

21 December 2022

THAILAND

Newsletter

Key Contacts



Jutharat Anuktanakul

☎ +66-2-009-5160

✉ jutharat.a@mhm-global.com



Suphakorn Chueabunchai

☎ +66-2-009-5168

✉ suphakorn.c@mhm-global.com



Pawee Jongrungrueang

☎ +66-2-009-5150

✉ pawee.j@mhm-global.com



Thanachart Osathanondh

☎ +66-2-009-5151

✉ thanachart.o@mhm-global.com

Lemon Law – Potential Obligations for the Automotive and Electronics Sectors

On 22 November 2022, the Cabinet approved the draft Act on Liability regarding Defective Goods ("**Draft Act**"), which is known as the "Lemon Law". The purpose of this law is to protect consumers from the sale of defective goods or products. The term originated from the slang "lemon" to describe defective or low-quality vehicles.

In Thailand, the concept of Lemon Law has been somewhat introduced under the Civil and Commercial Code. However, the obscurity of the law (e.g. lack of clear responsibility for the seller, lack of clear directions for the buyer, etc.), coupled with the trend of increasingly complicated consumer goods, especially in high-tech industries, has caused various problems in actual enforcement of the current laws.

With an aim to improve the current Lemon Law, the Draft Act was proposed by the Office of the Consumer Protection Board ("**OCPB**") again after receiving an approval-in-principle from the Cabinet in 2017. The Draft Act was initially prepared based on Lemon Laws from the Republic of Singapore and the United States of America.

Sectors potentially affected by the Draft Act

The Draft Act focuses on the "business operator" (i.e. Manufacturers for sale, Importers, and Sellers, or the owners in hire-purchase agreements) relating to the sale agreement or hire purchase agreement between the business operator and the consumer of the following products:

- 1) Electric appliances and electronic devices which require electricity or electromagnetic fields to operate;
- 2) Personal cars and personal motorcycles under the laws on automobiles; and
- 3) Other products to be determined in the form of Royal Decree.

Additionally, a sale or hire-purchase of used goods, sale or hire-purchase in as-is condition, and public auction shall not be governed by the Draft Act. Moreover, Business-to-Business transactions will not be governed by the Draft Act.

Therefore, the industries to be immediately affected by the Draft Act should be the manufacturers, importers, and sellers of electronic appliances and vehicles.

Effects of the Draft Act

According to the Draft Act, the business operator will be responsible for defects in goods which exist at the time of delivery and occur within two years of the delivery date, regardless of whether the business operator is aware of the defects or not. If the defects were found within one year of the delivery date, such defects will be presumed to exist at the time of delivery and the business operators will have the burden to prove otherwise.

If defects are found, a consumer can demand the following from a business operator without affecting their rights to recourse for actual and reasonable damages:

- 1) To request the business operator to repair the defective goods;
- 2) To request the business operator to replace the defective goods;
- 3) To request a price reduction as compensation; and
- 4) To terminate the sale or hire-purchase agreement.

Initial Countermeasures and Preparation

Pursuant to the Draft Act, an agreement between the business operators and the consumers which is contrary to the requirements under the Draft Act and is disadvantageous or onerous to the consumers shall become void.

Thus, to prepare for the enactment of the Draft Act, the affected business operators are advised to start drafting or revising their template sale or hire-purchase agreements in accordance with the requirements under the Draft Act, and begin to explore their options under these new restrictions.

Please note that the Draft Act will not exonerate obligations of the business operators from other laws (e.g. Restrictions and requirements regarding sale or hire-purchase of vehicles under the Consumer Protection Act B.E. 2552 (2009)).

Foreign Operators

Generally, a company with at least half of its total shares held by foreigners shall be considered as a foreigner under the Foreign Business Operation Act B.E. 2542 (1999) (the "FBOA"), and restricted from operating various business, including almost all services businesses, unless such company obtains a Foreign Business License or Foreign Business Certificate, as the case may be.

However, one of the most notable businesses interpreted as NOT restricted by the FBOA is an original manufacturing business (but not an original equipment manufacturer). Requiring an original manufacturer to also potentially provide repairs and maintenance in order to meet with requirements under the Draft Act could lead to the possibility that such activities of the foreign manufacturing business operator be interpreted as other services under the FBOA, and force them to obtain an additional permission under the FBOA before starting such service provisions. As the application process for the permission under the FBOA is notoriously time-consuming, the affected operator may need to contemplate necessary preparations or available alternatives.

Based on the past rulings of the Ministry of Commerce, a competent authority under the FBOA, providing repair and maintenance services shall be considered as operating a restricted service business under the FBOA, unless such services are

provided as part of the sale and purchase agreement (e.g. after sales services without additional costs).

Next Steps for the Draft Act

Currently, the Draft Act is under the consideration of the Office of the Council of State and is open for public opinions until the end of December 2022. Afterwards, the Draft Act will be presented for the approval of the House of Representatives.

We will continue monitoring the status of the Draft Act and let you know if there are any further developments.

If you have any questions in relation to the issues raised, please contact the authors in the left-hand column

Contact Us

Chandler MHM Limited
17th and 36th Floors
Sathorn Square Office Tower
98 North Sathorn Road
Silom, Bangrak, Bangkok 10500
Thailand
www.chandlermhm.com

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact bd@mhm-global.com.