



# Product Liability Law now in effect



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## Implementation of the Act

After years of waiting, Thailand finally introduced the Act on Liability for Damage from Unsafe Products on 20 February 2008. This law will come into full force and effect on 20 February 2009.

Business owners of large and small enterprises regardless of nationality should ask themselves whether they are adequately prepared to cope with the impact from implementation of this new law.

## Changes to benefit consumers

Basically, the Act aims to provide protection and legal recourse for the benefit of consumers. As reflected in the rationale statement for the bill, this law is intended to solve the problem regarding the burden of proof, which previously vested with consumers who pursued their claims in court. Before 20 February 2009, consumers injured by defective products could bring a claim under the wrongful act (tort) provision of the Civil and Commercial Code (CCC) and applicable consumer legislation. However, such laws offered only limited recourse. In particular, consumers' ability to file claims under the CCC was restricted by the need to prove that the business operators' willful or negligent acts caused such damage. This was very difficult to achieve in practice because in most instances the injured consumers lacked the technical knowledge necessary to prove the cause of unsafe products.

## Key features

The followings are the key features which were not recognised under prior law:

- The Act recognises the possibility of damage to mental health;

- In addition to the ability to claim for damages for actual injury, the Act allows injured to claim for punitive damages;
- The Act exempts certain court fees from product liability court claims.

Furthermore, the Act introduces the legal concept of 'strict liability' to the Thai legal system for the first time. This means any stakeholder within the product supply-chain may be subject to a claim for damages by consumers, and will have to prove to the satisfaction of the Court that its product is safe, or the consumer knew that the product was unsafe before purchase, or the damage/injury was sustained by misuse on the part of the consumer.

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## Impact on consumers

At the one end of the spectrum, consumers can be better assured that more and more products will become safer for consumption and utilisation. If they should be so unfortunate as to have suffered from unsafe products they will be better protected and compensated than what had been possible in the past.

On the other end of the spectrum, business operators with superior capability to manage their corporate governance will benefit more from this law than their competitors. In other words, this law will encourage business operators to be more vigilant in their business conduct and operations as otherwise their business might be adversely affected by litigation and heavy financial burdens which in turn might effect their sustainability.

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