

## **An Update on the New Thai Class Action Law**

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1. *What year was the procedure adopted? Is it authorized by statute, rule or judicial interpretation of an existing statute or rule?*

The National Legislative Assembly has passed a bill amending the Civil Procedure Code to allow class action lawsuits to be brought in Thailand. The amendment has added forty-nine new provisions to allow class action legal proceedings for wrongful acts and for breach of any right protected under the law. The amendment was proclaimed in the Thai Royal Gazette on 8 April 2015, and will take effect 240 days later, which would be on 4 December 2015.

The amendment is the result of a 14-year class-action legislation effort with the sponsorship of and informational support on class actions from the U.S. Agency for International Development (USAID).<sup>1</sup> Despite some major differences, the Thai class action law is largely based on U.S. class action law.

2. *What is the scope of the procedure?*

Article 222/8 of the Civil Procedure Code stipulates that the procedure may be initiated in these types of cases: 1) breach of tort; 2) breach of contract; 3) breach of any right protected under the law such as rights under environmental law, consumer protection law, labour law, securities and exchange law, competition law.

3. *Who has standing to initiate the procedure?*

The law defines a ‘class’ to include one or more persons having identical rights arising from common issues of facts and law as well as possessing identical characteristics that are specific to the class (Article 222/1). A person may fall within a class even if that person suffers a different kind of damage to another member of the class. Members of a class will be notified of a class action being initiated through a publication and notice procedure (Article 222/15).

The court shall allow class action legal proceedings when the class consists of several people and therefore normal court proceedings would be difficult and inconvenient; additionally, the court shall consider if initiating the class action proceedings would be more fair and efficient than having the normal court proceedings (Article 222/12).

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<sup>1</sup> Chukiart Rattanachaichan, A Primer on the Thai Draft Law on Class Action, available at <http://www.aseanlawassociation.org/9GAdocs/Thailand.pdf>, at page 4

The law grants the President of the Supreme Court power to issue detailed rules on requirements to be met by a plaintiff of class action proceedings (Article 222/2). To date, these detailed rules have not yet been issued. However, according to the explanatory memorandum attached to the amendment draft provided by the Office of the Council of State, there are two basic requirements the court should consider. The first requirement of a plaintiff is commonality. The plaintiff must be a person entitled to bring a lawsuit on his own behalf, and must share a common cause of action and have common arguments with other class members. The second requirement is adequacy of representation. The court must follow a rationale that a plaintiff in a class action lawsuit files not only for the protection of his or her own rights but also for the interests of other class members.

4. *What remedies are allowed?* (Injunctive or declaratory relief; monetary compensation; other)

Remedies for class action lawsuits are mostly compensatory after harm has been inflicted.

5. *Is the procedure opt-in or opt-out?*

The Thai class action procedure resembles the American opt-out rules. If a class member does not wish to be bound by a judgment in the class action, he or she has the right to express his or her intent to opt-out of the class by giving notice of such intention to the court within the prescribed period (Article 222/16). Where a class member gives notice to opt-out of the class after the expiration of the period prescribed by the court, he or she will have to request leave of the court. A class member who has opted-out may not file a motion to intervene or join as a plaintiff in the class action at a subsequent date. Once the class member opts-out of the class action, he or she has the right to file a separate individual lawsuit on his or her own behalf, but not another class action lawsuit.

6. *What are the applicable rules on funding and financing?* (How is the lawyer for the class paid, and by whom? Who is responsible for adverse costs? Is third-party litigation financing allowed?)

Prior to the judgment of the court in a class action, the plaintiff's attorney shall submit an account of expenses to the court wherein all the costs of the proceedings expended by the attorney, including the attorney's remuneration, must be clarified. When considering the attorney's fee, the court will take into account the complexity of the case, the amount of time taken, and the work of the attorney (Article 222/37).

The principles on payment of attorney's fees set out on class action in Thailand differ from those stipulated in U.S. law. In the U.S., class members are responsible for payment of attorney's fees as attorney's fees would be deducted from the damages awarded to the class members. However, under the Thai law, the defendant is responsible for payment of attorney's fees calculated on the basis of not more than 30 percent of the damages received by the class members (Article 222/37). In other words, if a defendant loses a case, he or she must pay for plaintiff's attorney fees, in addition to paying damages to the plaintiff and class members.

7. *Please tell us about whether and how the procedure has been used? (About how many cases have been brought to date? How many cases annually? What types of cases? Who brought the cases? What have been the outcomes of the cases?)*

Class action proceedings were not previously available in Thai proceedings. The law is scheduled to take effect on 4 December 2015. Official English translation of the law is not available at the moment.