

A Comparative Study on the Consumer Protection Legislations of Malaysia and Thailand

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Abstract: Every nation within the ASEAN community has adopted measures to protect consumer rights and interests by establishing institutional and regulatory framework. In strengthening and enhancing consumer protection, measures taken vary from one country to the other. The enactment of the Consumer Protection Act in Malaysia and Thailand demonstrates the commitment of the government of these nations in enhancing consumer protection. Adopting the analysis content methodology, this study scrutinises the Malaysian Consumer Protection Act, 1999 and the Consumer Protection Act, 1979 of Thailand. These legislations provide protection for consumers governing various aspects including misleading and deceptive conduct, safety of goods and services, guarantees in respect of supply of goods and redress mechanism.

Key words: Consumer protection, law, nation, goods, culture, Malaysia

INTRODUCTION

Consumerism has again arisen in view of the new market condition in the world economy that warrants a fresh examination of the economic power of sellers in relation to buyers. In the past in many ASEAN countries, consumer interests were suppressed under the goal of long term economic development. With the advancement of technology and changes in the trading world, market should not be allowed to neglect consumers interests, thus leading to the forgotten consumers in Thorelli (1988)'s terminology. The consumer is forgotten in that citizens do not generally think of themselves as consumers and policy makers pay less attention to consumer problems or rights. The concern for better consumer protection has been expressed not only in Malaysia but in many other countries within the ASEAN community such as Thailand.

In Asia, both the developed and developing nations have adopted measures to protect consumer rights and interests by establishing institutional and regulatory framework in strengthening and enhancing consumer protection policies and legislations, encouraging international co-operation and ensuring good business practices in view of liberalisation of trade and the advancement of technology. The enactment of the Consumer Protection Act in Malaysia and Thailand demonstrates the commitment of the government of these nations in enhancing consumer protection.

CONSUMER PROTECTION ACT, 1999 OF MALAYSIA

Malaysia has enacted its Consumer Protection Act in 1999 to provide a comprehensive protection to consumers. The act is under the jurisdiction of the Minister who is responsible for domestic trade, cooperatives and consumer affairs. It came into effect on 15th November, 1999. Before the enactment of the Consumer Protection Act, 1999, there was no single act which gives direct protection to consumers. The Consumer Protection Act, 1999 applies in respect of goods as defined in the act and services that are offered or supplied to one or more consumers in trade as provided in Section 2 (1). However as far as services are concerned, the act does not apply to services provided by professionals who are regulated by any written laws and healthcare services provided or to be provided by healthcare professionals or healthcare facilities. The Consumer Protection Act, 1999 defines a consumer as a person who acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purpose use or consumption and does not acquire or use the goods or services or hold himself out as acquiring or using the goods or services, primarily for the purpose of resupplying them in trade; consuming them in the course of a manufacturing process or in the case of goods, repairing or treating in trade, other goods or fixtures on land. The emphasis in the definition is on the phrase

goods or services of a kind ordinarily acquired for personal, domestic or household purpose, use or consumption. Thus to be a consumer under the act, a person must be able to satisfy two conditions:

- He must acquire goods or services for personal, domestic or household purpose use or consumption
- The goods or services that he acquires must be of a kind ordinarily acquired for personal, domestic or household purpose use or consumption

If he acquires goods which are not ordinarily acquired for personal, domestic or household purpose use or consumption he is not a consumer under the act even though he acquires the goods for personal, domestic or household purpose use or consumption.

Goods is defined as goods which are primarily purchased, used or consumed for personal, domestic or household purposes and includes goods attached to or incorporated in any real or personal property animals including fish vessels and vehicle, utilities and trees, plants and crops whether on, under or attached to land or not but does not include choses in action including negotiable instruments, shares, debentures and money. The definition only covers goods which are primarily purchased, used or consumed for personal, domestic or household purpose.

If the purpose of acquiring of the goods is only ancillary to the personal, domestic or household purpose, the goods are not within the meaning of goods under the act. Although, the act is a long-awaited piece of legislation by consumers and consumer movement groups with a hope that the act would be able to give a comprehensive protection to consumers, this hope, however has been hampered by the nature of the act itself. This is due to the provision in Section 2 (4) which provides that the application of the Consumer Protection Act, 1999 shall be supplemental in nature and without prejudice to any other law regulating contractual relations. Section 2 (4) thus, has made the application of the Act subject to the Contracts Act, 1950, Sale of Goods Act, 1957 and Hire-Purchase Act, 1967. It is submitted that this provision should be deleted.

SALIENT FEATURES OF THE CONSUMER PROTECTION ACT, 1999

Misleading or deceptive conduct, false representation and unfair practice: Part II of Consumer Protection Act, 1999 prescribes various business or trade practices which are regarded as misleading or deceptive. This part covers

conduct and representation. Section 8 (a) of the Consumer Protection Act, 1999 defines false, misleading or deceptive as capable of leading a consumer into error. Sections 9 and 10 prohibit misleading or deceptive conductor representation in relation to goods and services. It concerns conduct or representation of a person that is misleading or deceptive to members of the public. Under Section 18, if the conduct or representation in relation to any goods or services is made or published in an advertisement, the advertisement shall be deemed to have been made by the supplier of the goods or services or by the person on whose behalf the advertisement is made or by both of them. False representation and other misleading conduct in relation to land is regulated in Section 11. The provision is framed to curb malpractices in sales of land which results in monetary loss suffered by consumers. However, Section 11 does not apply to housing accommodation which is regulated by the Housing Development (Control and Licensing) Act, 1966. Part II of the Consumer Protection Act, 1999 also deals with misleading price indication which is regulated by Section 12. An indication as to price is misleading if it falls under any of the paragraphs in sub-section (3) of Section 12. Section 12 (1) makes it an offence if a person gives to a consumer an indication as to price which is misleading or becomes misleading but no reasonable steps are taken to prevent the consumers from relying on the indication. Meanwhile, the prohibition of making bait advertising is governed by Section 13 of the Consumer Protection Act, 1999. Bait advertising is a practice of offering goods or services at a particular price to attract consumers when the advertiser is aware that it will not be able to supply the goods or services at that price in reasonable quantity (Galapo, 2010).

The rationale behind Section 13 is to ensure that the advertiser is honest when advertising goods or services for supply. In order to ensure that the advertisement is done honestly and does not prejudice the consumers, the Consumer Protection Act, 1999 (Amendment) 2010 has introduced a Committee on Advertisement in Section 84A. Section 84A allows the Minister to establish a Committee on Advertisement whose functions are to advise the Minister on any aspect related to advertisement; to examine complaints related to advertisements to issue or publicise information concerning the nature and characteristics of goods or services which may be prejudicial to the rights or may cause damage to consumers and to do any other thing as it deems fit to enable it to perform its function effectively or which is incidental to the performance of its function. In business practices, there are many strategies used to

attract consumers, namely, offering free gifts or free offers or using statement which can influence the consumer mind, such as goods are limited. The purpose of this strategy is to increase the purchase of the goods within a short period. For those who offer free gifts or free offers with the intention of not providing it or with the intention of not providing it as offered will be caught under Section 14 (1). In providing free gifts or free items with the purchase of any goods or services, Section 14 (2) provides that no person is allowed to charge more than the regular price for the goods or services or reduced the quantity of the goods or services to be purchased to cover the cost of the free items. Section 15 (1) prohibits claim that goods are limited unless the goods are genuinely limited. Demanding or accepting payment without intending to supply is another kind of business malpractice that the Consumer Protection Act, 1999 is trying to curb. Section 16 makes it an offence if a person demands for or accept any payment or other consideration for goods or services, if at the time of the demand or acceptance that person has no intention to supply the goods or services or intends to supply goods or services which are materially different from the goods or services that are promised to supply or does not have reasonable grounds to believe that he will be able to supply the goods or services within specified period or within a reasonable time.

Safety of goods and services: Safety of goods and services has been given special treatment by the Consumer Protection Act, 1999 in Part III. However, healthcare goods and food do not come within the ambit of Part III. The ambit of Part III extends also to imported goods and services as provided by Section 24. Section 19 (1) empowers the Minister of Domestic Trade, Cooperatives and Consumerism to make regulations to prescribe safety standards in respect of any goods or class of goods and any services or class of services. Where safety standard has been prescribed for any goods or services, Section 20 provides that it is an offence for any person to supply or offer to supply or advertise for supply any goods or services which do not comply with the prescribed safety standard. Under Section 19 (4) in the case where no safety standard has been prescribed, the supplier of goods and services has to adopt and observe a reasonable standard of safety to be expected by a reasonable consumer, due regard being had to the nature of the goods and services. This provision adopts an objective test for the safety test, measured by reference to a reasonable standard expected by a reasonable consumer (Wu, 2000).

In order to ensure that only safe goods are supplied to consumers, the Consumer Protection Act, 1999 has also imposed general safety requirement for goods on the supplier. Suppliers are prohibited in Section 21 from supplying or offering to or advertising for supply goods which are not reasonably safe having regard to all the circumstances including the manner and the purpose the goods are being or will be marketed; the get-up of the goods; the use of any safety marks and the information as to instruction and warning in respect of the goods. The general safety requirement for services is dealt with in Section 21A.

Section 21A prohibits the supply of services which are not reasonably safe having regard to all the circumstances including the nature of the services and composition and mode of provision; its effect on human life and health and property; the appearance, design, labeling, instructions for installation or use, warnings, instructions for disposal of the property relating to the service and other information provided by the service provider and whether there are any categories of persons who may be at risk when using the services. Besides the power to prescribe safety standard for goods and services, the Minister of Domestic Trade, Cooperatives and Consumerism is also given the power to declare any goods or any class of goods as prohibited goods or any services or class of services to be prohibited services, on the recommendation of the Controller of Consumer Affairs. The prohibition must be published in the Gazette. Based on Section 23 (1), the prohibition can be declared in three situations:

- The goods or goods of that class or services or services of that class have caused injury to any person or property
- The goods or goods of that class or services or services of that class are likely to cause injury to any person or property
- Is otherwise unsafe

According to Section 23 (2), the prohibition order on the supplier may be coupled with an order to recall the prohibited goods or prohibited services; stop supplying or offering the prohibited goods or prohibited services; disclose to the public any information that cause the goods or services to be unsafe; repair or replace the goods or services or refund the price paid or the consideration for the prohibited goods or prohibited services. Part IV provides common penalties for offences under Part II and III. Under Section 25 (1)(a), a body corporate is liable to a fine not exceeding RM2,50,000 and

to a fine not exceeding RM500,000 for the subsequent offence for contravening any provisions of Part II and III. On the other hand, Section 25 (1)(b) provides that if the offence is committed by an individual, a fine not exceeding RM100,000 or an imprisonment for a term not exceeding 3 years or both can be imposed on the offender. In addition, under Section 25 (2), the offender will be further liable to a fine not exceeding RM1,000 for each day or part of a day during which the offence continues after conviction. This penalty applies to a body corporate as well as an individual. Section 29 on the other hand, empowers the courts to give ancillary relief to those who suffer loss or damage by the conduct of any person which falls under any of the paragraphs (a-e). This is a form of civil remedy. The power provided in Section 29 is a benefit to consumers because the consumers do not have to bring any cases to the court to get the ancillary relief for the loss or damage they suffer. The relief that is awarded under Section 29 can be in the form of refunding the money or returning the property, paying damages for the amount of loss or damage, repairing or providing parts of the goods that have been supplied or supplying specified services.

Unfair contract terms: Section 6 of the Consumer Protection Act, 1999 prohibits contracting out of the provisions of the act. The section further provides that every supplier or manufacturer who purports to contract out of any provision of this act commits an offence and under Section 145, those persons are liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 3 years or to both. The introduction of Part IIIA of the Consumer Protection (Amendment) Act, 2010 has to some extent resolved the problems associated with the use of exclusion clauses in consumer contracts in Malaysia. Under this part where a court or the Tribunal comes to the conclusion that a contract or term is procedurally or substantively unfair or both the court or Tribunal may declare the contract or the term as unenforceable or void. Under Section 24C, a contract or a term of a contract is procedurally unfair if it has resulted in an unjust advantage to the supplier or unjust disadvantage to the consumer on account of the conduct of the supplier or the manner in which or circumstances under which the contract or the term of the contract has been entered into or has been arrived at by the consumer and the supplier. A contract or a term of a contract is substantively unfair, under Section 24D if the contract or the term of the contract: is in itself harsh; is oppressive; is unconscionable; excludes or restricts liability for negligence or (e) excludes or restricts liability for breach

of express or implied terms of the contract without adequate justification. In addition to the contract or the term being held unenforceable or void, Part IIIA provides for a criminal penalty for contravention of its provisions. Under Section 24I if a body corporate contravenes any of the provisions in Part IIIA, the corporate body shall be liable to a fine not exceeding RM250,000 and if such person is not a body corporate to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding 3 years or both.

Guarantees in respect of supply of goods: The Consumer Protection Act, 1999 provides implied guarantees in respect of supply of goods as against suppliers as well as manufacturers. Part V of the Consumer Protection Act, 1999 provides for additional consumer protection in respect of supply of goods against suppliers. The act reproduces significantly certain parts of the New Zealand Guarantees Act, 1993. Part V provides eight implied guarantees in the supply of goods to consumers. Section 31 provides for the implied guarantee as to title on the supplier. Under this section, there is an implied guarantee that the supplier has a right to sell the goods; the goods are free from any undisclosed security and the consumer has a right to quiet possession of the goods. The phrase right to sell means a right to dispose of ownership of the goods to the consumer at the time when that ownership is to pass. Undisclosed security refers to any security that is not disclosed to the consumer in writing before he agrees to the supply and not created by or with his express consent. The expression quiet possession refers to the right of possession of the goods free from any interference. Section 32 introduces a new standard of quality in supply of goods.

The concept of acceptable quality incorporates the factors relevant in considering merchantable quality in the Sale of Goods Act, 1957. Goods shall be deemed to be acceptable quality if they are fit for all the purposes for which of that type are commonly supplied; acceptable in appearance and finish; free from minor defects, safe and durable. In assessing acceptable quality regard should be had to the nature of the goods, the price, any statements made about the goods on any packaging or label on the goods, any representation made about the goods by the supplier or manufacturer and all other relevant circumstances of the supply of goods. Section 33 reproduces a substantial part of Section 16 of the Sale of Goods Act, 1957. Where goods are supplied, there shall be an implied guarantee that the goods are reasonably fit for any particular purpose that the consumer makes known, expressly or by implication to the supplier as the

purpose for which the goods are being acquired by the consumer and that the goods are reasonably fit for any particular purpose for which the supplier represents that they are or will be fit. This provision does not however apply where circumstances show that the consumer does not rely on the supplier's skill or judgment or it is unreasonable for the consumer to rely on the supplier's skill or judgment. Under Section 34 where goods are supplied by description, there shall be an implied guarantee that goods shall correspond with description and if goods are supplied by reference to sample or demonstration model as well as by description, there shall be an implied guarantee that the goods shall correspond with sample as well as description. Descriptions are mostly found on the packaging or labels attached to the goods. Goods are supplied by description in cases where a consumer has not seen the goods but is relying on the description alone. If a consumer has seen and examined the goods, the supply shall be by description if there is some description applying to them. Under Section 35 where goods are supplied to a consumer by reference to a sample or demonstration model, there is an implied guarantee that the goods shall correspond to the sample or demonstration model in quality and that the consumer will have a reasonable opportunity to compare the goods with the sample or demonstration model. The Consumer Protection Act, 1999 introduces several new implied guarantees in respect of supply of goods. Under Section 36 where price for the goods is not determined by the contract or to be determined in a manner agreed by the contract or left to be determined by the course of dealing between the parties, there shall be implied a guarantee that the consumer shall not be liable to pay to the supplier more than the reasonable price of the goods. Reasonable price shall be a question of fact depending on the circumstances of each particular case. Where there is a failure to comply with this implied guarantee, the consumer's right of redress shall be to refuse to pay more than the reasonable price. Section 37 imposes on the supplier as well as the manufacturers an obligation that reasonable actions have been taken to ensure that facilities for the repair of goods and the supply of spare parts are reasonably available for a reasonable period after the goods are so supplied. This section applies equally to imported goods as well as locally manufactured goods. The provision however shall not apply where reasonable action has been taken to notify consumers, at or before the time the imported or locally manufactured goods are supplied that the manufacturer or the supplier or both do not undertake that repair facilities and spare parts will be available for those

goods. Part VI provides for the right of redress against suppliers where goods fail to comply with any of the implied guarantees under Sections 31-37. Where a consumer has a right of redress against a supplier, the consumer may exercise the following remedies depending on the extent of the failure if the failure is one that can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time or where the failure is one that cannot be remedied or is of a substantial character, the consumer may reject the goods or obtain from the supplier damages in compensation for any reduction in the value of the goods below the price paid or payable by the consumer for the goods.

Where the supplier refuses or neglects to remedy the failure as required within a reasonable time, the consumer may have the failure remedied elsewhere and obtain from the supplier all reasonable costs incurred in having the failure remedied or reject the goods. In remedying the defects, the supplier may repair the goods if the failure relates to title, curing any defect in the title; replacing the goods with goods of identical type or providing a refund of any money paid or other consideration provided by the consumer in respect of the goods where the supplier cannot reasonably be expected to repair or replace the goods or cure any defect in title.

Failure is regarded of a substantial nature where goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; goods depart with one or more significant respects from the description; substantially unfit for the particular purpose for which goods of that type are commonly supplied; goods are not of acceptable quality because they are unsafe. Part VII of the Consumer Protection Act, 1999 gives a consumer the right of redress against a manufacturer of goods where goods fail to comply with the implied guarantee as to acceptable quality, description, repairs and spare parts and the express guarantee of a manufacturer.

An express guarantee given by a manufacturer of goods supplied to a consumer is binding upon the manufacturer. Express guarantee in relation to any goods means an undertaking, assertion or representation in relation to quality, performance or characteristics of the goods, the provision of services that are or may at any time be required in respect of the goods; the supply of parts that are or may at any time be required for the goods; the future availability of identical goods or of goods constituting or forming part of a set of which the goods in relation to which the undertaking, assertion or representation is given or made to form part of or the return of money or other consideration should the goods

not meet any undertaking by the guarantor, given or made in connection with the supply of the goods or in connection with the promotion by any means of the supply or use of the goods. The consumer may obtain damages from the manufacturer for the reduction in the value of the goods resulting from the manufacturer's failure namely, the reduction below the price paid or payable by the consumer for the goods or the reduction below the average retail price of the goods at the time of supply which ever is lower.

The consumer may also obtain for any loss or damage to him resulting from the manufacturer's failure, other than loss or damage through the reduction in the value of the goods which is proved to be a result or consequences of the failure. Any breaches of a manufacturer's express guarantee entitle the consumer to repairs of the goods or replacement of the goods with goods of identical type.

Guarantees in respect of supply of services: Part VIII of the Consumer Protection Act, 1999 codifies the common law principles in respect of contract for the supply of services. Services in the ordinary meaning means doing something for somebody (Sakina and Rahmah, 2008). However, services under Section 3 of the Consumer Protection Act, 1999 has a specific meaning whereby it includes any rights, benefits, privileges or facilities that are or are to be provided, granted or conferred under any contract but does not include rights, benefits or privileges in the form of the supply of goods or the performance of work under a contract of service.

It should be noted that Part VIII does not apply to services provided by professionals who are regulated by any written law such as doctors, lawyers, architects and others and Part VIII is also not applicable to healthcare services provided or to be provided by healthcare professionals of healthcare facilities, namely medical services, dental services, midwife services and others. There are four guarantees in respect of supply of services. Section 53 implies into a contract for the supply of services to a consumer a guarantee that the services will be carried out with reasonable care and skill and that any material supplied in connection to with such services will be fit for the purpose for which it is supplied. The level of care and skill reasonably expected of a supplier will depend on the nature of the business. This means that the services must be of a standard and quality that could reasonably be expected from a competent person in the particular trade. Whether a service has been carried out with reasonable care and skill is a question of fact depending on the circumstances of each case. With the amendment in 2010, Section 53 was amended to include the guarantee on the material supplied in performing the

services. In any services covered by the act, the material supplied must be fit for the purpose for which it is supplied.

Where services are supplied to a consumer, there shall be implied a guarantee that the services and any product resulting from the services will be reasonably fit for any particular purpose and of such nature and quality that it can reasonably be expected to achieve any particular result that the consumer makes known to the supplier before or at the time of making of the contract for the supply of the services as the particular purpose for which the services are required or the result that the consumer desires to achieve. Section 55 requires services provided to consumers to be completed within a reasonable time where time for the services is not determined by the contract or to be determined in a manner agreed by the contract or left to be determined by the course of dealing between the parties.

What is reasonable depending on the nature of the services. Where price for the services is not determined by the contract or to be determined in a manner agreed by the contract or left to be determined by the course of dealing between the parties, Section 56 provides that there shall be implied a guarantee that the consumer shall not be liable to pay to the supplier more than the reasonable price for the services. Reasonable price shall be a question of fact depending on the circumstances of each particular case. Where there is a failure to comply with this implied guarantee, the consumer's right of redress shall be to refuse to pay more than the reasonable price. Where the price has been fixed by the parties to the contract, the consumer who is a party to the contract is bound to pay the agreed price.

This is based on the rule in the law of contract which says that each party is bound by the terms in the contract. Where there is a breach to implied guarantees under Section 53-55, a consumer has a right of redress against a supplier. The consumer may exercise the following remedies depending on the extent of the failure:

- If the failure is one that can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time
- Where the failure is one that cannot be remedied or is of a substantial character, the consumer may cancel the contract for the supply of the service or obtain from the supplier damages in compensation for any reduction in the value of the product resulting from the service below the charge paid or payable by the consumer for the services

Failure to comply with a guarantee shall be of a substantial character where the product resulting from the

services is substantially unfit for a particular purpose made known to the supplier or of such a nature and quality that the product cannot be expected to achieve a particular result made known to the supplier and the product cannot easily and within a reasonable time be remedied to make it fit for the particular purpose or to achieve the particular result or the product resulting from the services is unsafe.

Product liability: The product liability law under Part X of the Consumer Protection Act, 1999 adopts a concept of strict civil liability which is in line with the international practices practiced by various countries in the world such as United Kingdom, United States of America, Australia and other countries. There are two important changes brought by Part X:

- It eliminates the doctrine of privity of contract
- It lessens the burden of the consumers in the sense that the consumers do not have to prove fault on the part of the wrongdoer

The elements that need to be proved by the consumers under Part X can be derived from Section 68 (1) itself. The elements are defective product, damage and causal link between the defective product and the damage. Section 68 (1) further lists out the persons who can be made liable, namely, the producer of the product, the brand user and the importer of the product. Part X does not intend to impose the liability on the supplier. Nevertheless under Section 68 (4), the supplier will be held liable for the damage suffered by a consumer if he fails to identify any or all of the persons referred in Section 68 (1) within reasonable period if there is a request made by the consumer.

According to Section 67 (1), a product is defective if the safety of the product is not such as a person is generally entitled to expect. Safety in relation to a product includes safety in respect to products comprised therein; risk of damage to property and risk of death or personal injury. In determining what a person is generally entitled to expect in relation to a product, all relevant circumstances mentioned in Section 67 (2) shall be taken into account. As far as the recoverable damage is concerned, it is defined in Section 66 (1) which covers death or personal injury or any loss of or damage to any property including land. On the other hand, Section 69 limits the damage that can be recovered under Part X which does not include damage to the defective product itself, damage to the whole or any part of the product which comprises the defective product and damage to any

property which is not intended for private use, occupation or consumption. Various defences have been provided in Section 72 (1) to the persons who are sued under this part. If these defences are successfully relied on by a defendant, he can escape liability for defective product under Part X. Defences such as compliance with any requirement imposed under any written law in paragraph (a), development risk defence or state of the art defence in paragraph (d) of Section 72 (1) seems to cause injustice to the consumers as they may leave the consumers without a remedy.

The national consumer advisory council: Part XI provides for the establishment of the National Consumer Advisory Council to advise the Ministry of Domestic Trade, Cooperatives and Consumerism in respect of consumer issues, promoting consumer interests and consumer protection and the operation of the Consumer Protection Act, 1999. The members of the National Consumer Advisory Council shall consist of Secretary General of The Ministry of Domestic Trade, Cooperatives and Consumerism or his representative and not >16 other persons representing the interests of consumers, manufacturers, suppliers other non-governmental organizations and academicians who are appointed by the Minister for a term not exceeding 2 years period and shall be eligible for reappointment upon expiry of his term of office.

Tribunal for consumer claims: The Tribunal for consumer claims which came into force on 15th November 1999, is established under Section 85, Part XII of the Consumer Protection Act, 1999. The Tribunal currently consists of a Chairman, a Deputy Chairman and two Assistant Chairman who are officers from the judicial and legal services and seven other members appointed by the Minister. The jurisdiction of the Tribunal shall be exercised by the Chairman, Deputy Chairman or any other member of the Tribunal selected by the Chairman sitting alone. The Tribunal for consumer claims is an independent body with the primary function of hearing and determining claims lodged by consumers under the act. The primary objective of establishing the Tribunal is to provide an alternative channel which is easy, cheap and speedy for consumers to lodge their claims in respect of losses arising from any goods purchased or services rendered. The consumer may lodge with the tribunal for consumer claims a claim in the prescribed form together with the prescribed form for any loss suffered. The Tribunal for consumer claims shall have jurisdiction where the total amount in respect of which an award of the

Tribunal for consumer claims is sought does not exceed RM25,000.00. The Tribunal however shall have no jurisdiction in respect of any claim arising from personal injury or death for the recovery of land or any estate or interest in land in which the title to any land or any estate or interest in land or franchise is in question in which there is a dispute concerning entitlement of any person under any will or settlement or any intestacy, goodwill, any chose of action or any trade secret or other intellectual property and where any other tribunal has been established under any other written laws to hear and determine claims on matters that have become the subject matter of the claim.

A consumer may lodge a claim with the Tribunal, claiming for any loss suffered on any matter concerning his interest as a consumer under the Consumer Protection Act, 1999 arising from a false or misleading conduct, false representation or unfair practice; safety of goods and services; the right against a supplier in connection with any of the guarantees implied by the act in relation to goods and services and the right against manufacturer in connection with any express and implied guarantees on supply of goods.

The respondent trader is allowed to raise a debt or liquidated demand as a defence or counter claim. The TCC shall have no jurisdiction in respect of any claim for the recovery of land or any estate or interest in land; the dispute concerns the entitlement of a person under a will, goodwill; any chose in action; any trade secret or other intellectual property. The jurisdiction of the Tribunal for consumer claims is limited to a claim that is based on a cause of action which accrues within 3 years of the claim. The Tribunal for consumer claims will assess every claim to determine whether, in all circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement. Where it appears to the Tribunal for consumer claims that it would not be appropriate for it to assist the parties or the parties are unable to reach an agreed settlement in relation to the claim, the Tribunal for consumer claims shall proceed to determine the dispute. No representation is allowed before the Tribunal for consumer claims.

The proceeding before the Tribunal for consumer claims shall be open to the public. The Tribunal shall make its award without delay within 60 days from the 1st day the hearing before the Tribunal commences. The Tribunal for consumer claims shall give reasons for its award. The award of the Tribunal for consumer claims shall be final and binding on all parties to the proceedings and shall be deemed to be an order of a magistrate's court.

Any person who after 14 days fails to comply with the Tribunal for consumer claims' award commits an offence and shall on conviction be liable to a fine not exceeding RM5,000.00 or to imprisonment for a term not exceeding 2 years or to both. In the case of a continuing offence, the offender shall in addition to the penalties, be liable to a fine not exceeding RM1,000.00 for each day or part of a day during which the offence continues after conviction.

CONSUMER PROTECTION ACT, 1979 OF THAILAND

The Consumer Protection Act, 1979 of Thailand came into effect on 4th May, 1979. It is one of the earliest consumer laws to be enacted in the Asia Pacific region. The Consumer Protection Act, 1979 comes directly under the preview of the Prime Minister. However, the application of the Consumer Protection Act, 1979 is subject to the provisions of any specific laws provided for any matters. The provisions of the Consumer Protection Act, 1979 shall apply only in so far as it is not a repetition or contrary to such provision unless situations stipulated under Section 21 (1) and (2) happen. Under Section 3, the Consumer Protection Act, 1979 defines a consumer as a person who buys or obtains services from a businessman or a person who has been offered or invited by a businessman to purchase goods or obtain services and includes a person who duly uses goods or a person who duly obtains services from a businessman even he/she is not a person who pays the remuneration. On the other hand, goods is defined as study produced or possessed for sale. The word businessman is not confined to a businessman per se but also includes a manufacturer.

Section 4 of the Consumer Protection Act, 1979 guarantees four consumer rights in respect of the right to receive correct and sufficient information and description as to the quality of goods and services; the right to enjoy freedom of choice; the right of safety in relation to goods and services; the right to receive fair contract and the right to be compensated for the injury suffered.

SALIENT FEATURES OF THE CONSUMER PROTECTION ACT, 1999 OF THAILAND

Consumer protection board: The establishment of Consumer Protection Board is provided under Section 9 of the Consumer Protection Act, 1979. According to Section 9, the Prime Minister is the Chairman of the Board. Other members are the Secretary-General to the Prime

Minister, Permanent Secretary of the Office of the Prime Minister and Permanent Secretary of the Ministry of Agriculture and Cooperative, Ministry of Commerce, Ministry of Interior, Ministry of Industry, Ministry of Transport and Communications; Secretary-General of the Food and Drug Board and not more than eight qualified members appointed by the Council of Ministers. The Secretary-General of the Consumer Protection Board shall be a member and secretary. The board has wide powers and duties which include, inter alia:

- Power and duty to consider complaints from the consumers who suffer hardship or injury
- Power and duty to proceed with the goods which may be harmful to the consumer under Section 36
- Power and duty to institute legal proceedings regarding the infringement of the consumer's rights as the board thinks fit or when there is a request under Section 39
- Power and duty to recognise an association under Section 40
- Power and duty to submit opinion to the Council of Ministers concerning the policy and measure for the protection of the consumers and consider and give opinion in any matter regarding the consumer protection as entrusted by the Council of Minister

Besides those powers and duties set out in Section 10, the board also has power under Section 14 to appoint members of ad hoc committee on advertisement, ad hoc committee on labels and ad hoc committee on contract. In addition to these powers and duties, Section 43 provides that the board also has the power to hear appeals from persons who are aggrieved by the decision of the Committee on Advertisement made under Section 27 and 28 of the Consumer Protection Act, 1979. In order to ensure that the issues of consumer protection are given proper attention, Section 19 provides the establishment of the Office of the Consumer Protection Board which is attached to the office of the Prime Minister. The Office of the Consumer Protection Board shall have amongst others, powers and duties to receive complaints from the consumers; to encourage and conduct the study and research on problems concerning the consumer protection with other academic institutions and other agencies and to promote and encourage the providing of education for the consumers at all levels on safety and harm from the goods or services.

Types of consumer protection: Under the Consumer Protection Act, 1979 various types of consumer protection have been given to consumers. Consumer protection under the Consumer Protection Act, 1979

covers protection against advertising, protection against labeling, protection on contract and others. Section 22 protects consumers against an advertisement which contains a statement unfair to consumers or which may cause adverse effect to the society as a whole. Section 22 also lists out statements which are regarded as unfair to consumers or which may cause adverse effect to the society as a whole such as statement which is false or exaggerated; statement which will cause misunderstanding in the essentials elements concerning goods or services, notwithstanding the statement is based on or refers to any technical report, statistics or anything which is false or exaggerated; statement which is directly or indirectly encouraging the commission of an unlawful or immoral act or which adversely affects the national culture; statement which will cause disunity or adversely affects the unity among the public and other statements as prescribed in the Ministerial Regulations. Under Section 23, an advertisement in Thailand shall not be affected by a method which may be harmful to health or cause physical or mental harm or annoyance to consumers.

The power to protect consumers in advertisement is vested to the Committee on Advertising. The power of the committee is provided in Section 24-28. In cases where the committee on advertisement is of the opinion that any goods that are advertised may be harmful to consumers and the committee on labels had declared such goods to be label-controlled goods under Section 24 the committee on advertisement shall have the power to order the advertisement to be made together with the advice on or warning about the usage or harmful effect in accordance with the conditions prescribed by the committee on advertisement; restrict the use of advertising media for such goods and prohibit the advertisement of such goods. The committee on advertisement is also given a power to ask for further information to be included in the advertisement if the information is necessary for the consumers or public to know. In cases where advertisement violates Section 22 and 23, the committee has power to make orders specified under Section 27. The orders specified under Section 27 can also be invoked for the violation of Section 25.

If there is any businessman who is doubtful whether his advertisement will violate or does not conform to the Consumer Protection Act, 1979 he may apply to the committee on advertisement for consideration and opinion before advertising. This is to prevent the advertisement from violating the provisions of the Consumer Protection Act, 1979.

However, the giving of opinion by the committee on advertisement does not curtail the power of the committee to review the advertisement. Section 30-35 of the

Consumer Protection Act, 1979 provide for consumer protection against labeling. Section 30 specifically mentions that any goods which are imported into Thailand for sale shall be label-controlled goods. Section 30 further regulates that if the goods are harmful to health or may cause physical or mental harm, the committee on labels is given the power to declare such goods to be a label-controlled goods by publishing in the Government Gazette. Section 31 lists out the details that should contain in the label of label-controlled goods such as the name or trade mark of the manufacturer or importer, the place of manufacturing, price, caution, expiry date and so on. All these statements must be true and do not contain any statements which may induce misunderstanding as to the material facts concerning such goods. In the case when the committee on labels is of the opinion that any label does not conform with the requirement of Section 31, the committee has the power to order the businessman to cease using such label or rectify such label as provided under Section 33. Any businessman who is doubtful whether his advertisement will violate or does not conform to Section 31, may apply to the committee on labels for consideration and opinion on such label.

Another type of consumer protection is consumer protection on contract which regulates contracts of sale of goods and contracts of services that are required by law or custom to be made in writing. The committee on contract shall have the power to provide such business to be a controlled business. The committee also shall have the power to prescribe the form for this type of contracts. Any businessman who is doubtful whether his contract form violates or fails to comply with the Consumer Protection Act, 1979, he may require the committee on contract to give a prior opinion on such form.

Other types of consumer protection in the Consumer Protection Act, 1979 encompass goods testing, instituting legal proceedings in the infringement of the consumer's rights and recognition of consumer interest association. In cases where there is reasonable cause to suspect that goods may be harmful to consumers, the Consumer Protection Board may order the businessman to have such goods tested or verified. If the businessman fails to comply with the order of the board without justification, the board may arrange for the verification at the expense of the businessman. If the goods are proved to be harmful to consumers after verification has been carried out and the harm cannot be prevented by means of the requirement of the label, the board shall have the power to prohibit the sale of the goods or order the businessman to modify the goods in accordance with the conditions prescribed by the board. This prohibition order shall be published in the Government Gazette.

The board also shall have the power to order the goods to be destroyed if the goods cannot be modified or if it is doubtful that the businessman would keep the

goods for sale. Section 39 empowers the Consumer Protection Board to institute legal proceedings in the infringement of the consumer's rights. The board shall have the power to appoint a public prosecutor with the approval of the Director-General of the Department of Public Prosecutions for the purpose of carrying on the prosecution.

Section 40 allows any associations whose object is protecting the consumers against unfair trade competition and whose regulations with respect to the board, members and methods of operation of the association are in accordance with the conditions prescribed by the Ministerial Regulation to file an application to the Consumer Protection Board for its recognition. This recognition gives the association the right and power to institute legal proceedings for the protection of consumers and shall have the power to sue for the recovery of damages on behalf of its members provided that it has obtained the power of attorney to claim damages from its members. It should be noted that once the recognition is given by the Consumer Protection Board, the association is bound by the rules prescribed by the board. If the association is acting contrary to the rules of the board or mala fide in instituting legal proceedings in the court, the board may revoke its recognition and this revocation shall be published in the Government Gazette.

Sanctions: The Consumer Protection Act, 1979 employs criminal sanctions for the violation of the provisions in the act. It is provided in Chapter IV of the act. However, the severity of sanctions differs from one offence to the other. The highest sanction of 5 years imprisonment or a fine not exceeding 500,000 Baht or both is provided in Section 56. This section imposes on a manufacturer or importer of goods for sale if the manufacturer or importer sells the goods which have been prohibited by the Consumer Protection Board under Section 36 of the Consumer Protection Act, 1979.

The rationale for this highest sanction is for the consumer protection because the prohibition of the board is done to protect the consumers from harmful goods. The lowest sanction of 1 month imprisonment or a fine not exceeding 10,000 Bath is imposed on a number of offences such as failure to render facilities or submit representation to competent official under Section 45 and failure to comply with the order of the Consumer Protection Board or ad hoc committee to submit documents or particulars in connection with subject matter of the complaints made by the consumers under Section 46. Other offences attract moderate sanction, such as selling label-controlled goods without displaying labels on it or having labels incorrectly displayed as provided in Section 52 and failure to comply with the order of the Committee on Labels issued under Section 33. The

moderate penalty is imprisonment not exceeding 6 months or fine no exceeding 100,000 Bath or both. Although, the Consumer Protection Act, 1979 provides for criminal sanction for offences under the act, the power is given to the Consumer Protection Board to settle all the offences under the act by requiring the offender to pay fine fixed by the board or any committee delegated by the board. When the offender has paid the fine, the case shall be deemed to have been settled.

CONSUMER PROTECTION ACT 1999 OF MALAYSIA AND CONSUMER PROTECTION ACT 1979 OF THAILAND: A COMPARATIVE ANALYSIS

The Malaysian Consumer Protection Act, 1999 and the Consumer Protection Act, 1979 of Thailand contain

some remarkable similarities and differences in their provisions. A comparative analysis between the Malaysian Consumer Protection Act, 1999 and the Consumer Protection Act, 1979 of Thailand is shown in Table 1. The Malaysian Consumer Protection Act, 1999 is rather late in its introduction as compared to its Asian counterparts such as Thailand. However, this development is most welcome in the consumer protection arena. Malaysia and Thailand have indeed taken an important step in ensuring protection of consumers as market players with the enactment of consumer protection legislations.

The legislations of these two countries contain many similar provisions regulating consumer protection. Nevertheless provisions in the Malaysian Consumer Protection Act, 1999 are carefully designed and each part

Table 1: A comparative analysis of the two legislations

Criteria	Consumer Protection Act 1999 (Malaysia)	Consumer Protection Act 1979 (Thailand)
Contents	14 Parts and 150 sections	4 Chapters and 62 sections
Rights and obligations of consumers	No equivalent part	Section 4
Rights and obligations of business entities	No specific part	No specific part
Interpretation provision	Section 3	Section 3
Definition of consumer	Section 3: A person who acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purpose, use or consumption, does not acquire or use goods or services or hold, himself out as acquiring or using the goods or services, primarily for the purpose of, resupplying them in trade, consuming them in the course of a manufacturing process in the case of goods, repairing or treating in trade other goods or fixtures on land	Section 3: A person who buys or obtains services or has been offered or invited to purchase goods from a businessman and includes a person who duly uses goods and duly obtains services from a businessman even he/she is not a person who pays the remuneration
Definition of consumer protection	No equivalent section	No equivalent section
Definition of goods	Section 3: Primarily purchased, used or consumed for domestic or household purposes and includes, goods attached to or incorporated in, any real or personal property, animals including fish, vessels and vehicles, utilities and trees, plants and crops whether on, under or attached to land or not but does not include choses in action including negotiable instruments, shares, debentures and money	Section 3: Articles produces or possessed for sale
Definition of supplier, manufacturer, business, trade	Section 3: each term is defined	Section 3 contains definition of business man
Misleading and deceptive conduct, false representation and unfair practice	Part II Sections 8-18	Chapter II Part I and Part II
Safety of goods and services	Part III Sections 19-29	No specific section. Some elements could be found in Chapter II, Part 3
Offences in relation to misleading and deceptive conduct, false representation and unfair practice and safety of goods and services	Part IV Section 25-Criminal offence-fine /imprisonment	Chapter IV-Criminal offence
Guarantees in respect of supply of goods	Part V Sections 30-38	No equivalent section
Remedies against suppliers in respect of supply of goods	Part VI Sections 39-49-civil sanction	No equivalent section
Rights against manufacturers in respect of guarantees in the supply of goods	Part VII Sections 50-52	No equivalent section
Guarantees in respect of services	Part VIII Sections 53-56	No equivalent section
Rights against suppliers in respect of guarantees in the supply of services	Part XI	No equivalent section
Unfair terms	Section 6, Part IIIA	Section 35bis
Product liability	Part X	No equivalent section
Provision on product/service information	No equivalent section	Chapter II Part 1 and 2
National Consumer Advisory Council	Part XI-National Consumer Advisory Council	Chapter I-Consumer Protection Board
Consumer Protection Agencies	No equivalent section	Section 40
Redress mechanism	Part XII	Chapter I

regulates specific areas of consumer protection. The Consumer Protection Act, 1979 of Thailand also adopts a similar approach though not as exhaustive as the Malaysian Consumer Protection Act, 1999. The Malaysian Consumer Protection Act, 1999, however has some major flaws. The Malaysian Consumer Protection Act, 1999 excludes from its ambit services provided by professionals who are regulated by any written laws, more critically healthcare services provided by health care professionals and healthcare facilities. The nature of the Malaysian Consumer Protection Act, 1999 which is supplemental and without prejudice to any other written law regulating contractual relations poses a major setback in the application of the act. The Malaysian Consumer Protection Act, 1999 does not provide for public interest groups to bring action on behalf of the aggrieved consumer, unlike in Thailand. The problem of locus standi and representation as well as class action in the Malaysian Consumer Protection Act, 1999 should be reconsidered in giving consumers a better access to justice. Failure of the Malaysian Consumer Protection Act, 1999 to provide product monitoring on manufacturers is also seen as one of the weaknesses of the act.

The Consumer Protection Act, 1979 of Thailand, unlike the Malaysian Consumer Protection Act, 1999 contains provisions on rights to information on goods/services. In Thailand, there is a Committee on Advertisement established under the Consumer Protection Act, 1979 of Thailand to govern information given in advertisement in order to ensure that information given does not have any prejudicial effects on consumers. With the recent amendment in 2010, the same feature also appears in the Malaysian Consumer Protection Act, 1999. The Consumer Protection Act, 1979 of Thailand does not contain specific part on the use of unfair terms in contract but elements of prohibition of these terms can be seen in Part 2b is, particularly Section 35b is of the Consumer Protection Act, 1979 of Thailand. In Malaysia with the new amendment in 2010, provisions on unfair terms are now contained in Part IIIA of the Malaysian Consumer Protection Act, 1999. The Consumer Protection Act, 1979 of Thailand also provides for the role and activities of Consumer Protection Agencies which could not be found in the Malaysian Consumer Protection Act, 1999. The

Malaysian Consumer Protection Act, 1999 also provides for consumer redress mechanism. The Malaysian Tribunal for consumer claims has its own strengths and weaknesses. The Malaysian Tribunal for consumer claims has however, come under criticism for a number of perceived weaknesses the composition of the Tribunal is weighted towards persons with the legal background; does not provide for representation by consumer associations; does not allow class action; allows counter claim by traders; it enable corporation and unincorporated bodies to be represented by a full time paid employees; the hearing is held during weekdays and during office hours; no appeal allowed against the decision of the Tribunal and the limited jurisdiction of the Tribunal.

In Thailand, the Consumer Protection Board is empowered to consider claims from consumers who have suffered hardship or injury resulting from the acts of businessman.

CONCLUSION

In keeping with the Malaysian and Thailand legal culture, the Malaysian Consumer Protection Act, 1999 and the Consumer Protection Act, 1979 of Thailand are seen as the umbrella that will integrate and strengthen law enforcement in the area of consumer protection in these countries.

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