

## **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 Cases 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,
- the Data Protection Act;
- the Gender Equality Act; and
- the Debt Collection Act

### **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 the 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 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 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 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 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 came 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**

**Data Protection Act** 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 also a general right of privacy under the current Constitution. The Telecommunications Business Act makes it an offence to interfere with or disclose communications. The Criminal Code contains certain specific offences such as opening of postal mail. But there is currently no specific law that generally protects the storage or disclosure of data in the private sector.

In 2019, the Data Protection Act was passed. It is due to come into effect in May 2021. It will apply to all employers and all other persons who receive, store or distribute data as defined. The Act defines what is data, a person who can control the storage or dissemination of data, regulates the forwarding, transfer or disclosure of data, establishes a regulatory body, and sets out a code of punishment for breach of duties imposed.

**Exclusions from the Act** The Act shall not apply to:

- (1) the collection, use, or disclosure of data of a person that collects data for his/her own interests or only for the family business of the said person;
- (2) the proceedings of a government agency whose duty is to maintain state security, which includes treasury security or public security, and suppression of money laundering, forensic sciences, or cyber security;
- (3) a person or a juristic person that uses or discloses data which has been collected specifically for mass media business, art, or literature, which are in line with professional ethics or which is for public interests only;
- (4) the parliament, including commissions appointed by parliament, that collect, use, or disclose data in their duties;
- (5) adjudication of cases in Courts and the operations of the competent officers in respect of case proceedings, legal execution, and deposit in lieu of performance, as well of criminal justice;
- (6) handling of data of a credit data company and a member under the law governing credit data business operation.

The exemption from enforcement of the Act, either in whole or in part, or a data controller in any description, any business, or any agency in the same manner as that of the data controller under paragraph one or for any other public interests, shall be enacted as a Royal Decree.

data controllers under paragraph one (2), (3), (4), (5) and (6) and a data controller of an agency exempted as prescribed in regulations shall arrange for the security of data so that it be in accordance with the standards.

**Application of the Act** The Act shall apply to the collection, use, or disclosure of data by a data controller or a data processor who is in Thailand, irrespective of whether the said collection, use, or disclosure, is made inside or outside Thailand.

Where a data controller or data processor is outside Thailand, the Act shall apply to the collection, use, or disclosure of data of owners of data who are in Thailand by engaging of activities of the data controller or the data processor when such are the following activities:

- (1) the offering of goods or services to owners of data who are in Thailand, irrespective of whether there be payment of owner of data;
- (2) monitoring the behaviour of owners of data which occurs in Thailand.

**Definitions** In the Act,

“**data**” means information relating to a person which enables his identification either directly or indirectly, but excluding data of a deceased person.

“**data controller**” means a person or a juristic person who has the powers and duties to make a decision relating to collection, use, or disclosure of data.

“**data processor**” means a person or a juristic person operating business concerning collection, use, or disclosure of data under an instruction or in the name of a data controller, however, the said person or juristic person operating such shall not be a data controller.

“**person**” means an ordinary person.

“**Committee**” refers to the Data Protection Committee.

“**Office**” refers to the Data Protection Office.

**Data Protection Committee** This will be the regulatory authority under the Act.

### **Data Protection - General Provisions**

**Consent** A data controller may not collect, use, or disclose data if the owner of data does not give prior consent or at the time, except where it is so permitted by the provisions of the Act or other laws.

A request for consent must be made explicitly in writing or via electronic system, except where under certain circumstances such a request cannot be so made.

**Duties or data controller** In requesting consent from the owner of data, the data controller shall state the purposes of collection, use, or disclosure thereof as well, and such request must be clearly separated from other statements, must be of a format or of a statement that can be easily accessible and understandable, and the language used must be simple and must not be deceiving or must not cause the owner of data to be misunderstood of the said purposes. However, the Committee may allow a data controller to request for consent from an owner of data according to the form and statements prescribed by it.

In requesting consent from an owner of data, the data controller must take into account the freedom of the owner of data in giving such consent. However, in entering into a contract, which includes the providing of any services, there must not be specified any conditions for the collection, use, or disclosure of data which are not necessary for or related to the entering of the contract, which includes the providing of said services.

**Withdrawal of consent** The owner of data may withdraw his/her consent at any time, whereby it must be as easy as the giving of such consent, except where there is a restriction of right of withdrawal of consent by a law or a contract which gives benefits to the owner of the data. However, a withdrawal of consent shall not affect the collection, use, or disclosure of data that the owner of data has already given consent legitimately as prescribed in this Chapter.

In the event a withdrawal has an impact on the owner of data on any matter, the data controller must notify the owner of data of such impact.

A request for consent from the owner of data which is not in line with the Act shall not be binding on the owner of data, and it shall not cause the data controller to proceed with the collection, use, or disclosure of data.

**Minors and incompetent person** There are special provisions that apply to the giving of consent by minors and incompetent persons. .

**Data controller may collect data only for the purposes consented to** A data controller must collect, use, or disclose data according to the objectives notified to the owner of data in advance or at the time of collection of data.

The collection, use, or disclosure of data which is different from the objectives so notified under paragraph one cannot be made, except:

(1) new objectives therefor have been notified to the owner of data and consent has duly been obtained prior to the collection, use, or disclosure;

(2) the provisions of the Act or other laws permit.

**Collection of Data** Collection of data shall be made to an extent that it is necessary according to the lawful purposes of a data controller.

In collecting data, a data controller must notify the owner of data of the following details prior to or at the time of collection of data, except where the owner of data has already known of said details:

(1) The purposes of collection for using or disclosing the data, which includes where the Act gives the power of collection of data without obtaining consent from the owner of data.

(2) The fact that the owner of data must give data in compliance with the law or contracts, or when it is necessary to give data for entering into a contract, as well as the possible impacts if the data is not given.

(3) data that is to be collected and the period of collection thereof. However, where it is unable to fix such a period clearly, a period of time that can be expected according to the collection standards shall be stated.

(4) Category of the person or agency to whom the data may be disclosed.

(5) Data concerning the data controller, the place of contact, and the method of making contact. In the case there is a data protection agent or officer, the data, the place of contact, and the method of making contact of said data protection agent or officer shall also be stated.

(6) The rights of the owner of data under the Act.

**Where the Data Controller may not collect data without consent** It is prohibited for a data controller to collect data without obtaining consent from the owner of data, provided that:

(1) it is to achieve the purposes relating to preparation of historical documents or archives for public interests, or relating to studying, research, or statistics, and there have been arranged appropriate measures to safeguard the rights and freedom of the owner of data, however, as prescribed by the Committee;

(2) it is to provide protection or quelling dangers to life, body, or health of a person;

(3) it is necessary for complying with a contract to which the owner of data is a contracting party, or for use in certain proceedings under a request of the owner of data before entering into said contract;



(4) it is necessary for carrying out duties in conducting a mission for the public interest of the data controller or for carrying out duties in exercising the powers given by the State to the data controller;

(5) it is necessary for any lawful interests of the data controller or of other person or juristic person who is not a data controller, except where such interests are overridden by the basic rights in the data of the owner of data;

(6) it is in compliance with the law of the data controller.

**Data Controller may not collect data from others** A data controller shall not collect data from other sources than that from the owner of data directly, except:

(1) the owner of data has already been notified of the collection of data from other sources without delay, but in no case shall it exceed 30 days from the date of collection, and consent must be obtained from the owner of data;

(2) it is a collection of data which is exempted from obtaining consent under the Act.

The provisions relating to the notification of new purposes and the notification of the details shall apply to the collection of data that requires consent, except in the following cases:

(1) The owner of data has already known of the new purposes or details.

(2) The data controller has proven that the notification of said new purposes or details is not possible or it could be an obstacle to the use or disclosure of data, especially in order to achieve the purposes relating to scientific, historical, or statistical studies and researches. In this respect, the data controller must arrange for appropriate measures to safeguard the rights, freedom, and interests of the owner of data.

(3) The use or the disclosure of data must be carried out urgently as prescribed by law, and for which there must be arranged appropriate measures to safeguard the interests of the owner of data.

(4) When the data controller learns of or has acquired data in the course of his/her duties or his/her occupation or profession, and must keep the new purposes or certain details confidential as prescribed by law.

As for the notification of the details under paragraph two, the data controller must notify the owner of data of such within thirty days from the date of collection under this Section, except in the case of using the data in making contacts with the owner of data, when such must be notified at the first contact made, and in

the case the data is to be disclosed, it must be notified to the owner of data before it is disclosed for the first time.

**Certain categories of data may not be collected** It is prohibited to collect data relating to race, ethnic, political opinions, belief in cults, religions or philosophy, sexual orientation, criminal records, health data, disability, labour union data, genetics data, biological data, or any other data which send impacts to the owner of data in the same manner, as prescribed by the Committee, without obtaining explicit consent from the owner of data, except:

(1) for the purpose of prevention or quelling of dangers to live, body, or health of a person, and the owner of data is unable to give said consent by whatever reasons;

(2) it is a legitimate activity, with appropriate safeguard, of a foundation, an association, or a non-profit organisation, whose purposes are related to politics, religion, philosophy, or labour union, for its members, former members, or persons who are in regular contacts with said foundation, association or non-profit organisation according to said purposes without disclosing said data to any third party;

(3) it is data that is disclosed to the general public with explicit consent of the owner of data;

(4) it is necessary for an establishment of a right of claim under a law, a compliance or an exercising of right of claim under a law, or a defence against a right of claim under law;

(5) it is necessary in compliance with a law so as to achieve the purposes relating to:

(a) preventive medicine or occupational medicine, assessment of capability of employee's performance, medical diagnosis, health or social services, medical treatment, health management, or social welfare system and services, however, in the case it is not a practice under a law, and the said data is under the responsibility of an occupation or a profession practitioner or a person who has the duty to keep such data confidential under the law, it must be a practice under the contract between the owner of data and the medical profession practitioner;

(b) public health interests, such as, prevention of health from hazardous communicable diseases or epidemics which may be contagious or spread into Thailand, or control of standards or quality of medicines, medicaments, or medical devices, for which there have been arranged appropriate and specific measures to safeguard the rights and freedom of the owner of data, particularly the keeping of data confidential according to the duties or professional ethics;

(c) labour protection, social security, national health security, welfare concerning medical treatment of persons entitled thereto under the law, protection of vehicle victims, or social protection, for which the collection of said data is necessary in complying with the rights or duties of the data controller or the owner of data, whereby there have been arranged appropriate measures to safeguard the basic rights and interests of the owner of data;

(d) studies and researches in respect of sciences, history, or statistics, or other public interests, however, it must be carried out so as to achieve the said purposes as necessary only, and there have been arranged appropriate measures to protect the basic rights and freedom of the owner of data, as prescribed by the Committee;

(e) important public interests, whereby there have been arranged appropriate measures to protect the basic rights and interests of the owner of data.

Biological data under paragraph one shall mean data derived from the use of technique or technology related to the use of dominant physical descriptions of a person so as to confirm the identity of said person which are different from others', such as, facial recognition data, iris recognition data, or fingerprint recognition data.

Where it is a collection of data concerning criminal record, it must be carried out under the supervision of a competent authority under the law, or there must be arranged measures to safeguard data according to the bases prescribed by the Committee.

**Use or Disclosure of Data** No data controller shall use or disclose data without obtaining consent from the owner of data, except where it is data that has been collected and exempted from obtaining consent under the Act.

A person or a juristic person that has received data from disclosure under paragraph one must not use or disclose said data for other purposes than those notified to the data controller in obtaining such data.

In the case any data controller uses or discloses data which is exempted from obtaining consent under paragraph one, the said data controller must record the use or the disclosure thereof in the particulars under Section 39.

**Data controller sending data outside Thailand** Where the data controller sends or transfers data abroad, the destination country or the international organisation receiving the data must have adequate data protection standards, however, this must be in accordance with the bases on protection of data prescribed by the Committee under the Act, except where:

(1) it is in compliance with the law;

(2) consent has been obtained from the owner of data and the owner of data has also been notified of the inadequate data protection standards of the destination country or the international organisation receiving said data;

(3) it is necessary to comply with a contract to which the owner of data is a contracting party, or for proceeding under a request of the owner of data before entering into such contract;

(4) it is a proceeding under the contract between the data controller and other person or juristic person for the interests of the owner of data;

(5) for prevention or quelling of danger to life, body, or health of the owner of data or other persons, when the owner of data is unable to provide consent at the time;

(6) it is necessary to conduct a mission for important public interest.

Where there arises a problem concerning the adequacy of the data protection standards of the destination country or the international organisation receiving the data, such problems shall be proposed to the Committee for a decision. However, a decision of the Committee may be reviewed upon request when there are new evidences that could be believed that the destination country of the international organisation receiving the data has made developments to an extent that there be adequate data protection standards.

**Data policies to be examined by the Office** Where the data controller or a data processor who is residing in Thailand has set a policy on data protection for sending or transferring data to a data controller or a data processor who is residing abroad and is affiliated within the same business for joint business operations, if such policy on data protection has been examined and certified by the Office, the sending or transferring of data abroad which is in line with the policy on data protection duly examined and certified may be carried out whereby it is exempted from compliance under the Act.

The policy on data protection, the description of same affiliated business for joint business operations, and the bases and procedures on examination and certification under paragraph one shall be as prescribed by the Committee.

Where there is not yet a decision of the Committee, or there is still no policy on data protection under paragraph one, the data controller or the data processor may send or transfer data abroad without complying with the Act, when the data controller or the data processor has arranged for appropriate measures that can be enforceable according to the right of the owner of data, as well as efficient legal remedial measures therefor according to regulations prescribed by the Committee.

## **Rights of Owner of Data**

**Right of access and taking copies** An owner of data shall have a right to access to and obtain a copy of his/her own data which is under the responsibility of a data controller, or may request for a disclosure of the acquirement of said data that he/she has not given consent thereto.

The data controller must comply with the request under paragraph one, and may reject such request only in the case it is permitted by law or a court order, and the accessing to and the requesting for a copy of said data may have an effect that could cause damages to the rights and freedom of other persons.

Where the data controller rejects the request under paragraph one, the data controller shall record the rejection of said request together with reasons therefor.

Upon the owner of data having filed a request under paragraph one and it is a case that cannot be rejected under paragraph two, the data controller shall proceed with the request without delay, but in no case shall it be more than thirty days from the date of receipt of said request.

The Committee may prescribe bases relating to the access to and the filing of request for a copy under paragraph one, as well as an extension of period of time under paragraph four or other bases according to suitability.

**Data owner may request copies of data** An owner of data shall have a right to request for data relating to his/her own from a data controller, in the case the data controller has arranged for said data to be in a format that can be read or used generally by a device or an equipment automatically and which can be used or disclosed such data automatically, as well as the following rights:

(1) to request the data controller to send or transfer data of said format to other data controller when it can be made automatically.

(2) to request for data that the data controller has sent or transferred in the said format to other data controller directly, except where under technical circumstances such cannot be carried out.

The data under paragraph one must be the data that the owner thereof has given consent to the collection, use, or disclosure according the bases prescribed in the Act, or it is data exempted from obtaining consent under the Act, or it is other data as prescribed by the Committee.

The exercising of the right of the owner of data under paragraph one shall not apply to the sending or transferring of data of the data controller which is a carrying out of duties for public interests or a carrying out of duties under a law, or the exercising of such right must not be in violation of the rights or freedom of

other persons. However, in the case the data controller rejects such request by said reasons, the data controller shall record the rejection of request together with reasons therefor.

**Data owner may object to collection, use or disclosure** An owner of data shall have a right to object to a collection, use, or disclosure of his/her data at any time in the following cases:

(1) In the case it is data that is collected with exemption from obtaining consent except where the data controller can prove that:

(a) in collecting, using, and disclosing said data, the data controller has shown legitimate cause therefor which is more important;

(b) the collection, use, or disclosure of said data is for the establishment of a right of claim under a law, compliance with or exercising of right of claim under a law, or defending against a right of claim under a law.

(2) In the case it is a collection, use, or disclosure of data for the purpose of direct marketing.

(3) In the case it is a collection, use, or disclosure of data for the purposes relating to studying and research in respect of sciences, history, or statistics, except in the case of a necessity for carrying out a mission for public interests of the data controller.

Where the owner of data has exercised the right of objection under paragraph one, the data controller may not collect, use, or disclose said data further. However, the data controller must separate said data from other data clearly forthwith when the owner of data has notified the data controller of the objection.

Where the data controller rejects the objection by reasons under (1) (a) or (b) or (3), the data controller shall record the rejection of objection together with reasons therefor.

**Right to request destruction of data** An owner of data shall have a right to request the data controller to delete or destroy his/her data, or to cause his/her data to be unidentifiable as to who is the owner of said data, in the following cases:

(1) When the data is no longer needed to be kept according to the purposes of the collection, use, or disclosure of data.

(2) When the owner of data withdraws his/her consent to the collection, use, or disclosure of data, and the data controller no longer has the power under the law to collect, use, or disclose said data.

- (3) When the data controller protests against the collection, use, or disclosure of data and the data controller cannot reject the request, or it is an objection under the Act.
- (4) When the data has been collected, used, or disclosed illegitimately as prescribed.

The provisions of paragraph one shall not apply to the keeping for the purpose of exercising a right to freedom of expression of opinions, the keeping for the purposes permitted under the Act, use for establishing a right of claim under a law, the compliance with or the exercising of a right of claim under a law, or the defending against a right of claim under a law, or for compliance under a law.

Where a data controller has caused data to have been disclosed to the general public and the data controller is requested to delete or destroy the data or to cause it to be unidentifiable as to who is the owner of said data under paragraph one, the data controller must be responsible for both technological actions and expenses so incurred so that it be in accordance with the said request, by notifying other data controllers so as to obtain responses in regard to the proceeding according to said request.

Where the data controller fails to proceed with paragraph one or paragraph three, the owner of data shall have a right to lodge a complaint to the Experts Committee to order the data controller to do so.

The Committee may prescribe bases on the deletion or destroying of data or the causing of data to be unidentifiable as to who is the owner thereof under paragraph one.

**Data owner may request suspension of use of data** An owner of data shall have a right to request the data controller to suspend the use of data in the following cases:

- (1) when the data controller is under examination as requested by the owner of data;
- (2) when the data must be deleted or destroyed, but the owner of data requests that it be suspended instead;
- (3) when the data is no longer necessary to be kept according to the purposes of data collection, but the owner of data finds it necessary to request that it be kept for use in establishing a right of claim under a law, the compliance or the exercising of a right of claim under a law, or the defending against a right of claim under a law;

(4) when the data controller is in the process of proving, or examination, so as to reject an objection of the owner of data.

Where the data controller fails to proceed with paragraph one, the owner of data shall have a right to lodge a complaint to the Experts Committee to order the data controller to proceed as such.

The Committee may prescribe regulations regarding suspension.

**Data must be accurate** A data controller must ensure that data is accurate, up-to-date, complete, and not misleading.

**36.** Where an owner of data requests the data controller to ensure accuracy, if the data controller fails to do so, the data controller must record such request of the owner of data together with reasons therefor.

**Duties of Data Controller** A data controller shall have the following duties:

(1) to arrange for suitable security measures so as to prevent the loss, access, use, modification, amendment, or disclosure of data without authorization or illegitimately, and must review such measures when there is a necessity therefor or when the technology has changed, so that it be of efficient and appropriate security measures, however, it shall be according to the minimum standards prescribed by the Committee.

(2) where data must be given to a person or a juristic person who is not a data controller, actions must be taken to prevent said person to use or disclose data without authorization or illegitimately.

(3) Arrange for a checking system that deletes or destroys data when the period of keeping same has lapsed, or when the data becomes irrelevant or it is beyond necessity according to the purposes of collection of said data, or according to a request of an owner of data, or where an owner of data has withdrawn his/her consent, except in the case of keeping same for the purpose of exercising a right to freedom of expression of opinions, the keeping of data for the purposes under the Act, for the use of data for establishing a right of claim under a law, for the compliance with or the exercising of a right of claim under a law, or for the defending against a right of claim under a law, or for compliance under a law. The provisions of the Act shall apply to the deletion or destroying of data mutatis mutandis.

(4) Notify a violation of data to the Office without delay within seventy two hours after learning of the violation where feasible, except such violation poses no risks of having effect to the rights and freedom of a person. In the event the violation poses a high risk of having effect to the rights and freedom of a person, such violation shall be notified to the owner of data together with the remedial



guidelines without delay as well, however, such notification and exception shall be according to the bases and procedures prescribed by the Committee.

(5) In certain cases regarding the data controller, there must be appointed an agent of the data controller in writing, whereby the agent must be within Thailand and he/she must be authorized to act on behalf of the data controller without restriction of responsibilities concerning the collection, use, or disclosure of data according to the purposes of the data controller.

**Agents** There are rules concerning appointment of agents for Data Controllers.

**Recording of particulars of data** A data controller shall record particulars at least as stated hereunder for examination by the owner of data and the Office, whereby it may be recorded in characters or by electronic system:

- (1) data duly collected.
- (2) Purpose of collection of data of each category.
- (3) Data concerning the data controller.
- (4) Period of time of keeping data.
- (5) Rights and method of accessing to data, including conditions concerning persons who have the right to access to data and the conditions on accessing to said data.
- (6) Use or disclosure under the Act.
- (7) Rejection of a request or objection under the Act.
- (8) Explanations concerning security measures.

The provisions of paragraph one shall apply to the agent of the data controller

The provisions of (1), (2), (3), (4), (5), (6) and (8) may be exempted from applying to a data controller that is a small business according to regulations prescribed by the Committee, except where there is a collection, use, or disclosure of data that poses a risk of having effect to the rights and freedom of the owner of data, or that is not a business that collects, uses, or disclose data from time to time, or there is a collection, use, or disclosure of data under the Act.

**Duties of Data Processors** A data processor shall have the following duties:

(1) Proceed with the collection, use, or disclosure of data under an instruction received from the data controller only, except where such instruction is against the laws or the provisions of data protection under the Act.

(2) Arrange for appropriate security measures to prevent loss, access, use, modification, amendment, or disclosure of data without authorization or illegitimately, and notify the data controller of the violation of data so arisen.

(3) Arrange for and keep the record of activities of data processing according to the bases and procedures prescribed by the Committee.

Any data processor who fails to comply with (1) for the collection, use, or disclosure of data shall be regarded as a data controller for the collection, use, or disclosure of said data.

In carrying out work according to the duties of the data processor as assigned by the data controller under paragraph one, the data controller must arrange for an agreement between them, so as to control the carrying out of works according to the duties of data processor to be in line with the Act.

The provisions of (3) may be exempted from applying to a persona data processor that is a small business according to the bases prescribed by the Committee, except there is a collection, use, or disclosure of data which poses a risk of having effect to the rights and freedom of the owner of data, or that is not a business that collects, uses, or discloses data from time to time, or there is a collection, use, or disclosure of data under the Act.

**Arranging for own data protection officers** A data controller and a data processor must arrange for its own data protection officer in the following cases:

(1) A data controller or a data processor that is a government agency as prescribed by the Committee.

(2) A carrying out of activities of data controller or data processor in regard to the collection, use, or disclosure which requires an examination of data or the system regularly by reason of having large amount of data as prescribed by the Committee.

(3) The main activities of data controller or data processor are the collection, use, or disclosure of data under the Act.

Where data controllers or data processors are affiliated in the same business for joint business operations as prescribed by the Committee, the said data controllers or data processors may arrange for a joint data protection officer, however, each place of work of the said data controllers or the said data

processors that are affiliated in the same business must be able to make contact with the data protection officer easily.

The provisions of paragraph two shall apply to the data controller or the data processor that is a government agency under (1) which is of a large size or having several places of work mutatis mutandis.

Where the data controller or the data processor under paragraph one must appoint an agent under the Act, the provisions of paragraph one shall apply to the said agent mutatis mutandis.

A data controller and a data processor shall have the duty to notify the data protection officer, the place of contact, and the method of contact, to the owner of data and the Office. However, the owner of data may contact the data protection officer concerning the collection, use, or disclosure of data and the exercising of right of the owner of data under the Act.

The Committee may prescribe the qualifications of data protection officer, taking into account the knowledge or the expertise relating to data protection.

A data protection officer may be an employee of a data controller or a data processor or may be a service provider under a contract concluded with a data controller or a data processor.

**Duties of Data Protection Officer** A data protection officer shall have the following duties:

(1) Give advice to the data controller or the data processor, including employees or contractors of the data controller or the data processor in relation to the carrying out of duties under the Act.

(2) Inspect the operations of the data controller or the data processor, including employees or contractors of the data controller or the data processor, in relation to the collection, use, or disclosure of data so that it be in accordance with the Act.

(3) Coordinate and render cooperation with the Office in the case there arises a problem relating to the collection, use, or disclosure of data of the data controller or the data processor, including employees or contractors of the data controller or the data processor in regard to the carrying out of duties under the Act.

(4) Keep data learnt or acquired owing to the carrying out of duties under the Act confidential.

A data controller or a data processor must support the carrying out of duties of its data protection officer, by providing adequate tools or equipments therefor, as well as affording convenience in accessing to data for the carrying out of duties.

A data controller or a data processor may not terminate employment of its data protection officer nor terminate employment contract because the data protection officer has performed his/her duties under the Act. However, in the event there arises a problem in the carrying out of duties, the data protection officer must be able to report to the highest executive of the data controller or the data processor directly.

A data protection officer may perform other duties or missions, but the data controller or the data processor must give assurance to the Office that said duties or missions are not contradictory to or inconsistent with the Act.

**Office of Data Protection Committee** An Office of Data Protection Committee with the purposes relating to data protection, as well as promoting and supporting development in respect of data protection of the country.

**Complaints procedure** The Act contains provisions for the submission of complaints against a data controller or a data processor and orders to be made against them.

**Civil Liability** The Act contains rules relating to civil liability and the awarding of compensation including additional damages.

Any claim for damages must be made within three years from the date the injured party learned of the loss and the identity of the data controller or the data processor who is liable thereto, or ten years from the date of infringement of data.

**Criminal Penalties** There are criminal liabilities for breaches of duty under the Act. Where an offender is a juristic person, if the offence is derived from an order or an action of a director or the manager, or any person who is responsible for the operations of said juristic person, or in the case those persons are obliged to order or to take action but failed to do so to an extent that the juristic person committed the offence, the said person must be liable to punishment as provided for said offence as well.

**Administrative Penalties** There are also administrative penalties under the Act.

**Gender Equality** The Gender Equality Act (2015) came into force in September 2015. Prior to this, there were only general anti-discrimination rights contained in the Constitution.

*What is discrimination?:* Unfair gender discrimination means: any act or omission of an act, which causes division, discrimination or limitation of any right and benefit, either directly or indirectly, without justification, due to the fact that a person is male or female, or of a different appearance from his/her own sex by birth.

*Regulatory committees:* The Act sets up two regulatory committees:

(a) Gender Equality Promotion Committee (“Sor Tor Por Committee”) This Committee has duties to establish policies and action plans for promotion of gender equality, to advise the Cabinet with policy recommendations and proposals, to collect statistics, and draft regulations for the *Wor Lor Por* Committee.

(b) Committee for Consideration of Unfair Gender Discrimination (“Wor Lor Por Committee”) This Committee has the following powers:

- to decide cases where there have been complaints of unfair gender discrimination
- to take temporary measures for protection or mitigation
- to issue orders
- to submit complaints to the Ombudsman

*Anti- discrimination protections and obligations:* The Act provides that:

- Policies, rules, regulations, notifications, projects or procedures, whether by government agencies, private organizations or any individual which amount to unfair gender discrimination, are prohibited
- Implementation of principles to eliminate discrimination or to encourage persons to exercise their rights and freedom as others, for protection of a person’s safety and welfare, for compliance with religious principles, or for national security, are deemed not to be discrimination.

*Right to take action:* Any person believing that he/she has suffered or is likely to suffer loss caused by acts of unfair gender discrimination may complain to the *Wor Lor Por* Committee. The decision of the *Wor Lor Por* Committee to accept or refuse a case is final.

This does not prevent a person from suing for damages in civil proceedings. The court may award damages other than in money. If the discrimination was

intentional or by gross negligence, the court may award damages at four times the actual loss.

A complainant can either sue himself/herself or ask an organization to sue on their behalf.

*Limitation period:* Legal proceedings must be issued within two years from the date on which the *Wor Lor Por* Committee has made a decision, or from the date on which the Administrative Court has issued a final decision.

*Interim order:* Whilst a complaint is under consideration, the *Wor Lor Por* Committee may issue a temporary order before making a decision, to protect or mitigate loss faced by the victim, as necessary and appropriate.

*Powers of Wor Lor Por Committee:* Where a decision has been made by the *Wor Lor Por* Committee that there has been discrimination, the Committee may issue the following orders:

- that any relevant government agency, private organization or relevant individual takes any action to end and prevent discrimination, and
- to ensure that there is damages and remedies provided to an injured party

The *Wor Lor Por* Committee may prescribe conditions deemed necessary in order for offenders to take action.

*Submission of complaint to the Ombudsman:* Where the *Wor Lor Por* Committee has decided that there has been discrimination, but there no judgment has been issued by the Constitutional Court, it shall then submit the case to the Ombudsman for onward submission to the Constitutional Court, to assess whether such legal provision is contradictory to the Constitution.

*Procedural and investigatory powers:* The *Wor Lor Por* Committee or its officers have power to enter any residence or premises to collect evidence under a search warrant or to send an inquiry letter, or summon a person to give a statement, or supply things or documents to support its considerations.

*Damages and remedies:* Once the *Wor Lor Por* Committee has decided that there has been discrimination, an injured party is entitled to damages and remedies within one year from the decision of the *Wor Lor Por* Committee.

*Nature of damages:* Damages for an injured party can include damages:

- for loss of income during a period of inability to work
- for loss of commercial opportunity which can be calculated in money,

- for expenses of medical care, including physical and mental rehabilitation, and
- damages and remedies in other form or character.

*Administrative damages no bar to civil action:* Damages and remedies do not bar the right to issue civil proceedings claiming damages.

*Punishment for breaches of duty:* The Act contains a scheme of fines, and in some cases, imprisonment, for breach of duties imposed by the Act.

**Debt collection** The Debt Collection Act came into force in September 2015. It is intended to regulate the activities of debt collectors and protect debtors from unethical practices. Under the Act:

- All persons who engage in debt collection are regulated except lawyers (but if they represent debt collectors then their communications must contain certain information)
- Individual debtors but not juristic debtors are protected
- Debt collectors must show their entitlement to collect a debt
- Debt collectors must not use bad language or threaten violence or make false statements
- Fees for debt collection are subject to approval by a regulatory committee established under the Act
- There is a scheme of fines and imprisonment for breach of duties imposed by the Act.

*Revised 1 September 2019*