

Chapter Four: Dispute Resolution Process in Consumers Protection

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1. Historical Background

Since Thailand has a free trade economic system (Laissez-Faire or capitalism), the economic development, therefore, has been rapidly advanced in manufacturing, distribution and service sectors, and thus, has made the distribution and service system become more and more complicated. As a result, consumers who are valuable human resource fall into disadvantageous positions due to the inability to receive sufficient facts of market condition, quality of product and price, which result in the obstacle to the development of living quality of people.

In the past, when being taken advantages, consumers would protect their rights by only exercising their juridical rights although there are specific laws applicable to protect the rights of consumers by fixing product prices and quality of products and services. However, trial process was unnecessarily time and cost consuming process that was not worth proceeding. Thus, a great number of consumers were disadvantaged without any remedy or compensation.

In Thailand, the concept of having an authority in charge of consumer protection was initially pushed by a foreign NGO, the Federation of International Consumer Organization. In 1969, there were several unsuccessful attempts to set up the said consumer protection authority. Finally, the Consumer Protection Act B.E. 2522 (1979) was enacted and effective on 5 May 1979 under which a Consumer Protection Board has been established. In addition to the Consumer Protection Board, the Consumer Protection Act also set up the Office of the Consumer Protection Board opening on 2 July 1979. Subsequently, the Act was amended again on 24 March 1998.

Although there was the success in establishment of the authority responsible for the consumer protection, the advantages taking over consumers still continue.

2. Outline of Consumer Disputes

2.1. Background of Disputes

1. The basis of disputes in Thailand comes from the reason that manufacturers or business operators want to make high profit, which result in:
 - 1.1 Reduction of cost;
 - 1.2 Sale of products and services at the excessive prices or fixing the product prices higher than usual.
2. Sellers try to induce buyers to purchase low quality products by:
 - 2.1 Exaggerate advertisement, false statement or advertisement which cause buyers' or service users' misunderstanding;
 - 2.2 Contamination or decoration of products to persuade buyers without regard of hazards or dangers.

3. The basis of disputes arise from financial problems of the business operators and then require buyers to pay down payments and use such down payment as its cost to manufacture and deliver goods or services, for example, in allotted land & house business or condominium business, etc.
4. The basis of disputes comes from breach of contracts due to the failure of manufacturers or sellers in delivering goods within the time specified or with the quality or quantity as ordered by consumers because of production problems or trading problems made by other manufacturers or sellers.

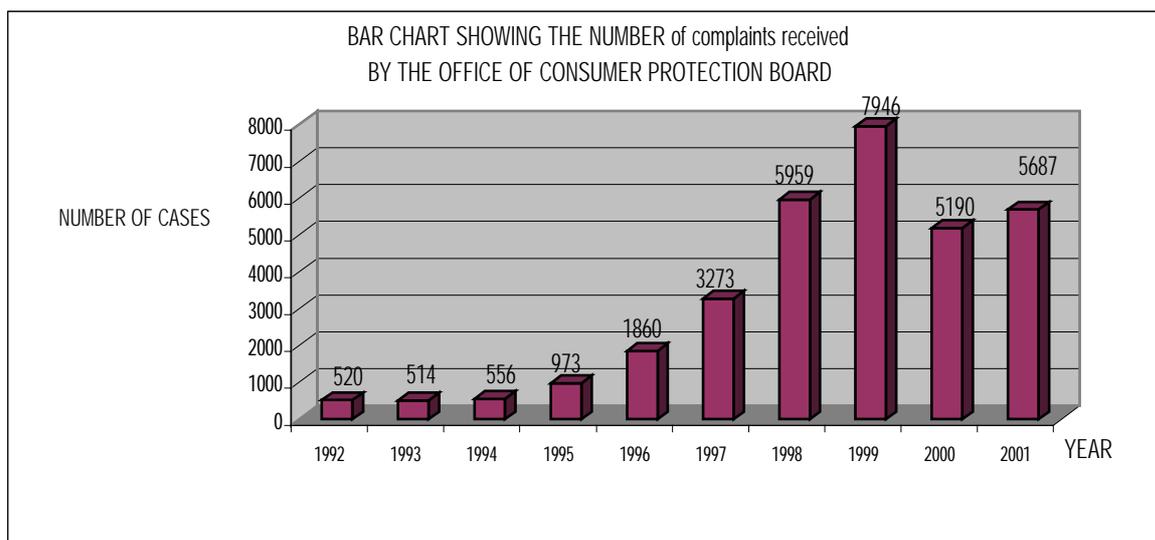
Most of these business operators or manufacturers or service providers are juristic persons having more influence and economic power than consumers or service users, and are always in the advantage positions.

2.2. Types of Disputes

1. Disputes over **low quality** of products or **excessive prices**: the consumer will demand for quality improving or price reducing.
2. Disputes over **breach of contracts**: the consumer will demand for execution of a contract or compensation.
3. Disputes over **exaggerate advertisements**, concealment of fact which cause people's **misunderstanding**; or not receiving safety in using goods or service: the consumer will ask for compensation.

2.3. Number of Cases

The number of complaints concerning sellers, business operators or manufacturers which were submitted to the Office of Consumer Protection Board are as shown in the bar chart as follows:



In courts, there is small number of cases brought by disadvantaged consumers. Instead, there appears to have the greater number of cases that were brought to courts by business operators. This may be because business operators have several supporting factors, for example, having more economic power and knowledge. Therefore, business operators are able to exercise their juridical rights without regard of time consumption and expenditures.

When the cases were submitted to courts by business operators, courts will play an important role to protect the rights of consumers by determining whether and how much consumers have to pay for the price of product or the fees for service or damages as claimed by the business operators.

Specific cases that were submitted to courts basically are brought by business operators or manufacturers who make claims on service users or buyers e.g. hire-purchase of automobile, mobile phone service fees, credit card users.

The quantity of cases in court will be said in the next chapter

3. Organizations or Institutes for Dispute Resolution

1. Court
2. The Office of Consumer Protection Board
3. Other organizations
 - Specific organizations
 - Consumer Association
 - Hotel Association
 - Thai Chamber of Commerce

Generally, associations established by business operators, including Thai Chamber of Commerce does not have much role in protecting the rights of consumers since the objectives of such organizations are to protect the benefits of the members within the group having similar benefits. They have no objective to protect the benefit of consumers.

For consumer associations, it seems that their activities are not widely spread in Thailand and in a few cases, their role in protecting the benefits of consumers remain small.¹ There is only the role of watchdog.

It can be mentioned that there are only 2 major organizations that have the role to protect the rights of consumers. there are:

1. The Office of Consumer Protection Board
2. Court of Justice

¹ However, it should be noted that the Consumer Protection Act empowers the endorsed consumer associations to take an action to the court on behalf of the injured consumers. The first consumer association was endorsed by the Consumer Protection Board in 2000 to take such action.

Fact-Finding of the Relevant Organizations

3.1. The Office of Consumer Protection Board

The Office of Consumer Protection Board was established under the Consumer Protection Act B.E. 2522 (1979) which was amended in 1998. Currently, the Office of Consumer Protection Board is under the Office of Prime Minister and has the following powers and duties:

1. To receive complaints of consumers suffered from or damages caused by an act of a business operator, and refer them to the Consumer Protection Board;
2. To follow up and monitor actions of business operators who act in the manner that violates the rights of consumers and to conduct a test or verifying of any goods or services as it deems appropriate and necessary to protect the rights of consumers;
3. To support or conduct the study and research on the problems concerning consumer protection in conjunction with the educational institutes and other work units;
4. To promote and support the impartation of knowledge to the consumer of every level of education concerning the safety and the possible dangers from goods or services;
5. To disseminate techniques and impart knowledge and education to the consumers in order to create the habit of consumption which is a promotion of health, economic use, and use of natural resources of the country for the most benefit;
6. To coordinate with other governmental bodies or state agencies whose powers and duties concern the control, promotion or establishment of standards of goods or services;
7. To carry out any other acts as assigned by the Board or by the Committees for Specific Affairs.

3.1.1 Protection Instructions

The Office of Consumer Protection Board has the following 5 major areas for the protection of consumers' rights:

1) Consumer protection in respect of advertising:

The Advertising Committee, established by the Consumer Protection Act B.E.2522 (1979) has the power in controlling and monitoring advertisement of goods and services for the fairness to consumers by prohibiting statements which may be detrimental to the society,

whether it concerns the origin, condition, quality or description of goods or service, as well as the delivery, the procurement or the use of goods or service.

The statements which are deemed to be unfair to consumers are:

- (1) **false or exaggerated** statements;
- (2) **misleading** statement in the material part concerning goods or service, whether or not by using or referring to technical report, statistics, or any other thing which is not true or which is exaggerate;
- (3) statements which, directly or indirectly, **encourage actions against the law** or moral or which lead to deterioration of the national culture;
- (4) statements which will disunite or deteriorate the unity of the public; and
- (5) the others statements as stipulated in the ministerial regulations.

If the Advertising Committee considers that any of statement is against the consumer protection law, the Committee is empowered to issue any of the following orders:

- (1) To **rectify** the statement or method of advertising;
- (2) To **prohibit the use of certain statements** appeared in the advertising;
- (3) To **prohibit the advertisement** or the use of such method in advertisement;
- (4) To order for an advertising to be made in **order to correct the understanding** of the consumer who might have already been misled, in accordance with the rules and procedures prescribed by the Advertising Committee.

2) Consumer protection in respect of labeling:

Under the Section 14 of the Consumer Protection Act, the Labeling Committee comprising of members not less than 7 persons but not exceeding 13 persons has authority to protect consumers in respect of labeling.

The act prescribes that it is the **duty of business operators** to provide material **facts of goods** for the benefits of consumers in enabling them to know the correct information, news, as well as quality description of the products. The statements shown in labels must contain the true statements and must not contain information that may mislead as to essential element of goods.

1. The Labeling Committee has power to designate the following goods as **controlled goods** for the purpose of labeling:

- (1) Goods produced for **sale by factories** in accordance with factory law
- (2) Goods **ordered or imported into the Kingdom** for sale
- (3) Goods which, by nature or by the use of such goods, **may cause physical or mental or health danger**
- (4) Goods which are **regularly used** by the general public and the labeling of which would be beneficial to consumers

2. The Labeling Committee has power to establish the principles and conditions in preparing labels under label control that statements must be true, and there must not contain any statement that may be misleading in the material part in relation to products.

3. The Labeling Committee is empowered to direct the business operator to correct or to discontinue the use of label that is not in accordance with the principles.

3) Consumer protection in respect of contracts:

There are a great number of consumers that suffer from the unfairness in entering into contracts with business operators. In purchasing land with structure, most business operators prepare an unfair standard-contract, but such contract may cause disadvantage to consumers.

Actually, it is accepted that general person may not be treated equally under the principle of equality due to the unequal education, economic power and intelligence, especially, consumers who have less economic bargaining power. Therefore, the Consumer Protection Act as amended in 1998 endorses an additional right of consumers, the **right to receive fairness in respect to contract**.

The substantial matter of the right to receive fairness in respect to contract is to empower the Contract Committee to control and observe the contract made between business operators and consumers.

The committee has authority to determine some business to be **business in under contract-control**.

In the case that the said contract is made in foreign language, a Thai translation of which must be accompanied. Violation of such requirement must be subject to criminal punishment of imprisonment for not more than 1 year or fine not exceeding Baht 100,000, or both of such imprisonment and fine.

D. Consumer protection in respect of hazardous products:

Article 36 of the Consumer Protection Act B.E. 2522 (1979) gives power to the Consumer Protection Board to carry out the following acts to deal with any goods which may cause dangers:

1. When there is a reason to suspect that any goods are **likely to injure the consumer**, the Board may direct the business operator to conduct a **test or verifying** of the said goods. If the business operator fails to carry out the test or verifying of the goods or does it with delay without reasonable ground, the Board may arrange for the verifying at the business operator's expenses;
2. If the result of the test or verifying shows that the goods may be **harmful**, and it is not possible to prevent the danger which will arise from the goods, the Board has the

power **to prohibit the sale** of such goods or may direct the business operator to correct the goods under the conditions stipulated by the Board.

In case the goods could not be changed, the Board has the power to direct the business operator to destroy or the Board may arrange for **destruction** of the goods at business operator's expenses;

3. In case of necessity and urgency, if the Board has a reason to believe that any goods are is likely to cause injury to the consumer, the Board has the power **to prohibit the sale** of such goods **temporarily** until a test or verifying is made;
4. If the business operator sell the goods prohibited by the Board, they will be punished by imprisonment for not more than 6 months, or a fine of not exceeding Baht 50,000, or by both of such imprisonment and fine, and if the business operator or manufacturer for sale imports into the Kingdom the goods for sale, it must be punished by imprisonment for not more than 5 years, or by a fine of not exceeding Baht 500,000, or by both such imprisonment and fine.

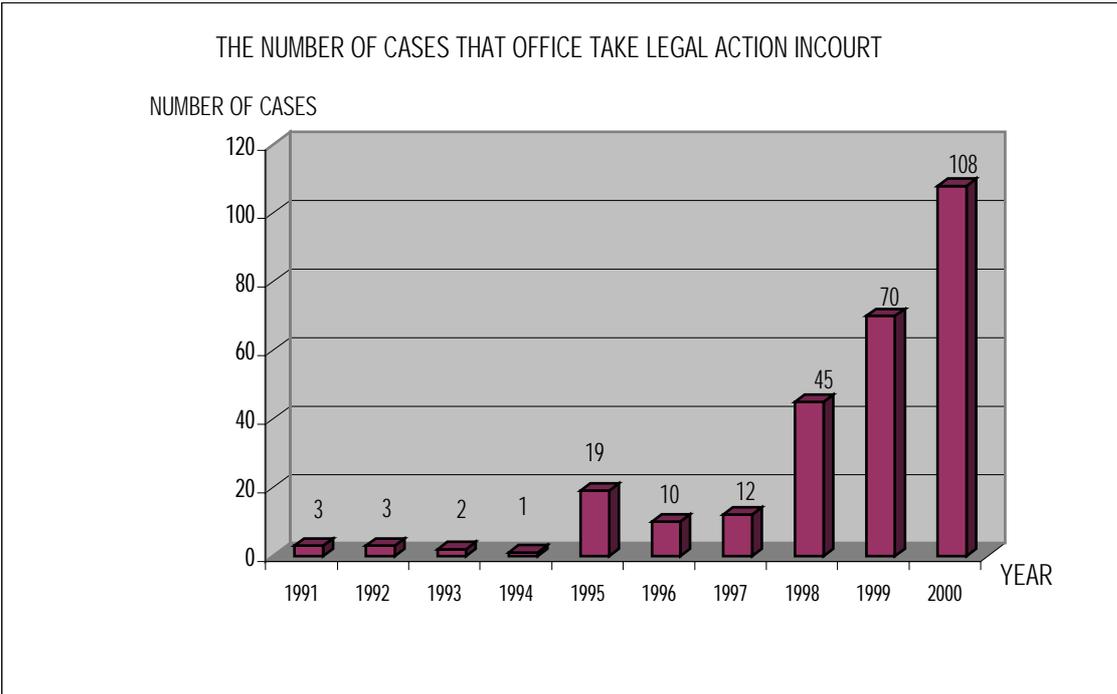
E. Consumer protection in respect of taking legal action for consumers:

Article 39 of the Consumer Protection Act B.E. 2522 (1979) provides that the Consumer Protection Board has the power **to appoint** a public prosecutor or an official in the Office of the Consumer Protection Board as the consumer protection **officer**. The officer will have authority to take legal action as assigned by the Board if it deems that the case concerns the violation of the rights of the consumers and that such legal action would be the benefit to the consumers in general.

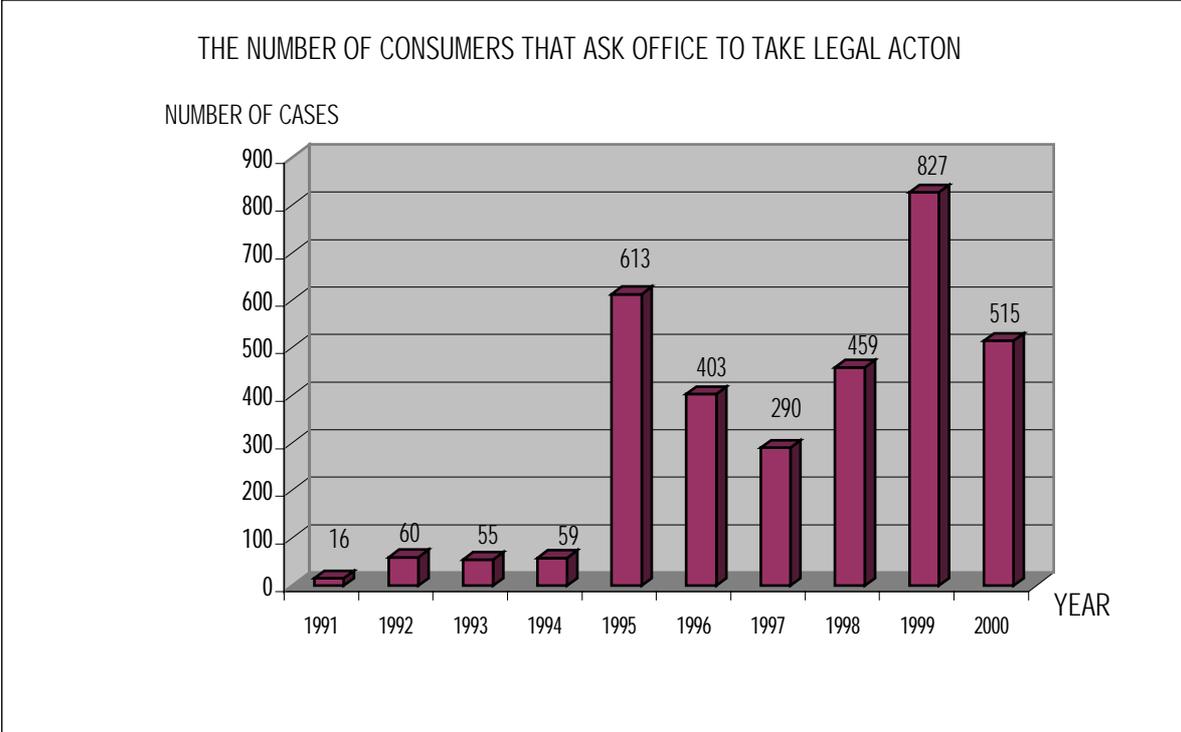
In filing a case in Court, the consumer protection officer will have the power to sue for property or compensation for the consumer, and in this case **shall be exempted from all fees**.

The element grounds in being able to take legal action for consumers are as follows:

1. **There is a request** from a consumer who is a consumer as defined in Section 3 of the Consumer Protection Act B.E.2522 (1979);
2. There is **a violation of consumer's rights**;
3. Such legal action **will be benefit to the consumers** in general by taking the following into account:
 - (1) Nature of Business Operation
 - (2) Result of legal action



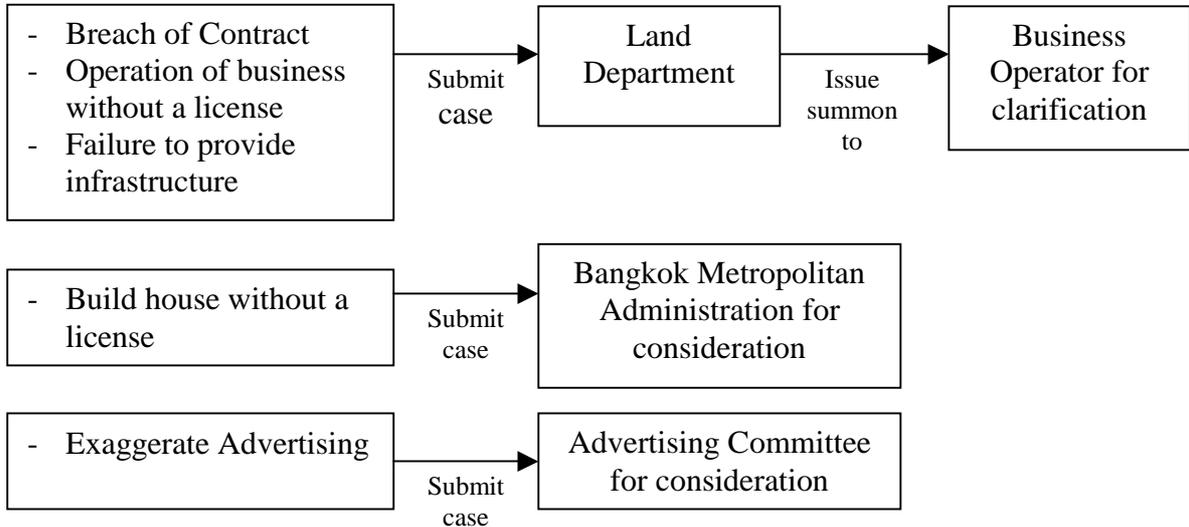
Source: Planning Section Office of Secretary of Department, Office of Consumer Protection Board



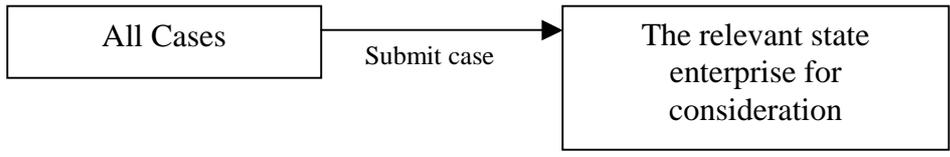
Source: Planning Section Office of Secretary of Department Office of Consumer Protection Board

Charts Showing Actions Taken by the Office of Consumer Protection Board

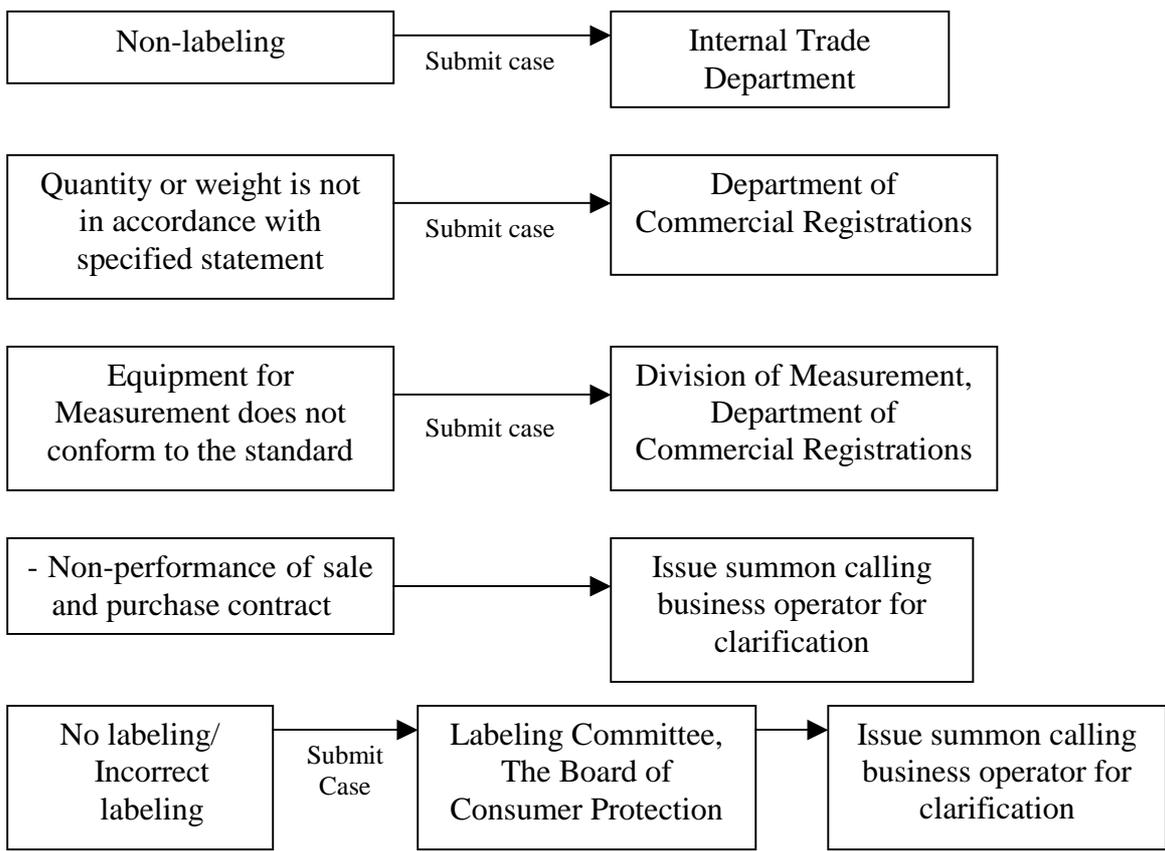
(1) Cases concerned with allotted Houses and Condominium



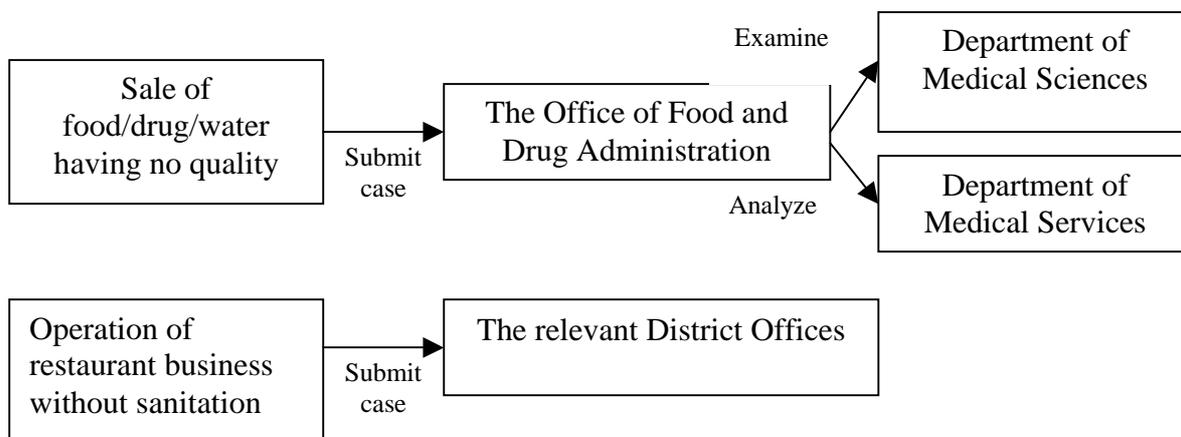
(2) Cases concerned with services of State Enterprises



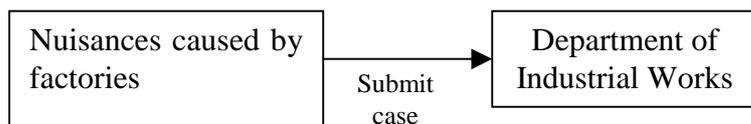
(3) Cases concerned with products



(4) Cases concerned with food and Drug



(5) Consumers are in troubles



3.2. Court

3.2.1. Roles of Protecting the Consumers

As mentioned previously, before the Office of Consumer Protection board was established, in the case where the consumers are taken advantage the consumers are able to exercise their rights to the court. However, the exercising the rights in court is not favored by the consumers because the consumers have to pay expenses, that is, the attorney's fees and the costs of action in the court (court fees); it may moreover spend a long time to do so. Therefore, with the reasons of wasting the times and the expenses the consumers do exercise their rights to the court infrequently.

After the Office of the Consumer Protection Board was established, a number of the consumers who favor to lodge any complaints to the office of the consumer protection board have been increasing. However, it can not help the consumer for not being take advantage. A few of the consumers hence changes their minds to use the court system again.

On the other hand, traders often take legal action in court for proceeding with the case against the consumers when the consumers do not perform the obligation of goods costs or service charge, or make performance not completely. It is possible that the traders have more economic status and potentiality than the consumers; so the traders can enter actions against the consumers to the court without being afraid of wasting the expenses and the times. In the

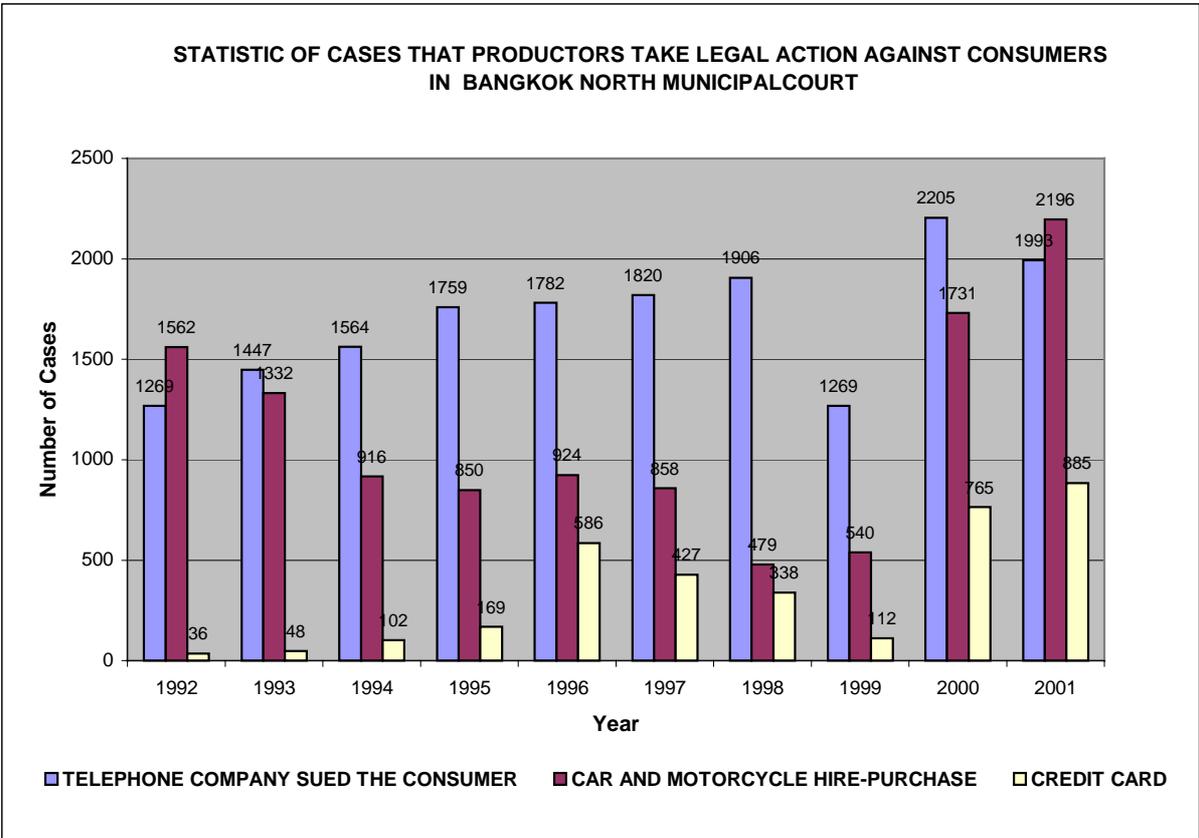
case where the consumers are entered actions against by the traders to the court, the court will play the roles of protecting the consumers with the judicial discretion whether the said consumers have to make the compensation to the traders in any extent.

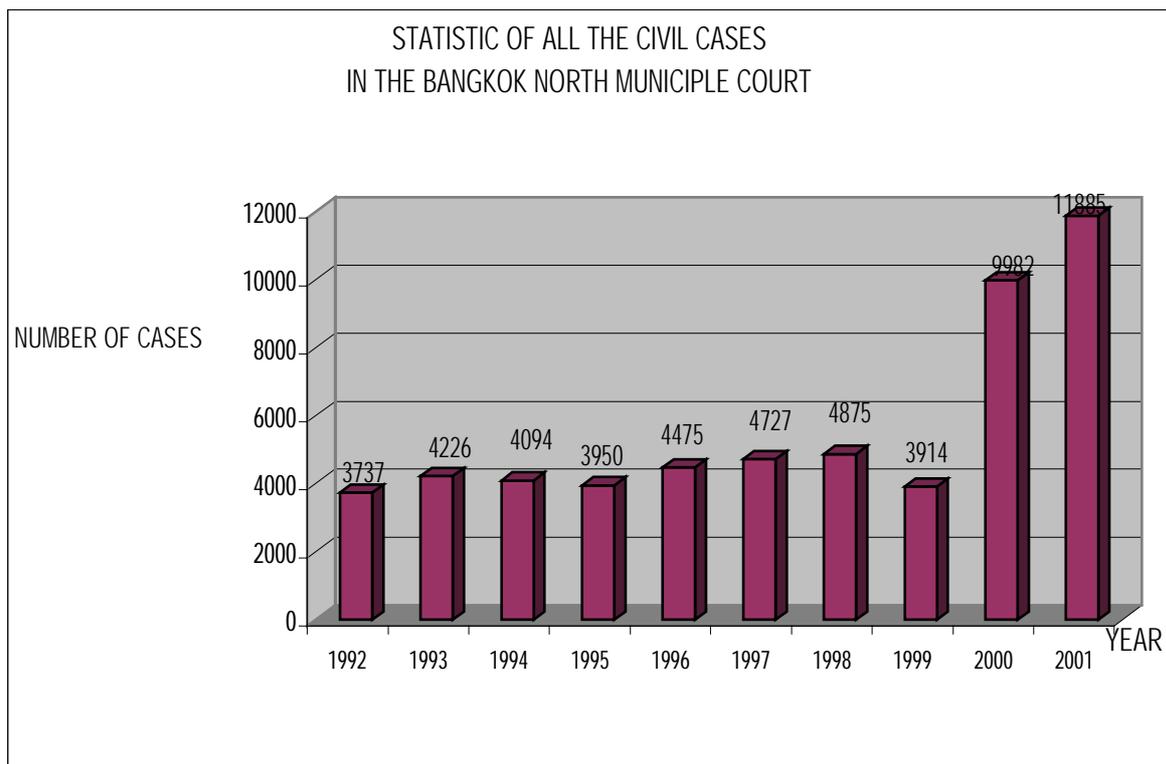
From researching the statistic of quantity of the cases, which the traders take legal actions against the consumers to the court in Thailand, it appears that the most of the traders entered the actions against the consumers to **the municipal or district courts** (small claim courts). Because the most of the amount in dispute was not high under the courts' power and the judicial proceedings in the municipal or district courts is shorter and faster than the normal courts, the consumers exercise their rights in the municipal or district courts in Thailand.

Bangkok North Municipal Court

The Bangkok North Municipal Court is established by the Kwang (Municipal or District) Court Establishment Act B.E.2478 (1935). Afterward there are amendments concerning the power of the Bangkok North Municipal Court for several times until now the Bangkok North Municipal Court has the territorial jurisdiction and competency of the court in twelve districts of Bangkok. The areas are estimated around 252.74 km² or 16.11% of the whole areas of Bangkok.

Currently the district court has the power to try and adjudicate civil cases having the amount in dispute not more than 300,000 bath.





Process of Proceeding the Case in the Bangkok North Municipal Court

When a plaintiff enters an action into the court and the court accepts, the civil case shall be divided into 2 categories, as follows:

1. The civil case concerning the financial institution as the plaintiff---the Bangkok North Municipal Court shall transfer the matter of this civil case to the Alternative Dispute Resolution Office, which shall proceed the mediation on behalf of the Bangkok North Municipal Court;
2. The civil case in another issue such as the car hire-purchase case and the case that the telephone server sues the consumer---this case shall be proceeded with the mediation by the Bangkok North Municipal Court firstly in accordance with the following steps:
 - (1) The division relating to accept the charge shall seal a rubber stamp in the summons for informing of the defendant and then the defendant will contact the mediation unit if the defendant wishes to mediate;
 - (2) The mediation unit shall co-ordinate to the plaintiff for fixing the day in mediation and also provide a writ of the appointment for each party via the registered mail of acceptance;
 - (3) The mediation division shall provide a file of the mediation, which separates from a file of the court's trial;
 - (4) The Chief Judge shall appoint a mediator from any judges in the court or any competent officials of the general affairs to proceed the mediation;

- (5) The mediation shall be proceeded within 7 days as from the day in court of the mediation. In the conference the parties shall come by themselves or nominate their representatives;
- (6) In the mediation process if the mediation is satisfying, a contract of the compromise shall be drafted for a judgment;
- (7) In the case where the mediation is not satisfying the case shall be entered into the normal proceedings of the court.

When the case is entered into the normal proceedings of the court, the court shall take evidences of both parties before giving the judgment. In this event it may spend a long time uncertainly because in some event the party tries to delay the case. In the past the court spent approximately 9 months.

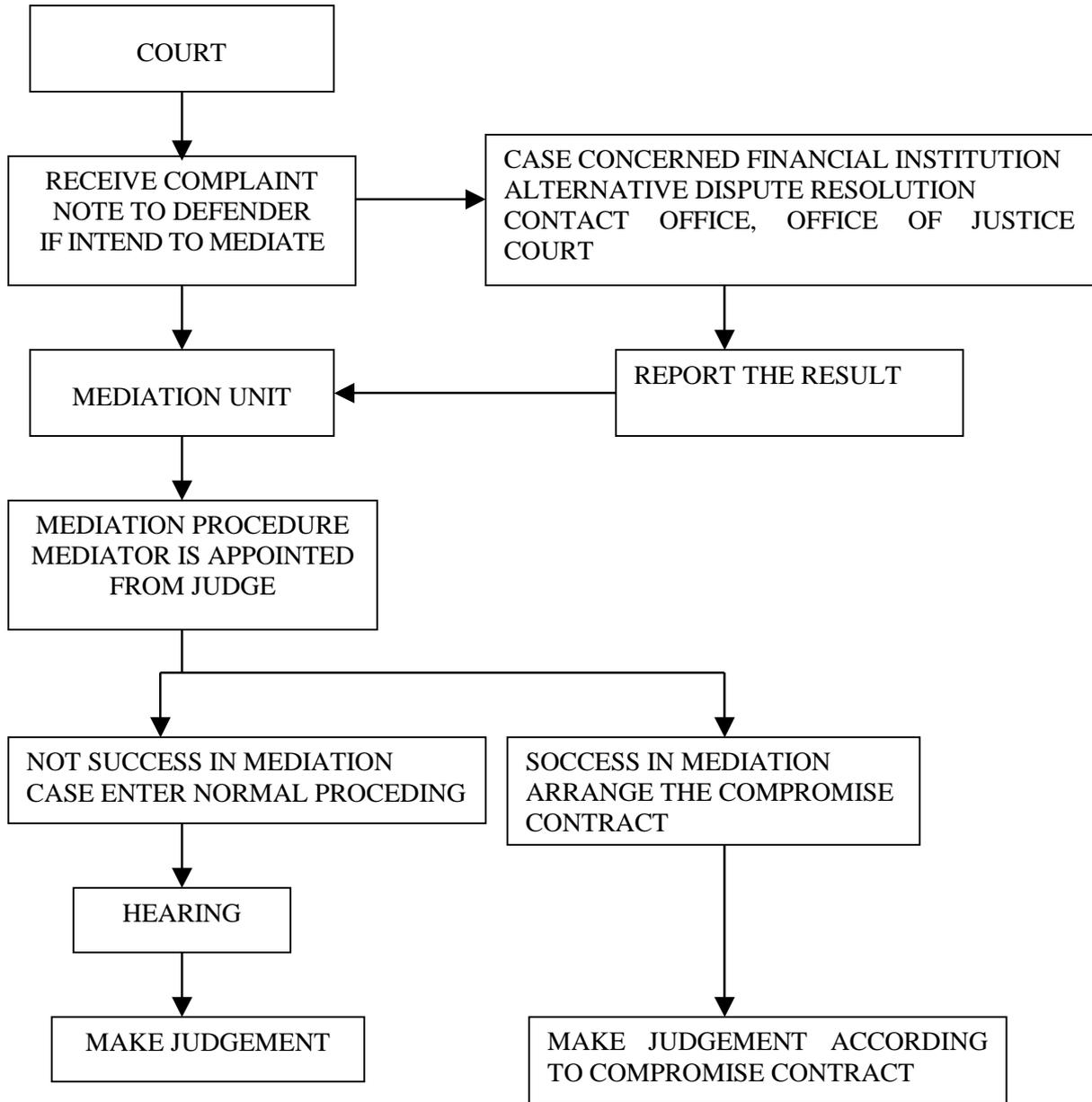
However, the Bangkok North Municipal Court presently has the **fast track** for fast disposal of the case, provided that there are 3 categories, that is, **the petty case**, the **non-complicated** case and the case in **default of defendant's appearance**.

The petty case is the case having the amount in dispute not more than 40,000 baht, and **the non-complicated** case is the case having evidences somewhat clear that make the trial proceed easily.

For the said three categories of the cases if the mediation proceedings is not satisfying, the court shall proceed the trial process only one time. It means that the trial and the judgment shall be made in the same day unless the parties ask for new mediation again, and the court may give a chance to do that.

Subsequently, the general cases are set to have the continuous trial by the Bangkok North Municipal Court. That makes the number of the trials a lot and the parties may wait for their queue around 7-8 months but on the day in court the court will make the continuous trial until the end.

Chart of Proceeding with the Trial in the Court



Normally in the cases where the trader takes legal action against the consumer if it is a petty case, the trader shall pay only 200 bath for court fees. In the other normal cases the fee is 2.5% of amount of dispute.

The attorney’s fees will depend on the agreement; in the case where the amount in dispute is not so high the attorney’s fees may be high to 10 % of the amount in dispute. But in the case where the amount in dispute is high, the percentage of the amount in dispute may be declined.

4. Comparative Study of the Proceedings of the Office of Consumer Protection Board and the Court

For lodging any complaints with the office of consumer protection there is normally no expense and it is easily to do that. The consumers are able to lodge the complaints in written or by themselves. In addition, the Office of Consumer Protection Board (OCPB) has the competent official for accepting the complaints. In contrary, the attorney is necessary for entering an action into the court except the petty case that no need to have attorney. Furthermore in the case where the amount in dispute is over than the petty case the consumers have to pay 2.5% of the amount in dispute for court fees and also pay the attorney's fees.

Regarding the time of proceedings, if it is the petty case or the case default of defendant's appearance or the non-complicated case, the court will spend a short time for the trial, that is, approximately 3 months including the general affairs. For the other civil cases, the court may spend one year or more than that. Meanwhile it is not certainty for spending the time by the OCPB; it may be more or less than 3 months because the OCPB has to send the matters to the other division relating for proceeding on behalf of the OCPB.

In the proceedings, the court has **the system of execution** better than OCPB when the consumers or the traders take legal action in the court. The OCPB has a weak point in the execution because there is likely no mechanism of the execution.

5. Case Study:

5.1 The case where the court plays the role to protect the consumer

Black Case No. 222/2544
Red Case No. 697/2544
Bangkok North Municipal Court

In this case, an elevator dealer company (seller) sold elevators to a consumer who is the marble and granite trading company. After purchasing the elevators from the elevator dealer, the consumer concluded a contract of the elevator maintenance to the elevator dealer with annual payment of the maintenance.

Then, the said elevators had a problem and the consumer contacted the dealer to send any mechanic to check and fix them. Next, it appeared that after checking and fixing the elevators, the elevator dealer asked 80,624 baht for collection of the service charge including the spare part charge. After checking the spare part costs in the market, the consumer found that the spare part costs are only 9,800 baht. Thus, the consumer paid only the price of spare part and VAT not including the service charge. The consumer did not pay the service charge to the seller because the seller was deemed to have an obligation of maintaining the elevators pursuant to the contract.

Subsequently, the elevator dealer entered an action into the Bangkok North Municipal Court and requested for the remaining payment. In the process of hearing, the elevator dealer referred that the company with service was separated from the company maintaining annually. Then, after taking the evidences, the court believed that such both companies were borne circumstantial evidences to be the same company but the seller registered into two companies

for collecting additional remuneration from the consumer. Next, in the fact that the plaintiff changed the spare parts with only 9,800 baht and a fraction but the plaintiff collected from the defendant more than 80,000 baht, it was the profiteering and took the advantage from the consumer. Consequently, the defendant, the consumer, had no obligations to reimburse the remuneration, and the court dismissed this case, and the seller shall reimburse the court fees and the attorney's fees for the consumer, as well.

5.2 The Office of Consumer Protection Board plays the role to protect consumers

1. A woman in Khongan province received an inviting document persuade to be a member of "Tesco Lotus Credit Card". The letter presented and option that she will receive a "hair dyer and iron machine 2 in 1" as the gift if she apply to be a card member. She agreed to the option and applied to be a card member.

After the company approved the application, she asked for the machine but the company did not send it to her. She used the card buying goods from Tesco Lotus store for a few times. And paid money for the goods. Meanwhile she tried to ask the company to send the machine to her. It was useless, the company did not act as promised in the inviting document.

At last she decided not paying for the goods she had shopped in Tesco Lotus store in amount of 1,327 baht and informed to the company by phone and letter that she would paid for the price when she had received the machine. There still was no answer from the company.

Eight months later, she received a notice from the company asking her to pay the price amount of 2,906 bath (included late charge and interest) otherwise she would be sued in court

Receiving the notice made her annoyed and decided to complain in letter to the Office of Consumer Protection Board (OCPB).

After received the complaint the officer called in letter to managing director of the company which concerned to the member card and the Tesco Lotus store. The managing director sent a representative to meet the officer and at last the company decided to sent the hair dyer and iron machine to the consumer as the gift and glad to receive the price amount only 1,327 bath.

2. A house owner in Prachinburi Province signed a contract to heir an anti termite company. According the contract both parties agreed that a house owner would pay amount of 7,000 bath and the company would inspect the house every 4 months for 3 years.

After the house owner paid the price, the company inspected the house only 4 times and did not do theirs job again. After the contract had signed for two years, the house owner inspected his house and found the termites in his house. He called to the company for sending men to inject the chemical material but the company did not do it.

He asked again in letter but there was no answer. So he decide to make a complaint in letter to OCPB.

After received the complaint, the OCPB called both parties to the office and mediated. Finally the house owner asked the company to inspect and inject medical material for 3 times. The company agreed to the request and the case ended.

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