailand also has certain supervisory duties under the Act.

Enforcement Enforcement of the Act is through a system of notices issued, suspension or cancellation of licenses issues and fines and imprisonment for breaches of specific duties imposed under the Act. Data owners may also take civil action for damages against those who wrongfully disclose data, or disclose incorrect data.

Direct sales and pyramid selling

Direct Sales and Direct Marketing Act (2002)

General The Direct Sales and Direct Marketing Act (2002) came into effect on 29 August 2002. The Act is intended to control and regulate the operation of direct sales and direct marketing businesses.

Regulated businesses The Act applies to direct sales and direct marketing businesses and defines these terms and associated terms as follows:

Direct sales means the marketing of goods or services directly to a consumer at his home or workplace or the home or workplace of others or any other place which is not an ordinary place of business, through a direct sales representative or uni-level or multi-level independent distributor, but excluding transactions specified in regulations.

Direct marketing means the marketing of goods or services by means of communicating information direct to the consumer and expecting the consumer to respond and purchase such goods or services from a direct marketing business.

An *independent distributor* is a person who receives ownership of goods from a direct sales business operator and directly offers such goods or services to consumers.

A *direct sales representative* is a person who is authorized by a direct sales business to offer goods or services to consumers.

Regulation Regulation of the businesses that are subject to the Act is given to a regulatory committee called the Direct Sales and Direct Marketing Committee. The Committee will enforce the Act, draft regulations, and may issue, suspend or terminate licenses for regulated activities.

Prohibited activities Direct sales and direct marketing businesses may not induce persons to join their network by promising benefit based on the number of persons who join the network.

Licensing procedure Any operator of a direct sales or direct marketing businesses must register and apply for the issue of a license from the Committee.

Direct sales businesses Direct sales businesses are subject to the following duties:

1. They must prepare a remuneration plan and submit it to the Committee.
2. The remuneration plan must contain the following information:

- it may not confer benefits calculated by means of recruiting any person or recommending any person to join the network;
 - a distributor or representative's main income must depend on sale of goods or services to consumers including purchases for personal consumption. Any term to the contrary is only enforceable to the extent that it is fair to the distributor or representative;
 - a distributor cannot be compelled to purchase goods;
 - a distributor must not be encouraged to purchase goods in unreasonably large amounts;
 - the business must clearly show the actual method of calculation of remuneration.
3. Membership fees, training fees or fees for promotional materials or other fees may not be demanded at a rate higher than that approved by the Committee.
 4. Contracts with distributors or representatives must be in writing, and contain certain specified terms.
 5. Where a distributor returns goods promotional materials or manuals purchased, the purchase price must be refunded within 15 days. Where such items are returned after expiry of the agreement, expenses permitted by the Commission may be deducted and debts set off from the amount to be refunded.

Direct marketing businesses Direct marketing businesses are subject to the following duties:

1. Information used to offer goods or services must be in accordance with regulations.
2. The requirements of the Consumer Protection Act regarding advertising will apply to any provision of information made by a direct marketing business.

Consumer protection The Act contains a number of measures to protect consumers:

1. Documents relating to goods or services provided to consumers must be in Thai language, easy to be understood, name the seller and purchaser,

- the date of sale and delivery, and show the consumer's right of termination in highlighted words.
2. Documents for the sale of goods must contain certain information. Failure to comply with this duty renders any sale agreement unenforceable.
 3. A consumer may terminate any agreement by seven days written notice from the date it receives the goods or services.
 4. The Act contains rules relating to the return of the goods, care of the goods pending return, and compensation payable where the goods are damaged or lost due to the consumer's fault.
 5. After termination by the consumer, any purchase price paid must be refunded in full within 15 days.
 6. Any warranty for the goods must be in Thai language and set out the consumer's rights to invoke the warranty in simple language.

Enforcement Enforcement of the Act is via the suspension of any license granted, and fines and imprisonment for breach of specific duties imposed.

Unfair contract terms

Unfair Contract Terms Act (1997)

Background The Unfair Contract Terms Act (1997) came into force on 15 May 1998. The Act is intended to protect the interests of consumers who are parties to standard form contracts and consumer contracts. The Act may also be relevant to contracts where both parties are dealing in the course of business, as well as to contracts made between business operators and consumers. It provides that certain contract provisions which give an *unfair trade advantage* to business operators, are only enforceable to the extent that they are *fair and reasonable*. The contract provisions which must fulfil this fair and reasonable test are many, and include terms which exclude or limit liability arising for breach of contract. The exclusion of liability for defects in property may only be permitted to the extent that it is fair and reasonable.

Under the Civil and Commercial Code, there have always existed certain consumer protection rights. For example, the Code provides that: *contracts shall be interpreted according to the requirements of good faith, ordinary usage being taken into consideration*. A further provision of the Code provides that: *an agreement made in advance exonerating a debtor from his own fraud or gross negligence is void*. The Unfair Contract Terms Act is far more wide ranging and potentially gives consumers far more rights when they deal with business operators.

Definitions There are four key definitions to be understood:

Operator of a trade, business or professional services (referred to below, as a *business operator*) means a person who enters into a contract as a seller, a lessor, an owner under a hire purchase contract, a lender, an insurer, or a person who enters into any other contract to provide property or services, or any other benefit, provided that entering into such contract shall be in the course of business, or in its normal course of business.

Consumer means a person who enters into an agreement as a buyer, a lessee, a hire-purchaser, a borrower, an insured, or any other person who enters into any other agreement for the purpose of obtaining property, services, or any other benefits for consideration; provided that entering into such contract is not be in the course of trade in such property or services or any other benefit. A guarantor is also protected, provided that he does not give the guarantee in the course of business.

Standard form contract means a written contract in any form, prescribing essential terms in advance which a party uses in its business.

Contract term means a provision, agreement or consent, including a declaration or notice, which excludes or limits liability.

Interpretation The Act provides that:

1. a contract provision which wholly or partially excludes the provisions of the Act, is void;
2. In the case of doubt, a Standard Form Contract is to be construed in favour of the party who does not prescribe it.

Unfair trade advantage Any provision which appears in:

1. a contract between a business operator and a consumer;
2. a standard form contract; or
3. a contract of sale with a right of redemption;

that gives an unfair trade advantage to the business operator; or a person prescribing a standard form contract, or a buyer under a contract of sale with a right of redemption; shall only be enforceable to the extent that it is fair and reasonable under the circumstances.

Examples of terms that give an unfair trade advantage The Act sets out examples of contract terms which are deemed to give an unfair advantage to the other party, and these include:

1. A term excluding or limiting liability arising from breach of the contract.
2. A term requiring a party to be liable or bear more obligations than required by law.
3. A term for termination of the contract without grounds or giving the right to terminate the contract when no material term of the contract has been broken.
4. A term giving a party a right not to comply with any term of a contract, or to delay performance without grounds.
5. A term giving a party a right to demand or require that the other party accepts more obligations than those which existed at the time of execution of the contract.
6. In a hire purchase contract, a term stating that the repayment amount is greater than the total of the sale price and interest at more than 15% per annum.
7. In a hire purchase contract, a term prescribing an unreasonably excessive hire purchase price, or a provision requiring the hire purchaser to accept unreasonably unfair obligations.
8. In a credit card agreement, a term requiring the consumer to pay unreasonably excessive interest, penalties, or expenses, or imposing any other detriment in the case of default in payment, or other default.

Restraint of trade obligations in contracts A contract term that restricts the right to engage in an occupation, or to carry out legally binding acts related to the conduct of trade, business or professional services, which subjects a person to greater obligations than would normally be expected, may only be enforced to the extent that it is fair and reasonable in the circumstances. The matters to be taken into account when determining whether greater than normal obligations are imposed include:

- (1) the area and duration of the restrictions, including the ability of the restricted person to engage in another occupation or to carry out legally binding acts with others, and
- (2) the lawful interests of others.

Exclusion of liability for defects An agreement between a consumer and a business operator which involves the delivery of property, may not include a term that excludes or limits liability for defects or the right of recovery, unless the consumer has knowledge of the defects or the grounds which give rise to the right of recovery at the time the agreement is entered into. Where the consumer has such knowledge, the provision is only enforceable to the extent that it is fair and reasonable in the circumstances.

Deposits As to any contract term that requires payment of a deposit, and such deposit may be forfeited, or the deposit is disproportionately high, then the Court has power to reduce the amount forfeited to the amount of actual loss.

Prohibition of terms, declarations and notices that exclude liability Any terms, declarations or notices made in advance which exclude or limit liability for tortious acts or breach of contract, for damages for personal injury or health, cannot exclude or limit liability which arises from any intentional or negligent act by a contract party, or the party making the declaration or issuing the notice. Such person is jointly liable with the contract party.

Terms, declarations, or notices that exclude or limit liability, other than those above, shall only be enforceable to the extent that they are fair and reasonable under the circumstances.

Avoidance of agreements that exclude or limit tortious liability Any agreement or consent given by a person who has suffered loss, relating to an act which is illegal or contrary to good morality, may not be used to exclude or limit any tortious liability.

Meaning of fair and reasonable In deciding what is fair and reasonable in relation to contract terms, all matters must be taken into account, including:

1. Good faith, mutual bargaining power, economic position, knowledge, understanding, expertise, expectations, previous course of dealing, and other matters, as well as all the interests of the parties in the particular circumstances of the case.
2. What is customary for that type of contract.
3. The time and place of the execution of the contract or the performance of the contract.
4. Any excessively onerous obligation borne by one party when compared with the other party.

Regulations concerning credit card services

The Ministry of Finance and the Bank of Thailand periodically issue regulations relating to conducting credit card business and the offering of credit cards. These regulations impose duties on companies that offer credit card services. The main points of the regulations are as follows:

Limitations on interest and fees chargeable Interest and fees chargeable by credit card companies are subject to the following limitations:

1. For cash advances, a maximum fee of 3% may be charged on the amount withdrawn.
2. Actual and reasonable expenses for debt collection.
3. A fee for returned items up to a maximum of 200 Baht per item, for issuers that are not financial institutions.
4. Operating fees, in accordance with the regulation.
5. Interest and other costs other than 1-4 above, must not exceed 20% per annum.

Notification of interest and charges Card issuers must publicly disclose their interest rates, charges, and other details as specified by regulations, and must notify cardholders.

Payment by instalments Cardholders can repay their debt obligations, provided that any monthly payment must be at least 10% of the outstanding balance.

Cancellation of credit card facility Where there has been non payment for three months the credit card facility must be cancelled.

Licensing requirement Non-financial institutions must obtain a license from the Ministry of Finance to offer credit card services.

Further draft Bill concerning credit cards A further Bill concerning credit cards was approved by the Cabinet in June 2010, but has not yet been approved by Parliament. Its main provisions are listed below:

- Credit card operators must obtain a license from the Ministry of Finance and approval from the Bank of Thailand
- The BOT will establish rules governing interest rates, penalty rates, fees and other matters
- The rights and obligations operators, cardholders and sellers are defined

- Operators may not collect payment before the due date under the agreement
- In a case of overpayment, the cardholder can request the return of the excess payment
- If a cardholder disputes an internet purchase in writing, the operator will be obligated to suspend payment and investigate the matter
- Claims for payment may only be enforced within two years following termination of the contract

Regulations concerning loan agreements

General Regulations issued by the Contract Committee (see Consumer Protection Act above) in May 2001 stipulate that certain types of loan agreement and guarantees are subject to control. The regulation prescribes the contents of such agreements.

Consumer loan agreements only The protection applies to consumers who borrow money from financial institutions for personal use only, not for business purposes. The protection extends to guarantors of consumer loans.

Formalities A consumer must be permitted to read and understand the agreement, especially provisions concerning the consumer's liabilities. The contract must be legible. The type size or letters must be large enough and explicit enough for the consumer to read. The type size is required to be a minimum of 2 millimetres. The loan agreement must be written in Thai language. The agreement must contain a warning about the circumstances in which the lender can terminate the agreement in highlighted words.

Rights of guarantors A guarantor's liabilities under a related guarantee agreement must be summarized in a separate warning. The regulation includes a standard form of wording for warnings. The liabilities referred to in a standard warning deal with waiver of the guarantor's right of release from the guarantee.

Increase in interest rates Any increase in the interest rate must be notified to the borrower at least 30 days' prior to the effective date of increase. In emergency cases, an increase of interest rates may be published in a Thai language newspaper in general circulation or by written notification to the borrower at least seven days before the new interest rate comes into effect. The borrower must be notified in writing of the increase, regardless of whether a newspaper announcement is made. Changes to certain recognised interests rates such as Minimum Lending Rate, Minimum Overdraft Rate and Minimum Retail Rate do not have to be notified to the borrower, nor do default interest rates.

Borrower must have time to remedy breach of agreement A borrower must be allowed a reasonable period to remedy a breach of the loan agreement. If there are reasonable grounds for doing so, a lender is not bound to observe this requirement.

Assignment by the lender Where the lender assigns the agreement, the assignment takes effect after the borrower has received notice of assignment notice of at least one interest period. This is in addition to the requirements of the Civil and Commercial Code which require that notice of assignment of a contract must be given by the assignor to the non-assigning party for it to be enforceable.

Requirements concerning insurance The lender may insure its assets and name itself as the beneficiary under the policy. Where a claim is made, the lender has a duty to pay to the borrower any excess, after it has used the insurance monies to cover any losses sustained upon a default.

Excluded terms Certain terms and conditions may not be included in a loan agreement. These include provisions such as a right for the lender to demand payment prior to maturity date where the borrower is not in default or to terminate the agreement without any reason or without notice.

Deemed incorporation Any terms and conditions that are required to be included, are deemed to be incorporated into regulated agreements.

Regulations concerning used vehicle dealers

General In April 2008, the Consumer Protection Board issued a regulation concerning labelling of used vehicles which used vehicle dealers will be subject to. The regulation will come into effect on 8 September 2008.

Labelling of used vehicles Any label attached to a used vehicle must contain certain specified information including: the vehicle registration date, registration number, chassis number, engine number, vehicle brand, engine brand, color, type of vehicle, fuel type, details of the last owner, product classification (e.g. used car), manufacturer, distributor, location of manufacturer or distributor, engine size, directions for use, warning, date of manufacture date, and price. The labels must be placed on the front windscreen of the vehicle, with a font size of not less than 1 cm.

Penalties Used vehicle dealers who do not comply with the regulation will be liable to a fine or imprisonment.

Data protection

Draft Data Protection Bill Although the Official Information Act (1997) deals with disclosure of information in the possession of government authorities, and the Credit Data Act deals with credit data kept by banks and other organizations (see *above*), there is currently no law that generally protects the storage or disclosure of personal data in the private sector.

In 2008, a draft Data Protection Bill was published. The bill defines what is personal data, a person who can control the storage or dissemination of personal data, regulates the forwarding, transfer or disclosure of personal data, establishes a regulatory body, and sets out a code of punishment for breach of duties imposed.

As at 1 August 2010, no further progress has been made with this.

Revised 1 August 2010