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Foreword

Asia Pacific is an economically dynamic region. Inter-country trade is flourishing and domestic markets are eager for consumer products that cater to every need. The ever-growing demand for products drives innovation and productivity and generates further impetus to create and create even greater value.

Beneath the frenetic pace of the market, however, there is an intricate web of regulations. These regulations govern critical aspects in the relationship among manufacturer, distributor and consumer. A keen awareness of these regulations is of great importance, and this awareness can ensure continued presence in the market and allow a participant to thrive.

It is in this context that the Asia Pacific Dispute Resolution Group prepared the first edition of the Product Liability Guide. The guide covers the major Asia Pacific jurisdictions and presents a brief outline of applicable legislation governing phases of the product cycle, regulations governing safety standards, regulations covering specific product categories and regulations governing product liability and recall. In jurisdictions where a specific regulation exists for a product type, broad outlines of these regulations are provided as well.

The conceptual core of the guide, however, lies in its treatment of the concept of product liability. While the nature and consequences of liability varies with each jurisdiction, certain key areas such as criminal, civil and administrative liability have been given key focus.

The guide does not purport to be a comprehensive reference for all applicable regulations. Nothing would replace sound legal advice from your legal advisors. Rather, it is a tour of the fundamentals of product liability law, as it relates to individual jurisdictions within Asia Pacific. It is meant to create an awareness, and from there initiate a sound strategy for dealing with product liability and its many permutations.
We welcome any comments you may have on the content of this guide and any suggestions about topics you would like to be covered in future editions.

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Introduction

Australia’s product liability and safety law is made up of both common law and statute. Statute-based regimes govern certain types of civil liability for defective products, product recalls and other product safety issues, and common law causes of action for breach of contract and negligence are also available. A wide range of protection is offered, ranging from causes of action available to persons who suffer loss or injury as the result of a defective product, to regulators having powers to ban the sale of goods and order product recalls to be carried out.

The key federal statute is the *Australian Consumer Law* (*ACL*), which is Schedule 2 to the *Competition and Consumer Act 2010* (Cth). The Australian States and Territories have also enacted laws so that the provisions of the ACL operate within each Australian jurisdiction.

Overview of product liability law

The ACL is a nationally uniform regime that regulates the safety of consumer goods and product-related services. Instead of each State and Territory and the Commonwealth having their own product safety regulatory system, there is now a single harmonized framework throughout Australia.
The causes of action available to a plaintiff who has suffered personal injury or property damage caused by a product may include:

- strict liability for damage caused by “defective” goods under Part 3-5 of the ACL
- negligence
- breach of contract, including warranties implied into contracts by State/Territory Sale of Goods legislation
- failure to comply with statutory consumer guarantees associated with the supply of goods to consumers under Part 3-2 of the ACL
- statutory causes of action against manufacturers and importers of faulty goods under Part 5-4 Division 2 of the ACL
- causes of action based on the prohibitions against misleading or deceptive conduct and other “unfair practices” in Part 3-1 of the ACL

**Product safety**

**Product safety and information standards**

Under the ACL, the Commonwealth Minister responsible for consumer affairs (Minister) has the power to introduce a mandatory product safety standard or product information standard in relation to a product. Product safety standards specify requirements that products must comply with in relation to performance, composition, contents, method of manufacture or processing, design, construction, finish or packaging. It is common for existing voluntary standards, such as Australian standards or international standards, to be used as the basis for mandatory product safety standards.

Product information standards require prescribed information to be given to consumers when they purchase certain goods (usually by way of a warning label on, or instructions supplied with, goods).
The ACL requires all suppliers of goods, including manufacturers, importers, distributors, hirers and retailers, to ensure that the goods they supply comply with any applicable standard for the goods.

Bans

The Minister also has the power to declare goods or product-related services that may cause serious injury, illness or death as unsafe. There are two means by which they can be banned from supply:

- Interim bans – These may be imposed by a responsible Commonwealth, State or Territory minister for 60 days, with the possibility of another 60-day extension. They will apply until revoked or the goods are permanently banned.

- Permanent bans – These may only be imposed by the Minister.

Enforcement and administration

The main Federal product safety regulator is the Australian Competition and Consumer Commission (ACCC), which regulates compliance with the ACL. Certain industries or types of product have, in addition, their own Federal regulator, such as the Therapeutic Goods Administration for therapeutic goods.

The States and Territories also have government departments which are responsible for enforcing product safety and consumer protection laws. At present, these are:

- New South Wales: NSW Fair Trading
- Victoria: Consumer Affairs Victoria – Department of Justice
- Western Australia: Consumer Protection – Department of Commerce
- Australian Capital Territory: ACT Fair Trading – Department of Justice and Community Safety, Office of Regulatory Services
- South Australia: Consumer and Business Services
- Northern Territory: the ACCC
- Queensland: Queensland Fair Trading
- Tasmania: Tasmania Consumer Affairs and Fair Trading – Department of Justice

**Specific sector regulation**

The following Commonwealth regulators have specialist powers complementing the powers exercised by the ACCC:

- Therapeutic Goods Administration (for medicines and medical devices)
- Australian Pesticides and Veterinary Medicines Authority (for agricultural and veterinary products)
- Food Standards Australia and New Zealand (for food)
- Department of Infrastructure and Regional Development (for motor vehicles)

There are also State/Territory regulators in some industry sectors. For example, there is an electrical product safety regulator in each State/Territory.

**Product recall**

Product recalls in Australia are primarily governed by Division 3 of Part 3-3 of the ACL. The law provides for both voluntary and compulsory recalls. All “consumer goods” are subject to the ACL.

The majority of recalls conducted in Australia are voluntary recalls. Although voluntary recalls are the responsibility of the supplier, they are monitored by the ACCC. For certain kinds of goods, industry regulators will also monitor the product recall (see “Specific sector
regulation” above). The ACL does not specify the circumstances in which a supplier must carry out a product recall. The ACL does, however, require that if a supplier takes action to recall consumer goods in Australia because:

- the goods will or may cause injury to any person;
- a reasonably foreseeable use (including a misuse) of the goods will or may cause injury to any person;
- a safety standard for the goods is in force and they do not, or it is likely they do not, comply with the standard; or
- an interim ban, or a permanent ban, on the goods is in force, the supplier must, within two days, notify the Minister in writing of the goods that are the subject of the recall and the nature of the defect or dangerous characteristics of the goods.

The ACCC does not specify how a recall should be carried out, but the ACCC has issued Consumer Product Safety Recall Guidelines which contain information about when it expects a recall to be carried out and how it recommends conducting a recall (http://www.productssafety.gov.au/publication/consumer-product-safety-recall-guidelines?source=recalls). Although the conduct of a voluntary recall is the responsibility of the supplier, it is advisable to conduct product recalls in a way that is acceptable to the ACCC, otherwise the ACCC may refer the matter to the Minister and recommend a compulsory recall.

The ACL gives the Minister power to order a compulsory recall of consumer goods if: (a) it appears to the Minister that the goods will or may cause injury to a person; (b) the goods do not comply with an applicable product safety standard or product information standard; or (c) the goods are subject to a banning order; and (d) it appears to the Minister that the supplier has not taken satisfactory action to prevent the goods from causing injury. Generally, the Minister will order a
compulsory recall only if he or she considers that voluntary recall action taken, or proposed to be taken, by the supplier is inadequate.

Civil liability (for products which are dangerous, defective, misdescribed, do not perform to specification, etc.)

Strict liability for defective goods causing injury (Part 3-5 of the ACL)

If a person is injured, or a person’s property is damaged, as a result of a product having a “safety defect,” the manufacturer of the product is liable to compensate that person under Part 3-5 of the ACL for losses suffered as the result of the injury or property damage.

“Manufacturer” is defined broadly in the ACL and covers not only actual manufacturers but also importers, those held out (by themselves or by others) as the manufacturer, and those who use their own brand name in relation to the goods.

A product has a “safety defect” if its safety is not such as persons generally are entitled to expect. This is an objective test based on community expectations. Goods are not expected to be absolutely risk-free and all relevant circumstances (such as the way in which the product has been marketed, packaged, marked, any instructions given, expected use and date supplied) are to be taken into account when determining whether consumer expectations are met. The provisions of Part 3-5 of the ACL cannot be excluded or modified by contract and only limited defenses are available.

Negligence

A person who suffers loss or injury caused by a product may also be able to bring an action in negligence against the manufacturer or, in some circumstances, a supplier or importer. Under the law of negligence, a manufacturer of a product owes a duty of reasonable care to avoid injury being suffered by those using the product. The duty extends not only to the person using the product but includes “bystanders” whom the manufacturer should have reasonably foreseen
may be injured by the product. A plaintiff must show that the manufacturer breached its duty, and that the plaintiff suffered loss as a result, such loss not being too remote. Many negligence claims fail because the plaintiff is unable to prove that the loss suffered was caused by the breach of duty. In this regard, it may be easier to bring a claim under Part 3-5 of the ACL, as it is a strict liability cause of action.

Breach of contract

In order for a product liability claim to be made for breach of contract, there must exist a valid contract between the plaintiff and defendant. The plaintiff must establish the breach of a term of the contract (whether an express or implied term) by the defendant, and loss arising from that breach. The contract in question may contain express terms as to the quality of the product, but in many cases the injured party will have to rely on terms implied into the contract by statute.

A significant drawback of contract as a cause of action for redressing product-related loss is the doctrine of privity of contract under which, with limited exceptions, only a party to a contract may sue to enforce rights and obligations arising under the contract. In a product liability context, a person who is injured by or suffers loss because of a product may not be the person who purchased it and, accordingly, would have no claim for breach of contract against the manufacturer or supplier of the product.

Consumer guarantees

Pursuant to Part 3-2 Division 1 of the ACL there are statutory “consumer guarantees” in respect of various goods and services supplied to consumers. If a consumer guarantee is not satisfied, consumers may claim various forms of relief under Part 5-4 of the ACL against the supplier or possibly the manufacturer. The remedy available to the consumer will be dependent upon whether the problem with the good or service can be categorized as “major” or “minor.”
A “consumer” is defined very broadly in the ACL as a person or corporation acquiring goods or services for AUD 40,000 or less, or a person acquiring goods or services for more than AUD 40,000 if the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption.

The consumer guarantees include that:

- goods supplied are of acceptable quality, which means that they are as fit for all the purposes for which goods of that kind are commonly acquired, as acceptable in appearance and finish, as free from defects, as safe and as durable as a reasonable consumer would regard as acceptable
- goods supplied are fit for any disclosed purpose (where that purpose is made known to the seller expressly or by implication)
- goods supplied by description, sample or demonstration correspond with the description, sample or demonstration
- services are provided with due care and skill and within a reasonable time
- services are fit for any specified purpose

Statutory causes of action against manufacturers for faulty goods (Part 5-4 Division 2 of the ACL)

Part 5-4 Division 2 of the ACL extends the circumstances in which a consumer has a right of action against a manufacturer of faulty goods (as with Part 3-5 above, “manufacturer” has a broad meaning). This overcomes the doctrine of privity of contract by allowing a claim by a consumer directly against a manufacturer, even though there is no contract between them. Part 5-4 Division 2 applies where a manufacturer supplies to a reseller, and the goods are ultimately supplied to a consumer. The plaintiff may either be the purchaser or a person who acquires the goods from the purchaser (other than for the
purpose of re-supply). Liability is imposed on manufacturers direct to consumers for:

- goods which are not of acceptable quality
- goods which do not correspond with a description applied to the goods by the manufacturer
- goods for which repairs and spare parts are not available for a reasonable time after purchase
- non-compliance with express warranties

For Part 5-4 Division 2 to apply, the goods the subject of the action must be of a kind ordinarily acquired for personal, domestic or household use or consumption.

To establish a breach of Part 5-4 Division 2, it is necessary to show that the loss or damage suffered by the affected person occurred because of the failure to comply with the guarantee and it was reasonably foreseeable that the affected person would suffer such loss or damage as a result of such a failure.

Unfair practices (Part 3-1 of the ACL)

Statutory liability may be imposed on a manufacturer or a seller of goods under the “unfair practices” provisions in Part 3-1 of the ACL and corresponding State/Territory legislation. The farthest-reaching of these provisions is section 18 of the ACL, which prohibits a person, in trade or commerce, from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive. Such conduct may include failing to give warnings about products and making false or misleading statements about products. Failure to meet a warranty may also give rise to a contravention of section 18.
Other relevant provisions in Part 3-1 of the ACL include:

- section 21, which prohibits unconscionable conduct in connection with goods or services
- section 23, which prohibits the use of unfair terms in consumer contracts
- sections 29(a) and (b), which prohibit a person from falsely representing that goods or services are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use
- section 29(c), which prohibits a person from falsely representing that goods are new
- section 29(g), which prohibits a person from representing that goods or services have a sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have
- section 33, which prohibits a person from engaging in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods

A person who is affected by conduct which contravenes these provisions may seek damages or a wide range of other remedies against the contravening party. The ACCC also has the power to bring an action against a party for contravening these provisions.

**Penalties**

**Product safety laws**

It is an offense under the ACL for a corporation to supply goods that do not comply with a mandatory product safety standard or a product information standard, or to supply goods which are banned. Not only the corporation, but also directors, officers and anyone else who is
knowingly concerned in the supply of goods in breach of a relevant standard or ban, are exposed to criminal liability under the ACL. These offenses are currently punishable by fines of up to AUD 1.1 million for corporations and AUD 220,000 for individuals.

Where a mandatory product safety standard or product information standard has been breached, the ACCC can also seek immediate withdrawal of goods from sale, order the recall of goods from consumers, require enforceable undertakings to be provided and seek injunctions, orders for corrective advertising, refunds or repair of the goods and legal costs.

Product recalls

Failure to comply with a compulsory recall notice is a criminal offense, punishable by a maximum fine of up to AUD 1.1 million for corporations and AUD 220,000 for individuals. Failure to notify the Minister of a product recall within the specified time limit is a criminal offense, punishable by a maximum fine of AUD 16,650 for corporations and AUD 3,330 for individuals, and may be the basis for civil action.

Class actions

All State/Territory courts in Australia, as well as the Federal Court, permit class actions (known as representative actions) to be commenced by a representative plaintiff on behalf of others in circumstances where several people have claims which arise out of the same or related circumstances and the claims give rise to a substantial common issue of law or fact.

In addition, the ACCC has the ability to bring a representative action for breach of Part 3-5 or Part 5-4 of the ACL, by making an application on behalf of one or more persons who have suffered injury or are likely to suffer loss.
Reform

The effectiveness of the ACL, including its product liability and product safety provisions, is currently under review. The review is being carried out by Consumer Affairs Australia and New Zealand, which issued a report in March 2017 recommending significant changes to the ACL’s product liability and product safety provisions. Key recommendations include:

- the introduction of a new general product safety provision requiring manufacturers and suppliers to ensure the safety of a product before it enters the market

- increased penalties for contravening the ACL; proposed maximum penalties are:
  - for a corporation, the greater of
    - AUD 10 million; or
    - three times the value of the benefit that the company received from the contravening conduct; or
    - if the court cannot determine this value, 10% of the corporation’s annual turnover
  - for an individual, AUD 500,000

- the introduction of a statutory definition of “voluntary recall”
Introduction

China promulgated the *Product Quality Law of the People’s Republic of China* in 2000 (effective as of 1 September 2000), which is the key legislation addressing the product liability of sellers and manufacturers. Other provisions concerning product liability, product safety and product recall are scattered in various pieces of legislation and administrative regulations.

These laws and regulations cover civil liability, administrative penalty, product recall and criminal liability for manufacturing or providing substandard or defective products and for other product quality issues.

Overview of product liability law

The main pieces of legislation and regulations governing civil liability, administrative liability, product recall, and criminal liability include:

Civil liability

- Breach of contract for selling faulty goods under the *Contract Law* (1999) and the *Product Quality Law* (revised in 2000)
- Tortious liability for manufacturing or selling defective products under the *General Principles of Civil Law* (amended in 2009), the *Product Quality Law* and the *Tort Law* (2010)

- Protection for consumers under the *Consumer Protection Law* (revised in 2013)

**Administrative liability**

- Administrative liability (such as banning the products from production or sale, confiscating illegal income and revoking business licenses) under the *Product Quality Law* for manufacturing or selling unsafe products or products that are in violation of the *Product Quality Law*

- Administrative liabilities under a variety of other regulations regulating other aspects of the products, including labeling and certification, and regulations on specific sectors of industry

**Product recall**

- General requirement for recall of defective products under the *Consumer Protection Law* and the *Tort Law*

- Specific rules for recall of consumer goods, automobiles, food, pharmaceuticals and other products under respective regulations

**Criminal liability**

Criminal liability for manufacturing or selling certain defective products or products in violation of laws under the *Criminal Law* (1997, most recently amended in 2015).

**Product safety**

**Product safety regulation**

Under the *Product Quality Law*, products should comply with the national or industry standards for the safeguarding of health, personal safety or the safety of property. If any product does not comply, the
producer or seller of the products will be ordered to cease the production or sale, and any product produced or sold illegally will be confiscated and a fine will be imposed. Any illegal income will be confiscated. In serious cases, the producer’s or seller’s business license will be revoked. If a criminal offense is committed, the offender will be prosecuted.

The Special Rules of the State Council on Strengthening the Supervision and Management of the Safety of Food and Other Products (2007) provides specific rules on the safety of food, edible agricultural products, pharmaceuticals and other products concerning personal health and safety. Government authorities overseeing agriculture, sanitation, inspection, commerce and pharmaceuticals have the power to impose administrative penalties on the producer or seller of the relevant products.

The Food Safety Law (2015) further provides specific rules on food safety in relation to food safety evaluation, standards, production and distribution, inspection, import and export, accident and supervision. The 2015 amendments have expanded the scope of the Food Safety Law to cover issues related to online purchase of food and genetically modified food.

Product safety standards

There are national standards and industry standards for safeguarding personal health, personal safety and property safety. Products that do not conform to the standards are prohibited from production, sale or import.

The Standardization Administration of the People’s Republic of China (SAC) is responsible for establishing and overseeing the national standards. Relevant departments of the State Council may introduce industry standards (which should be registered with SAC). Local SAC can introduce local standards (which should be registered with SAC and relevant departments of the State Council).
The National Health and Family Planning Commission is responsible for the introduction of national standards for food safety. If there is no relevant national standard, the local government authority in charge of health may introduce local standards for food safety (which should be registered with the National Health and Family Planning Commission). Food safety standards are mandatory standards.

Certification and Accreditation Administration of China (CNCA)

The Regulations of the People’s Republic of China on Certification and Accreditation were introduced by the State Council in 2003 and amended in 2016, following which CNCA was made responsible for the administration and supervision of certification activities in China. “Certification” refers to the conformity assessment activities of accredited certification bodies certifying that a specific product, service or management system conforms to applicable technical regulations or compulsory standards imposed by the relevant technical regulations. CNCA also formulates the list of products that require compulsory certification and supervises the compulsory certification activities.

Enforcement and administration

The main product safety regulators at the national level are the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and the State Administration for Industry and Commerce (SAIC). AQSIQ mainly regulates product quality in the manufacturing and importing process, and SAIC regulates product quality in the market (for the protection of the market and consumers).

Local government authorities responsible for supervising product quality (such as the Bureau of Quality and Technical Supervision, and the Entry-Exit Inspection and Quarantine Bureau) and the local Administration for Industry and Commerce oversee product quality within their administrative divisions.

AQSIQ, SAIC and the local authorities have the power to take administrative measures such as warnings, banning of the product’s
manufacture and sale, seizure, confiscation of illegal gain, fines, ordering the suspension of operation for rectification and revocation of business licenses.

Certain industries or types of product also have their own regulators. For example, the National Health and Family Planning Commission has the power to formulate food safety standards; the China Food and Drug Administration is responsible for the supervision of food safety in the circulation process, and also for the formulation and enforcement of standards for pharmaceutical products and medical instruments; the Ministry of Agriculture regulates agricultural products as well as seeds, pesticides and veterinary medicines.

**Specific sector regulation**

The *Product Quality Law* applies to all sectors except for construction projects. In addition, there are laws and administrative regulations specifically regulating certain types of products. The main pieces of such legislation include:

**Food**

- *Special Rules of the State Council on Strengthening the Supervision and Management of the Safety of Food and Other Products* (2007)
• Administrative Regulations on the Supervision of the Quality and Safety of Dairy Products (2008)

• Administrative Measures on the Inspection and Quarantine Supervision of Imported and Exported Dairy Products (2013)

• Guiding Opinions on Regulating the Food Processing Enterprises (2009)

• Administrative Measures on Sample Inspection on Food Safety (2015)

• Measures for the Administration of the Safety of Imported and Exported Food (2012)

• Provisions on the Production, Supervision and Administration of Food Additives (2010)

• Administrative Measures for the Supervision of Food Safety in Catering Service (2010)

• Implementation Rules for the Supervision and Administration on the Quality Safety of the Food Manufacturing and Processing Enterprises (2005)

Pharmaceuticals

• Pharmaceutical Administration Law (1984, most recently amended in 2015)

• Regulations for Implementation of the Pharmaceutical Administration Law (2002, amended in 2016)

• Measures on the Administration of Drug Recalls (2007)

• Administrative Provisions on Pharmaceutical Directions and Labels (2006)
• **Regulations on the Control of Narcotics and Psychotropic Drugs** (2013, amended in 2016)

• **Good Manufacturing Practice for Drugs** (2010)

• **Good Supply Practice for Pharmaceutical Products** (2000, amended in 2016)

• **Administrative Measures on Report and Monitoring of Adverse Drug Reaction** (2011)

Toys:

• **Measures for the Inspection, Supervision and Administration of Import and Export Toys** (2009, amended in 2015)

• **Administrative Provisions on the Recall of Children’s Toys** (2007)

Agricultural products

• **Law on Agricultural Product Quality Safety** (2006)

• **Administrative Measures on the Quality Safety Monitoring for Agricultural Products** (2012)

• **Administrative Code of Feed Quality and Safety** (2015)

• **Regulations on Administration of Feed and Feed Additives** (1999, most recently amended in 2016)

• **Provisions for the Safety Supervision and Administration of Agricultural Machines** (2009, amended in 2016)

• **Administrative Measures for the Registration of Import Feed and Feed Additives** (2014, amended in 2016)

• **Administrative Measures for the Inspection, Quarantine and Supervision of Imported and Exported Feedstuff and Feed Additives** (2009)
• Regulations on the Supervision and Administration of Cotton Quality (2006)

Special equipment
• Special Equipment Safety Law of the People’s Republic of China (2014)
• Regulations on Safety Supervision of Special Equipment (2003, amended in 2009)

Automobiles
• Administrative Regulations on Recall of Defective Auto Products (2013)
• Implementing Measures for the Administrative Regulations on the Recall of Defective Auto Products (2016)

Medical devices
• Administrative Measures for Medical Device Recall (2011)
• Regulations on the Supervision and Administration over Medical Devices (2000, amended in 2014)
• Administrative Measures for Medical Device Recall (Draft for Comment) (2016)

Cosmetics
• Measures for the Inspection, Quarantine, Supervision and Administration of Import and Export Cosmetics (2012)
• Notice of the Ministry of Health on the Promulgation of the Rules for the Sanitation of Cosmetics Manufacturers (2008)
Railway equipment


Compulsory product


Product recall

Relevant legislation

The *Consumer Protection Law* provides a general requirement for a business operator to report to relevant authorities any material product defect that may cause personal injury or property damage to a consumer. The business operator is also required to inform the general public of such defects and to undertake preventative measures.

There are currently several separate recall regulations relating to consumer goods, automobiles, food and pharmaceuticals, etc.

AQSIQ released a recall regulation governing product in general in 2015, the *Administrative Measures for Recall of Defective Consumer Goods*. This rule came into effect on 1 January 2016. It imposes mandatory product recall requirements on the products covered by a catalogue, which currently includes electric gears and products used by children. For voluntary product recall of other products not covered in the catalogue, this rule can be used as reference. This rule does not apply to tobaccos, automobiles, aircrafts and ships for civil use, food, pharmaceuticals, cosmetics, medical devices, pesticide products, all of which are subject to industry-specific regulations.

Summary of the current product recall regulations

Under the current recall regulations, product recalls must be carried out where the product in question is unsafe or poses unreasonable danger to personal health, personal safety or property safety.
The manufacturer of the product must carry out a voluntary recall if a product is unsafe, defective or unreasonably dangerous. The manufacturer is required to file a recall plan with the relevant government authority monitoring the voluntary recall.

If the product is defective but the manufacturer fails to carry out a voluntary recall, the government authority may initiate a mandatory recall by issuing a notice to the manufacturer to require it to conduct the recall. For example, for food recalls, the government authority may order a mandatory recall in these circumstances:

- where the manufacturer intentionally conceals the truth or fails to conduct a recall when it should have done so
- where the damage escalates or recurs due to the manufacturer’s fault
- where a safety risk is discovered by the authorities in its routine random examination of products

**Imported product liability**

In 2012, the AQSIQ promulgated the *Administrative Provisions on the Risk Precaution and Rapid Response for Imported and Exported Industrial Products* (effective as of 15 January 2013), which aims to regulate the quality of imported industrial products.

The AQSIQ or its local branches may conduct risk assessment against defective products, and if it is confirmed that the products have quality risks, the AQSIQ may take the following actions:

- Alert the local AQSIQs of the quality risks, as a result of which the local AQSIQs may reassess and inspect the quality of the imported product.
- Alert Chinese customers of the quality risks associated with the imported product.
• Restrict importation of the concerned products into China (the ban on import can be removed if it can be proven to the AQSIQ that the risks have been eliminated).

• Issue orders on suspension of the sale/use and destruction of the imported product.

• Seal/detain the products imported into China and used by the Chinese customers.

• Order a recall of the imported product.

• Impose a more rigid inspection standards in future over the products.

Civil liability

Strict liability for manufacturers of defective products and consumer commodities

According to the Product Quality Law, the Tort Law and the Consumer Protection Law, a manufacturer of defective products and consumer commodities is held strictly liable if a defect in its products or commodities causes personal injury or other property damage.

The Product Quality Law defines “defect” to mean an unreasonable danger existing in a product that endangers personal safety or the safety of property. Where a product is governed by state or industry standards for safeguarding health, personal safety or the safety of property, a defect is deemed to exist in the product if it fails to conform with such standards.

A manufacturer will not be liable for damages if it can prove the following:

• The product has not been put into circulation.

• The defect causing the harm did not exist when the product was put into circulation.
• The level of science and technology at the time when the product was put into circulation was not sufficient to detect the existence of the defect.

Distributor's liability

Under the Product Quality Law and the Tort Law, if a product is defective due to the fault of the distributor, and such defect causes personal injury or damage to property (other than to the defective product itself), the distributor shall be liable for damages. In the event that the distributor is unable to identify the manufacturer or the supplier of a defective product, the distributor shall be liable for damages.

The person who has suffered loss may choose to sue either the manufacturer or the distributor. If the distributor is found liable for damages where the manufacturer was the party at fault, the distributor may seek indemnification from the manufacturer, and vice versa.

Breach of contract under the Contract Law

Under the Contract Law, if a party’s breach of contract results in personal injury or property damage to another party, the aggrieved party may choose whether to claim for breach of contract or in tort in accordance with other laws.

If the aggrieved party chooses to bring a claim for breach of contract, he or she must establish that the quality of the product in question does not comply with the contract’s requirements and stipulations. If the contract does not set out the product quality requirements, the quality of the product is required to meet applicable national, local or industry standards. Where there are no relevant state or industry standards, the quality of the product is required to meet customary standards or to be consistent with the objective of the contract.

Taking timely remedial measures

The Tort Law provides that if a defect is discovered after a product has entered the market, the manufacturer and the distributor are
required to take timely remedial measures, such as warnings to the market and a product recall. The manufacturer and the distributor shall be liable for any failure to take the timely or sufficient remedial measures. Such provision may be able to form a basis of a claim against a manufacturer or distributor that fails to recall products as required.

**Criminal liability**

**General liability**

The manufacturer or supplier of counterfeit or substandard products may be subject to criminal liabilities. Specifically, if they have intentionally manufactured or sold substandard products with a sales revenue of RMB 50,000 or more, they may be charged with the crime of manufacturing and selling counterfeit or shoddy products.

**Specific crimes**

Certain products related to human health and safety are specifically regulated under the *Criminal Law*, which provides for eight crimes in relation to the manufacturing or selling of the following products by manufacturers and suppliers. For these crimes the sales revenue is not an element, and harsher penalties are imposed:

- sham pharmaceuticals sufficient to seriously endanger human health
- substandard pharmaceuticals causing serious harm to human health
- failing food hygiene standards, which is sufficient to cause a major outbreak of food poisoning or other serious food-borne diseases
- toxic or harmful food
- substandard medical devices or medical hygiene materials
• products failing national standard or industry standard adopted to ensure personal or property safety (such as electrical appliances, pressurized containers, flammable or explosive products) and causing severe consequences

• sham agricultural chemicals, veterinary medicines, fertilizers or seeds causing relatively large losses to production

• substandard cosmetics causing severe consequences

Penalties

Civil penalties

• If a defect in a product is found to have caused personal injury, the compensation shall include expenses such as medical expenses, nursing costs during the treatment period and loss of income due to absence from work. If the defect causes a permanent disability, there shall be additional compensation payable to the disabled person, including for self-aid tools, living allowance, disability compensation and the necessary living expenses of his dependents. If the defect causes the death of a person, there shall be additional compensation payable, including for funeral expenses, death compensation and the necessary living expenses of the dependents of the deceased.

• If a defect in a product causes damage to another person’s property, the offending party is required to restore the property to its original state or pay compensation according to the market price. If a person suffers other serious losses as a result thereof, the liable party shall compensate for such losses.

• Where a person’s health or life is seriously harmed due to the defective product, a claim for mental damages may be available.

• Where a defective product was manufactured or distributed by the manufacturer or the distributor who was aware of the defect, and the defect causes death or serious harm to health, the aggrieved
party is entitled to claim punitive damages. Due to the general language of this provision, it is expected that it will be necessary to clarify, among other things, the calculation and appropriate range of the punitive damages.

Administrative penalties

Where a product is found to be non-compliant with national or industry standards, the offending party may be ordered suspension of production or sale, confiscation of the illegitimately produced or on-sale products and the sale proceeds, and may be imposed fines amounting to no more than three times the value of the illegitimately produced or on-sale products (including those already sold and not yet sold). The business license may be revoked under severe circumstances.

Criminal penalties

- Crime of manufacturing and selling of counterfeit or shoddy products – A person found liable for this crime is subject to criminal detention or imprisonment for a period between six months and a life sentence, and a fine ranging from 50% to 200% of the sales revenue, or confiscation of assets.

- Crimes of manufacturing and selling of specific products – The criminal penalties for the eight crimes (referred to above) of manufacturing and selling of specific products include criminal detention, imprisonment for a period of between six months and a life sentence, and a fine ranging from 50% to 200% of the sales revenue, or confiscation of assets.

Class actions

Class actions are provided for under the Civil Procedure Law (1991, most recently amended 2013). In class action proceedings, the court may issue a notice setting out the case status and the claims made, which notifies any relevant parties that they are required to register at the court within a prescribed period. The court’s judgment and ruling
in class actions will bind all the registered parties. Those parties who do not register but initiate separate proceedings within the statute of limitations shall also be bound by the court judgment or ruling in the class action.

Under the *Consumer Protection Law* (1993, most recently amended in 2014), the China Consumers’ Association and the consumers’ association established in the provinces, the autonomous regions and municipalities directly under the central government have the right to institute legal proceedings in the people’s court.

**Reform**


A major difference in the *Consumer Protection Law* is the reversion of burden of proof where disputes arise due to a defect found by a consumer in the durable commodities or decoration services provided by business operators, such as motor vehicle, computer, television, refrigerator, air-conditioning and washing machine. Article 23 of the *Consumer Protection Law* provides that the business operator shall bear the burden of proof with respect to the defect in question within six months from the date when the customer receives the aforesaid commodity or service.

The *Consumer Protection Law* also contains a new provision in relation to the liability of providers of online trading platforms. Article 44 of the *Consumer Protection Law* provides that where the providers of the online trading platform know clearly or should have known that the sellers of products or the suppliers of services make use of the platform to infringe the legitimate rights and interests of customers, but fails to take measures, the providers shall bear the joint liability with the sellers of products or the suppliers of services.
Introduction

Hong Kong has no consolidated product liability and consumer safety law. The law in this area is governed by local legislation and case law. Statute-based regimes govern certain types of civil and criminal liability for defective or unsafe products, product recalls and other product safety issues. Common law causes of action for breach of contract and negligence are also available. Apart from certain strict liability offenses imposed by various statutes, there is no strict liability regime in Hong Kong.

Overview of product liability law

In the absence of a single comprehensive legislation on product liability, various ordinances and regulations impose statutory duties and criminal liability on persons who manufacture, supply or import products that are defective or do not comply with the applicable safety requirements, or who engage in unfair trade and marketing practices. Certain legislation targets specific sectors or products. The main pieces of legislation are:

- Consumer Goods Safety Ordinance
- Trade Descriptions Ordinance
- Toys and Children’s Products Safety Ordinance
• Electricity Ordinance
• Food Safety Ordinance
• Public Health and Municipal Services Ordinance
• Chinese Medicine Ordinance
• Pharmacy and Poisons Ordinance

In terms of civil liability, the causes of action available to a plaintiff who has suffered loss or injury to person or property caused by a product are founded in the following:

• the torts of negligence (including personal injury claims) and breach of statutory duty

• breach of contract for sale of goods, including breach of terms implied into contracts by the Sale of Goods Ordinance

**Product safety**

**Consumer Goods Safety Ordinance**

The main piece of legislation regulating product safety is the Consumer Goods Safety Ordinance (**CGSO**). The CGSO imposes a statutory duty on manufacturers, importers and suppliers of certain consumer goods to ensure that the consumer goods they supply are safe for local consumption.

Under the CGSO, all consumer goods (except those referred to in the paragraph below) must comply with the general safety requirement or safety standards and specifications prescribed by the Secretary for Commerce and Economic Development.

Consumer goods not covered by the CGSO are food and water, pharmaceutical products, poisons and antibiotics, traditional Chinese medicines, pleasure craft and similar vessels, aircraft (other than hang-gliders), motor vehicles, gas, liquefied petroleum gas containers, gas
appliances, gas fittings and flexible gas tubing as defined under the Gas Safety Ordinance, electrical products, pesticides, tobacco and tobacco products, toys and children’s products within the meaning of the Toys and Children’s Products Safety Ordinance, and any other goods the safety of which is controlled by specific legislation.

Recent amendments made to the Trade Descriptions Ordinance (TDO), which came into effect in 2013, extend the coverage of the legislation so as to prohibit specified unfair trade practices deployed by traders against consumers, including false trade descriptions of goods and services, misleading omissions, aggressive commercial practices and bait advertising.

**Enforcement and administration**

The main consumer goods safety regulator is the Commissioner of Customs and Excise (C&E), which enforces the CGSO. The C&E is also responsible for regulating compliance with other legislation, including the Toys and Children’s Products Safety Ordinance and the TDO.

Certain industries or types of products have their own regulators, such as the Food and Environmental Hygiene Department (FEHD) and the Department of Health in relation to the supply of food and drugs, and the Electrical and Mechanical Services Department (EMSD) for electrical products.

The C&E may act on a complaint or may conduct spot checks of its own volition. Where a mandatory consumer product safety standard or consumer product information standard has been breached by any person or entity, the C&E may issue one or more of the following notices requiring remedial measures:

- Notice to warn – to require that person to publish, at his own expense, a warning that the product may be unsafe unless certain steps are taken
• Prohibition notice – to prohibit that person from supplying certain consumer goods that are found to be unsafe for a specified period of time

• Recall notice – to require the immediate removal of unsafe goods from sale and the retrieval of those goods already supplied

• Requirement notice – to require (i) mandatory testing of the goods in the form and manner specified by the C&E; (ii) modification of the labeling, packaging or advertising of the goods; and (iii) inclusion of warning notices in advertisements for the goods or to cease advertising

Specific sector regulation

Toys and children’s products

The Toys and Children’s Products Safety Ordinance requires toys (including their packaging) and children’s products (including products intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under four years of age, and their packaging) manufactured, imported or supplied for local consumption to comply with at least one of the three prescribed international safety standards. A toy or children’s product is regarded as safe if it complies with any one of those international standards. This regime not only ensures that the level of safety accorded to children is on a par with that in advanced economies, but also avoids the costs of establishing a separate set of standards for the Hong Kong market. Apart from the applicable international safety standards, additional requirements concerning identification markings, warnings or cautions and concentration of phthalates in toys and children’s products are also imposed by subsidiary legislation.

Food

The basic legislation regulating food safety in Hong Kong is laid down in Part V of the Public Health and Municipal Services Ordinance. The main provisions cover general protection for food
purchasers, offenses in connection with the sale of unfit food and adulterated food, composition and labeling of food, food hygiene, and seizure and destruction of unfit food.

The Food Safety Ordinance is relatively new legislation that came into full operation in February 2012. It provides new food safety control measures, including a registration scheme for food importers and food distributors and a requirement for food traders to maintain proper records of the movements of food to enhance food traceability. These new measures allow the government to trace the source of the food more effectively and take prompt action when dealing with food safety incidents. The new ordinance also empowers the authorities to make regulations for tightening import control on specific food types, make orders prohibiting the import and supply of problem foods, and order the recall of food products.

Therapeutic goods

Chinese medicines and non-Chinese medicines are regulated under the Chinese Medicine Ordinance and the Pharmacy and Poisons Ordinance, respectively. Apart from these two main pieces of legislation, the Import and Export Ordinance, the Undesirable Medical Advertisements Ordinance, the Antibiotics Ordinance and the Dangerous Drugs Ordinance also govern the control of drugs in Hong Kong.

Medicines and pharmaceutical products to be applied on human or animal bodies must obtain approval and registration prior to sale in the market. Products will only be registered if they conform to the Pharmacy and Poison Board’s satisfaction in terms of safety, efficacy and quality. Upon registration, products are given a registration number that must be printed on the label. All manufacturers, wholesalers, importers/exporters and retailers must obtain the requisite licenses for their businesses for dealing with drugs.

Medicines are classified into three main classes according to the severity of the diseases they are intended to treat and the seriousness
of the side effects they cause. Medicines in different classes have to be
sold through different channels and under different specified
conditions (for example, certain medicines must be sold on doctor’s
prescription and/or in registered pharmacies).

Electrical products

Under the Electricity Ordinance, the EMSD can prohibit the use or
supply of an electrical product that does not meet prescribed safety
requirements. The Electrical Products (Safety) Regulation (**EPSR**),
which is a subsidiary legislation under the Electricity Ordinance,
prescribes specific requirements and standards for household electrical
products supplied in Hong Kong. In general, electrical products
conforming to international safety standards are deemed to have
complied with the applicable safety requirements under the EPSR. All
household electrical products supplied in Hong Kong must have a
valid certificate of safety compliance in order to satisfy the
requirements of the EPSR.

There is no pre-approval registration requirement for household
electrical products supplied in Hong Kong, but suppliers are
encouraged to participate in the voluntary registration scheme
established by the EMSD.

Product recall

Consumer goods

The CGSO confers power on the C&E to require the immediate
withdrawal of consumer goods from the market, and the retrieval of
those items already sold, by serving a recall notice on the supplier if
the C&E reasonably believes that the consumer goods do not comply
with an applicable safety standard or are unsafe, and that there is a
significant risk that the consumer goods will cause serious injury.
Failure to comply with a recall notice constitutes an offense.
Toys and children’s products

For toys or children’s products that do not comply with the applicable safety requirements, or where there is a significant risk that the product will cause serious injury, the C&E can impose a mandatory product recall by serving a recall notice on the supplier. Again, failure to comply with a recall notice constitutes an offense.

Food

Under the Food Safety Ordinance, the FEHD may make a food safety order directing that any food supplied be recalled or isolated, destroyed or otherwise disposed of. In cases of public health emergencies, the FEHD may alert the public before a decision on recall has been reached.

In most cases in Hong Kong, food recalls are carried out on a voluntary basis. The FEHD’s role in a voluntary recall is to monitor progress and assess the adequacy of actions taken by the food supplier concerned. The food supplier is required to provide a progress report on the recall to the FEHD at regular intervals, and to produce a final report within a time frame specified by the FEHD upon completion of the recall. The FEHD may consider taking further action, such as extending the recall or making a food safety order, if the report is unsatisfactory.

Therapeutic goods

The Department of Health may alert the public to defects in a drug and instruct the relevant licensee to recall and dispose of the product. The FEHD has published extensive guidelines governing the recall of pharmaceutical products.

Since all suppliers of drugs in Hong Kong are required to obtain a license, failure to comply with the Department of Health’s directions in relation to a product on a recall may result in the relevant license being suspended or revoked.
Licensees are also required to notify the Department of Health of any pharmaceutical product problem by submitting a prescribed form no later than 24 hours (and 72 hours for defects that may not pose a significant hazard to health) after receipt of a complaint or report of a problem.

**Electrical products**

If an electrical product does not comply with the applicable safety requirements, the EMSD can impose a mandatory product recall. EMSD can require the supplier to advertise the recall on television and in newspapers, and to accept returns of the product and make a refund to purchasers. Failure to comply with a mandatory recall notice constitutes an offense.

Apart from the power to impose a mandatory product recall, the EMSD has also published guidelines for voluntary recalls of electrical products. In a voluntary recall, the EMSD’s role is to monitor the progress of the recall and assess the adequacy of a supplier’s action. The voluntary recall should be undertaken in consultation with EMSD to reach prior agreement on the recall strategy. After the voluntary recall is completed, EMSD will review the result of the recall and may consider requesting the supplier to take further action, if required. The EMSD may also require the supplier to advertise the recall.

**Civil liability**

**Breach of contract**

In Hong Kong, contracts for the sale of goods are subject to the Sale of Goods Ordinance (SOGO). In order for a product liability claim to be made for breach of contract under SOGO, there must exist a valid contract between the plaintiff and defendant, and the plaintiff must establish the breach of a term (whether express or implied) by the defendant, and loss arising from that breach.

The SOGO implies certain terms into contracts between “consumers” and sellers who sell goods “in the course of business.” Where a breach
of one of the implied terms occurs, the cause of action which arises is an action for breach of contract. In general, a person is a “consumer” if he or she purchases goods from a business for private use but not for business purposes.

The conditions and warranties implied by SOGO are:

- that the goods are of merchantable quality
- that goods are fit for the purchaser’s stated purpose (where that purpose is made known to the seller expressly or by implication)
- that goods sold by reference to a sample will correspond with the sample in quality
- that goods sold by description will correspond with that description

The Control of Exemption Clauses Ordinance (CECO) also imposes certain restrictions on the effectiveness of any term in the contract, which seeks to avoid liability for breach of contract, negligence or other types of breach of duty.

A seller cannot exclude or restrict its liability for breach of the implied terms and warranties if the purchaser is a consumer. If the purchaser is not a consumer, any term in the contract limiting or restricting the seller’s liability is required to satisfy the test of reasonableness.

Under CECO, it is not possible for sellers to exclude or restrict their liability for death or personal injury resulting from negligence.

In some circumstances, consumers can also rely on the new Contracts (Rights of Third Parties) Ordinance to impose a contractual liability on the supplier or manufacturer of defective goods, despite not being a party to the contract of sale between the supplier or manufacturer and the retailer.
Negligence

A person who suffers loss or damage to property or injury caused by a defective product may be able to bring a negligence claim against the manufacturer or, in some circumstances, a supplier or importer. The plaintiff must show that the defendant owed him or her a duty of care, breached that duty (by failing to meet the required standard of care), causing loss or damage to the plaintiff, which is not too remote.

A third party who suffers loss in consequence of a breach of a contract to which he or she was not a party, may also have a right of action in negligence against the party causing the breach.

Breach of statutory duty

To claim breach of statutory duty, the plaintiff must identify a breach of a statutory obligation that was imposed to protect that particular class of plaintiff and must establish that the statute was intended to provide a private remedy. The injury or damage must be of a type that the statute was intended to prevent. Normal causation rules apply. The same injury or damage may give rise to a claim in negligence as well as for breach of statutory duty.

Criminal liability

It is an offense under the CGSO for a person to supply, manufacture or import into Hong Kong consumer goods that do not comply with a general safety requirement (as defined in the CGSO) or with the applicable approved standard for that particular type of goods. Failure to comply with notices issued by the C&E (see previous section on “Enforcement and administration”) also constitutes an offense.

Apart from the CGSO, there is other legislation regulating the criminal liability in respect of specific types of products. These include the Toys and Children’s Products Safety Ordinance, the Food Safety Ordinance, the Public Health and Municipal Services Ordinance, the Pharmacy and Poisons Ordinance and the EPSR. Like under the CGSO, it is an offense to supply products that do not meet
the prescribed standards and safety requirements stipulated under the relevant legislation. Failure to comply with notices or orders issued by the relevant regulatory bodies is also an offense.

In addition to the general criminal liability imposed on suppliers who fail to comply with applicable safety standards and requirements:

- It is an offense to sell any food intended for, but unfit for, human consumption. Under the new food registration system introduced by the Food Safety Ordinance, it is an offense to carry on a food importation or distribution business without registration. Food importers, distributors and retailers who fail to keep and maintain proper records of the movements of food commit an offense. False or misleading labeling and advertisement of food also constitutes an offense

- The sale of unregistered pharmaceutical products or medicines is an offense. It is also an offense to deal with drugs without a license. In addition to the offense of false or misleading labeling and advertisement of drugs, advertising of certain specified medicines, surgical appliances and medical treatments is also prohibited

Recent amendments to the TDO have added six new offenses that prohibit specified business-to-consumer unfair trade practices. They are

- trading or manufacturing goods with a false trade description in any form

- omitting or hiding material information in respect of goods or providing material information that is unclear, unintelligible, ambiguous or untimely

- adopting aggressive commercial practices by way of harassment, coercion or undue influence
- using bait advertising when it is unreasonable to believe that the trader will be able to supply the goods at the specified price
- adopting bait-and-switch practices by making an invitation to purchase for promotion purposes and refusing to show the goods to consumers
- wrongly accepting payment for goods that the trader has no intention or reasonable ability to supply

The TDO also introduced a civil alternative to criminal prosecution for contravention of the TDO (see “Criminal liability” section). The regulator may accept a commitment from a trader engaging in any unfair trade practice not to continue or repeat the conduct. The terms of the commitment will be made available to the public. If the commitment is breached, the regulator may seek an injunction from the court prohibiting the trader from continuing or repeating the conduct in question.

**Penalties**

Under the CGSO, a person who supplies, manufactures or imports into Hong Kong consumer goods that do not comply with a general safety requirement (as defined in the CGSO) or with the applicable approved standard for that particular type of goods is liable to a maximum fine of HKD 500,000 and imprisonment for up to two years. Failure to comply with a notice issued by the C&E is a criminal offense and carries a maximum fine of HKD 500,000 and imprisonment for up to two years.

Under the Toys and Children’s Products Safety Ordinance, a person who manufactures, imports or supplies toys or children’s products failing to comply with the applicable safety standards is liable to a maximum fine of HKD 500,000 and imprisonment for up to two years. Again, failure to comply with a notice issued by the C&E attracts a maximum fine of HKD 500,000 and imprisonment for up to two years.
Part V of the Public Health and Municipal Services Ordinance makes it an offense to sell or to offer or advertise for sale any food or drug which is injurious to health or unfit for human consumption. Preparing and selling any adulterated food or drugs for human consumption is also a criminal offense, as is false labeling and advertisement of food and drugs. The offenses are punishable by fines ranging from HKD 10,000 to HKD 50,000 and (depending on the offense) up to six months’ imprisonment.

Non-compliance with the record-keeping requirement of food under the Food Safety Ordinance carries a maximum fine of HKD 10,000 and imprisonment for three years. Breach of any terms under a food safety order issued by the FEHD is punishable by a maximum fine of HKD 100,000 and imprisonment for up to 12 months.

It is an offense to sell unregistered drugs, or to sell any drugs that do not meet the prescribed conditions. Illegal sale of controlled drugs carries a maximum penalty of HKD 100,000 and two years’ imprisonment.

It is an offense under the Electricity Ordinance and the EPSR for a person to supply an electrical product that fails to comply with the applicable safety requirements or without a certificate of safety compliance. Failure to comply with a notice issued by the EMSD is also an offense. These offenses are punishable by maximum fines ranging from HKD 10,000 to HKD 500,000 and imprisonment for up to two years.

Any person who commits an offense under the Trade Descriptions Ordinance is liable to a maximum fine of HKD 100,000 and imprisonment for up to two years.

Class actions

There is no comprehensive regime in Hong Kong for multi-party litigation. Under the current laws in Hong Kong, the only mechanism for dealing with multi-party proceedings in Hong Kong is a provision
relating to representative proceedings in the Rules of the High Court. This mechanism has been criticized as restrictive and inadequate. In 2012, the Law Reform Commission Class Action subcommittee published a report calling for reform and recommended phasing the implementation of a class action regime by starting with consumer cases.

Reform

Since the report published by the Law Reform Commission in 2012, the Department of Justice has established a cross-sector working group to study and consider the proposals of the report. The working group has held 10 meetings since its inception and is expected to make recommendations to the government in due course.

Contracts (Rights of Third Parties)

The Contracts (Rights of Third Parties) Ordinance came into force in January 2016. It reforms the law of privity of contract and recognizes third-party contractual rights. Unless specifically excluded by contract, consumers who are only parties to a contract with the seller or retailer but not parties to any contract with the supplier or manufacturer may now be able to recover compensation from the supplier or manufacturer for loss caused by defective goods in certain circumstances.
Introduction

Indonesia is a civil law country and a unitary republic. This being the case, its product liability laws are based on statutes passed by parliament. These statutes are supported by regulations and administrative decisions of the executive branch (the national government) and independent bodies. Local government has wide-ranging autonomy, which, theoretically, may include product liability. However, regulation to date has been concentrated at the national level.

Case law on product liability is not highly developed in Indonesia as the value of precedents as a guide to the law is limited. This may change as consumers become more assertive of their rights.

Overview of product liability law

Indonesia has no single unitary product liability law. Rather, product liability law is found within several different laws.
Law No. 8 of 1999 on Consumer Protection (**Consumer Protection Law**) provides for liability of manufacturers and distributors of products sold to consumers. Generally, liability arises due to misrepresentation or breach of product standards.

The Indonesian Civil Code provides for the liability of sellers arising from sale and purchase transactions, including liability arising from hidden defects. Article 1365 provides for damages arising from unlawful acts, which include breach of product standards.

Law No. 5 of 1984 as revoked by Law No. 3 of 2014 on Industry (**Industry Law**) provides for Indonesian National Standards (**SNI**) for industrial goods or services distributed or manufactured in Indonesia. The Ministry of Industry can decide whether the SNI is mandatory or voluntary. If the industrial goods or services do not meet the requirements set under the SNI, the owner of the industrial goods or services must withdraw the goods or stop the services. If the owner of industrial goods or services does not withdraw the goods or stop the services, administrative sanctions will be imposed.

Law No. 7 of 2014 on Trade (**Trade Law**) also stipulates that goods that are traded in Indonesia must meet the mandatory SNI requirements and relevant technical requirements. If the trader does not meet the requirements set under the SNI or the technical requirements, administrative sanction may be imposed in the form of withdrawal of goods.

The Indonesian Criminal Code provides criminal penalties for distribution of products that are harmful to human life.

**Product safety**

For goods in general, Government Regulation No. 102 of 2000 on National Standard (**GR No. 102**), an implementing regulation of the Industry Law, authorizes the National Certification Body (**BSN**) to issue the SNI.
According to Article 12 of GR No.102, the intention is that entrepreneurs voluntarily apply SNI. However, if it is related to the safety, security, public health or environmental conservation and/or economic considerations, the technical agency (the government) can enforce partially or entirely the technical specification and or parameter in the relevant SNI.

In case entrepreneurs choose not to comply with an SNI, the Directorate of Supervision on Circulations Goods and Services of Ministry of Trade can still supervise the production of their products. Supervision is conducted in part by using the information given by the entrepreneurs regarding their products. For instance, if a certain food is not in line with the ingredients’ information contained on the label, the Directorate of Supervision on Circulations Goods and Services may take further administrative and/or regulatory action as it deems necessary.

With regard to mandatory SNI, Article 53 of the Industry Law in conjunction with Article 18 (1) of GR. No. 102 prohibits businesses from manufacturing or distributing goods that do not comply with the SNI.

Manufacturers who do not comply with the SNI may lose their manufacturing license (issued by the Ministry of Industry or by local government). Traders who distribute non-compliant products may lose their trading license (issued by the Ministry of Trade or by local Government).

Trade Law also stipulates that every manufacturer or importer who trades goods that relate to security, safety, health and environment must register the goods with the Ministry of Trade, and must place the registration mark on the goods and/or their packaging. The criteria of the security, safety, health and environment are set based on the SNI and other standard.
Enforcement and administration

The Consumer Protection Law provides for an examination of consumer complaints and imposition of administrative sanctions by the Consumer Dispute Resolution Body (BPSK).

The Ministry of Industry supervises and enforces SNI compliance. For goods that are already distributed in the market or imported products, the Minister of Trade through the Directorate General of Domestic Trade has a supervisory role.

The authority to grant manufacturing and trading licenses has been variously delegated to the local government, the Investment Coordination Board (for foreign investment entities) and special entities such as governing bodies of special economic zones. Consequently, the identity of the authority empowered to enforce the law depends upon the status or location of the manufacturer or trader.

The national police retains overall authority to pursue criminal investigations for violations of the Consumer Protection Law, Industry Law and Criminal Code.

Specific sector regulation

Processed foods, drugs, cigarettes and cosmetics are subject to supervision by the Foods and Drugs Supervision Agency (BPOM) and the Ministry of Health. Agricultural products are subject to the supervision of the Ministry of Agriculture.

The main regulations that apply to specific sectors include the following:

- Law No. 36 of 2009 on Health
- Law No. 18 of 2012 on Food
- Government Regulation No. 69 of 1999 on Food Labelling and Advertisement
Government Regulation No. 109 of 2012 on Safety of Cigarettes for Health

The general product safety regulations referred to earlier provide the general rights and obligations applicable to consumers and businesses. The industry-specific regulations contain more detailed regulation of specific sectors. For example, detailed medicine and cosmetics labeling regulations have been in force for many years in Indonesia. Administrative sanctions are available for breach of these regulations. The Consumer Protection Law, as the general product safety law, strengthens the industry-specific regulations by imposing on businesses a general obligation not to distribute products that do not conform with labeling requirements, and giving consumers a right to recover damages arising from such breaches.

Theoretically, it is possible for an industry-specific law to conflict with the more general product safety regulations. In such a case, the industry-specific regulation would prevail.

More specific provision is, for example, Law No. 33/2014 on Halal Product Certification (Halal Law). Halal Law defines products as goods and/or services related to food, beverage, medicine, cosmetics, chemical products, biological products, products of genetic engineering, and other goods used by the community. Under the Halal Law, halal products are defined as products that have been declared lawful in accordance with Islamic law.

The purpose of the certification of halal product are as follows:

- to provide the comfort, security, safety, and certainty of availability of the halal products for people to consume and use a product
- to increase added value for business communities to produce and sell halal products
Under Halal Law, business communities with halal certificates must:

- include halal labels on products that have received a halal certificate
- maintain the halal quality of the products that have gained the halal certificate
- separate location, place, processing tools, storage, packaging, distribution, sales, and presentation between halal and non-halal products
- update the validity of the halal certificate if the halal certificate expires
- report changes in the composition of the material to the authorities

Business communities that do not perform the above obligations are subject to administrative sanctions in the form of any of the following:

- written warning
- administrative fines
- halal certificate revocation

Product recall

Relevant regulation

Product recalls in Indonesia are governed by the following regulations:

- Article 19 of the Industry Law in conjunction with Article 18 (1) of GR. No. 102 prohibits businesses from manufacturing or distributing goods which do not comply with SNI. If a business is in breach of these laws, it must recall such goods.

- Article 8.1 in conjunction with Article 8.4 of the Consumer Protection Law prohibits the distribution of goods that do not
comply with mandatory standards regarding their quality, manufacture or markings. Manufacturers or distributors of non-compliant goods are required to cease distribution and recall the goods.

- Goods that otherwise comply with the above standards, or are not subject to any standards but are defective, may still be distributed but full disclosure must be made to consumers. If the manufacturer or distributor fails to give full disclosure, the goods becomes ineligible for distribution and must be recalled (Article 8.2 in conjunction with Article 8.4 of the Consumer Protection Law).

- Minister of Trade Regulation No. 20/M-DAG/PER/2009 on Term and Procedures of Supervision of Goods and Services (Regulation No. 20) stipulates that the Minister of Trade through the Directorate General of Domestic Trade may instruct a recall if they determine that the goods (i) bring harm to safety, security and consumers’ health or and environment; (ii) cause loss to the consumer; (iii) do not comply with SNI and (iv) do not comply with other technical requirements.

**Steps for recalling goods**

Currently Indonesian regulations do not specify the steps for recalling goods. Rather, the following general requirements of Regulation No. 20 apply:

- Any recall instructed by the government must be coordinated with the relevant government institutions. There is no further implementing provision on how to coordinate with the relevant government institutions.

- A recall of goods must cover (i) goods of the same manufacturing batch, or (ii) goods with same types, variants and marks if the manufacturing batch cannot be determined.
• For goods that relate to safety, security and consumers’ health or environment, the recall must be conducted immediately and in a short period of time.

Notification for voluntary recall

Currently there is no specific requirement to notify, or procedure for notifying, the authorities prior to conducting a voluntary recall. However, it is prudent to give the authorities prior notice to prevent them from taking action on their own initiative and to gain their support.

Civil liability

In general, under the Civil Code, liability for goods is limited to the contracting parties (that is, between buyer and seller), and is based on fault.

However, Article 1365 of the Civil Code provides that a person whose unlawful act caused loss to another person is obliged by law to compensate the injured party. The unlawful act referred to in Article 1365 can include the breach of laws such as the Consumer Protection Law and non-compliance with SNI under the Industry Law. As the distribution of hazardous goods is a crime, this article may be used to seek civil liability for injury or damage caused by such goods. In actions based upon Article 1365, the plaintiff bears the burden of proof.

Under Article 19 of the Consumer Protection Law, consumers may seek damages for loss arising from the use or consumption of goods manufactured or marketed by businesses. In such actions, the burden of proof is reversed and the business is required to prove that the consumer’s loss did not arise from using or consuming its product.

Criminal liability

Article 204 of the Criminal Code sets out a penalty of 20 years’ imprisonment or life imprisonment to any individual who sells, offers
or distributes goods that are known to be hazardous to life or health, without giving prior notice of such hazard.

The Consumer Protection Law also provides for criminal penalties as follows:

- up to five years’ imprisonment or up to IDR 2 billion (approximately USD 200,000) in fines for breaching regulations on manufacturing and marketing of goods

- additional criminal penalties of (i) confiscation of violating goods; (ii) payment of damages; (iii) orders to cease conduct causing loss to consumers and to recall goods and (iv) revocation of business license.

The Trade Law also stipulates that if a trader trades goods in Indonesia and the goods do not meet mandatory SNI requirements, the trader faces imprisonment for five years or up to IDR 5 billion (approximately USD 500,000) in fines.

Furthermore under the Trade Law, producers or importers who trade goods related to security, safety, health and environment, but who do not register the goods with the Ministry of Trade, face imprisonment for one year or up to IDR 5 billion (approximately USD 500,000) in fines.

Under Article 120 of the Industry Law, businesses that manufacture or distribute goods that do not comply with mandatory SNI or technical specifications is subject to criminal penalty of up to five years’ imprisonment or fine of up to IDR 3 billion.

Penalties

In addition to civil liability and criminal liability, manufacturers who do not comply with SNI may lose their manufacturing license. Traders who distribute non-compliant products may lose their trading license.
The BPSK is authorized to impose up to IDR 200 million (around USD 20,000) in mandatory product standards administrative fines.

**Class actions**

The Consumer Protection Law permits class actions for the breach of its provisions. Such class action claims may be filed by a group of consumers with similar interests and who have suffered loss.

A class action claim must include complete and clear information about the class representative, a specific and detailed description of class members, a detailed statement of the basis of the claim from both the representative and the class members, and a detailed plea for damages, including a proposal on how compensation to all members of the class would be distributed.

Class action claims are increasingly used in consumer protection/product liability actions in Indonesia. Under the Indonesian Consumer Protection Law, class action claims must be filed by the consumers who suffer the losses, and the losses must be legally proven (for example, if proven by transaction evidence).

**Reform**

Reform of current product liability laws is not expected in the near future.
Introduction

Japan has two statutes regulating product liability and product safety. The Product Liability Act, which was enacted in 1994, provides that manufacturers, processors and importers of defective products are liable for damage to life, body or property of others caused by the defect in the product.

Further, the Consumer Product Safety Act was amended in 2007 to expand the reporting obligations of manufacturers and importers in relation to serious product incidents. Under this obligation, manufacturers and importers must, within 10 days after becoming aware of a “Serious Product Incident,” file a Serious Incident Report that includes a brief description of the incident and possible causes. The Act defines “Serious Product Incident” as, inter alia, fire, carbon monoxide poisoning, physical injury requiring 30 days or more for recovery and other serious physical injuries.

Overview of product liability law

The Product Liability Act provides that the following individuals or entities are liable for damage caused by a defect in a product:

- any person who manufactured, processed, or imported the product in the course of trade
any person who provides his/her name, trade name, trademark or is otherwise indicated on the product as the manufacturer of the product, or any person whose representation of name, etc., on the product misleads others into believing that he/she is the manufacturer

any person who through his/her representation of name, etc., on the product, in light of the manner concerning the manufacturing, processing, importation or sales of the product, and other circumstances, holds himself/herself out as its actual manufacturer

However, if any of the following is proved, these parties will not be liable for the damage:

- the defect in the product could not have been discovered given the state of scientific or technical knowledge at the time when the manufacturer, etc., delivered the product

- in cases where the product is used as a component or raw material in another product, the defect occurred primarily because of the compliance with the instructions concerning the design given by the manufacturer of such other product, and the manufacturer, etc., was not negligent with respect to the occurrence of such defect

The Product Liability Act reverses the onus of proof for tort liabilities under the Civil Code. Under the Civil Code, in order to bring a tort claim for product liability, the victim/plaintiff bears the onus of proving that the defect was caused by the intentional or negligent activity of the manufacturer. The Product Liability Act shifts the onus of proving that fact to the manufacturer/defendant, and as a result, makes it easier for victims/plaintiffs to bring successful claims. It is generally considered that the victims/plaintiffs only need to prove that the accident happened while using the product in a normal way.
Product safety

The Ministry of Economy, Trade and Industry (METI) has jurisdiction over the enforcement of the above-mentioned laws. METI requires manufacturers, importers and sellers of specific products to comply with prescribed safety standards. METI also has reporting requirements and has responsibility for issuing recall orders in certain situations.

Regulations on specified consumer products

Under the Consumer Product Safety Act, the following products must satisfy the safety standards specified under the Act: (i) baby cribs, (ii) portable laser applied appliances, (iii) hot water recirculation systems for baths, (iv) mountain climbing ropes, (v) pressure cookers for home use, (vi) helmets for riding vehicles, (vii) oil burning water heaters, (viii) oil burning bath boilers, and (ix) oil stoves (Specified Consumer Products). Anyone who wishes to import or sell the Specified Consumer Products as business must first submit a notification to METI. The importer or seller must verify whether the product satisfies the safety standards, and must maintain records of the verification. If the product satisfies these requirements, the importer or seller may put a safety indication (called as the PSC Mark) on the product.

Reporting requirements under the Consumer Product Safety Law

If a manufacturer or importer becomes aware of a Serious Product Incident that occurred in connection with any consumer product it supplies (not limited to the Specified Consumer Products), it must file a report to METI (the METI Report). Also, resellers and repairers of consumer products must endeavor to notify the manufacturer or importer of the consumer product if they become aware of a Serious Product Incident. METI Reports must be filed within 10 days. METI publishes the reports on its website.

In addition to these mandatory reporting requirements, METI recommends that manufacturers, importers, sellers, leasing companies,
construction companies and repair companies file a report with the National Institute of Technology and Evaluation, an independent administrative organization in charge of product safety issues; if there is an accident that could lead to a Serious Product Incident or that caused a lesser injury that does not fall within the scope of a Serious Product Incident. This report (the NITE Report) is to be submitted within 10 days.

The NITE Report is not mandatory but is recommended by the METI. There are no legal sanctions for not filing it, but METI will take more stringent action against companies that do not submit a NITE Report and can employ a range of enforcement actions, such as recall orders under the Consumer Product Safety Law. In addition, even if a product does not fall within the scope of consumer products as defined under the Consumer Product Safety Law, it is recommended that companies, including manufacturers and importers, file a NITE Report. Thus, for example, if electric power lines for businesses are defective and could lead to a Serious Product Incident, or have caused a slight physical injury, it is recommended that the manufacturer, importer or seller file a NITE Report.

Other than these reporting requirements, which are mainly connected to the Consumer Product Safety Law, the listed safety laws generally do not require reporting by manufacturers and importers unless METI issues a reporting order to them.

Inspection and indication system for long-term-use products

Manufacturers or importers of the following product must indicate on the product the designed standard period of use (that is, the standard period of time during which the product may be used safely), the inspection period and contact information:

- gas-burning instantaneous water heaters for indoor use
- gas-burning bath boilers for indoor use
- oil-burning water heaters
• oil-burning bath boilers
• direct vent-type oil-burning air heaters
• built-in electronic dishwashers
• electric bath dryers

Enforcement and administration

Under the Consumer Product Safety Act, METI may take the following administrative actions:

In connection with specific consumer products

METI may issue remedial orders if Specified Consumer Products do not satisfy the relevant safety standards.

In cases where METI believes that there exists a risk of danger to the lives or bodies of general consumers due to (i) the sale of a Specified Consumer Product by an individual or an entity that has not submitted the required notification to METI or (ii) the sale of a Specified Consumer Product that does not satisfy the safety standards. METI may order the recall of the Specified Consumer Product and otherwise take all necessary measures to prevent the Specified Consumer Product from causing or increasing danger to the lives or bodies of consumers.

In connection with any consumer product

If the manufacturer or importer of a consumer product fails to make a report of a Serious Product Incident, or has made a false report, and if METI finds it necessary for securing the safety of the consumer product, METI may issue an order to the manufacturer or importer of the consumer product to develop a system necessary for collecting information on serious product accidents and for the proper management or provision of the information.
If a Serious Product Accident has occurred due to a defect in a consumer product, or if there is an imminent risk of serious danger to the lives or bodies of consumers, METI may order the manufacturer or importer of the consumer products to recall the consumer products and to otherwise take measures necessary to prevent the occurrence and increase of serious danger.

METI may also request a manufacturer, importer or seller of a consumer product to report on the status of its business. METI also has power to enter the offices, factories, workplaces, stores or warehouses of the manufacturer, importer or seller and to conduct an inspection of the consumer products, books, documents and other items. METI may have NITE conduct the inspection.

**Specific sector regulation**

The following are examples of industry-specific product safety regulations in Japan:

**SG Mark**

The Consumer Product Safety Association, which was established under the Consumer Product Safety Act, established the SG Mark system. The Consumer Product Safety Association establishes safety standards for baby products, welfare equipment, furniture and other products, and allows manufacturers of products that satisfy the safety standards to affix the SG Mark on the product. If an injury is caused by such a product, the association will provide compensation to the victim of the injury.

**ST Mark**

The Japan Toy Association established the ST Mark system for toys. Manufacturers of toys that satisfy the safety standards established by the Japan Toy Association may affix the ST Mark on the toys. If an injury to human body or property damage is caused by such toys, the association will provide compensation to the victim.
PSE Mark

Under the Electrical Appliance and Material Safety Act, the import or sales of certain electrical appliances must satisfy safety standards under the Act. The manufacture or seller of the product must affix the PSE Mark on the products that satisfy the safety standards. Importing or selling the specified electrical appliances not bearing the PSE Mark is prohibited.

Product recall

Generally, recalls in Japan are done voluntarily by the manufacturer or importer. Recalls are usually initiated by a Serious Incident Report filed with the METI, as triggered by a Serious Product Incident. Upon such a filing, companies start communicating with the METI about how to deal with the incident and the necessity of a recall. During such discussions, if the METI thinks the incident was due to a defect in the product design or manufacturing process, it will recommend a voluntary recall. If the manufacturer or importer does not obey such a recommendation, the METI will issue an involuntary recall order under the Consumer Product Safety Law (or other safety laws, depending on the type of product). Because most companies follow the METI’s recall recommendation, involuntary recall orders are rare.

Civil liability

Strict liability

As mentioned in the overview of product liability law above, certain categories of individuals or entities are liable for damage caused by product defects, unless it is proven that (i) the defect in the product could not have been discovered given the state of scientific or technical knowledge at the time when the product was delivered; or (ii) in cases where the product is used as a component or raw material in another product, the defect occurred primarily because of the compliance with the instructions concerning the design given by the manufacturer of such other product, and the manufacturer, etc., was not negligent with respect to the occurrence of such defect.
Contract

It is also possible to make a claim based on the contract, arguing non-performance of the obligation under the contract to provide safe products. However, this action cannot be made directly against the manufacturer of the product if the product was not directly purchased from the manufacturer (that is, if the product was purchased through retailer or reseller).

Tort

It is theoretically possible to make a tort claim under the Civil Code for damage caused by a defective product. However, because of the advantage of strict liability under the Product Liability Act, there is little or no advantage in filing a tort claim.

Criminal liability

Manufacturers and sellers of dangerous or defective products may face criminal liability. The penalties for various offenses are set out in the following section.

Penalties

The Consumer Product Safety Act sets out, among others, the following criminal liability.

- A person who sells a Specified Consumer Product that does not bear the PSC Mark, or who places a sign which is confusingly similar to the PSC Mark on a Specified Consumer Product, will be punished by imprisonment with work for up to one year and/or a fine of up to JPY 1 million.

- A person who violates a mandatory recall order or other measures issued by METI will be punished by imprisonment with work for up to one year and/or a fine of up to JPY 1 million.

- A person who files a false notification concerning a Specified Consumer Product or who does not conduct a proper safety


inspection of a Specified Consumer Product will be punished by a fine of up to JPY 300,000.

- If a representative, agent, employee or other worker of a company commits certain violations of the Act, the company will also be punished by a fine of up to JPY 100 million.

Class actions

There is no specific class action procedure in Japan. People injured or otherwise affected by defective or dangerous products may bring, jointly or separately, ordinary civil actions against the manufacturer of the defective product. It is also possible for other people, injured or otherwise affected by defective or dangerous products, to join an existing civil action by filing a petition to the court.

Reform

No reforms are expected in the next couple of years.
Introduction

Korea’s product liability and product safety laws are statutory laws. These statutes provide the basis for product liability litigation, consumer protection and government regulation. Consumers can bring private lawsuits against manufacturers or business entities for compensatory damages due to a defective product. Government agencies can also regulate business entities that manufacture or distribute defective products that can harm consumers, by issuing corrective orders such as recalling or banning the sale of defective products. Moreover, governments can fine or impose criminal liability on manufacturers or distributors who violate the relevant statutes.

Overview of product liability law

In Korea, product liability claims may be based on tort, breach of contract, or violation of the Korean Product Liability Act (the PLA). Each type of product liability claim requires different elements to be proven to present a successful claim.

Product safety

The main government authority to regulate product safety is the Korean Ministry of Trade, Industry and Energy (the MTIE), which regulates compliance with the Framework Act on Product Safety (the FAPS). The FAPS governs activities of a “business entity,” which is defined as an entity that either manufactures or distributes products.
Pursuant to the FAPS, the MTIE must establish a product safety management plan every three years (Article 7.1 of the FAPS) and conduct safety investigations on certain products in the market to test whether the products pose risks or not (Article 9 of the FAPS).

Furthermore, if a product in the market is defective and is deemed to cause or is likely to cause danger to consumers, the MTIE can make recommendations to the relevant business entity, including recalls or product discontinuation in the market (Article 10 of the FAPS). If the business entity does not follow the recommendation without any justifiable reason, the MTIE can make an official announcement of that fact (Article 10 of the FAPS) and can issue product recall orders or take other necessary measures (Articles 10 and 11 of the FAPS).

**Enforcement and administration**

As explained above, the main product safety regulator is the MTIE. Certain industries or product types have their own regulator, which is further explained below.

Furthermore, the Framework Act on Consumers (the FAC) also provides broad consumer protection against defective products that pose the risk of death, bodily harm or property damage. Although it does not have regulatory power, the Korea Consumer Agency (the KCA) conciliates or mediates product liability disputes, upon a consumer’s request for compensation for damages. If the parties agree to the result of the mediation, then the settlement has equal effectiveness as a final judgment rendered by the Korean courts (Article 67 of the FAC).

**Specific sector regulation**

The following government authorities regulate certain product types and determine whether they are in compliance with the relevant legislation:

1. Ministry of Health and Welfare
2. Ministry of Land, Infrastructure and Transport
   - Motor vehicles – Motor Vehicle Management Act

3. Ministry of Employment and Labor
   - Safety devices – Occupational Safety and Health Act

4. The National Emergency Management Agency
   - Fire-fighting appliances – Installation, Maintenance, and Safety Control of Fire-Fighting Systems Act

### Product recall

Under the FAC, a business entity is under an obligation to disclose or report any significant defect that poses a risk of death, bodily harm or property damage to the relevant government authorities (Article 47 of the FAC). The FAC defines “business entity” as any entity that manufactures, imports or sells products. Upon the report of such defects, if the defective product can pose or poses a risk of death, bodily harm or property damage to consumers, the business entity is required to voluntarily recall the defective products or take other necessary measures (Article 48 of the FAC). The Korean government also has the authority to order the business entity to conduct a mandatory recall of the defective products, or issue other corrective orders (Article 50 of the FAC).

### Civil liability

**Tort**

Before the enactment of the PLA in 2002, a party injured by a defective product would generally bring its tort claim under Article
750 of the Korean Civil Act (the Civil Act). Under Article 750 of the
Civil Act, a person who causes losses to or inflicts injuries on another
person through a willful or negligent unlawful act must compensate
for the damages arising therefrom. In order to successfully prove the
claim, the injured party must prove the following elements: (1) the
existence of a defect in the product; (2) the defect was willfully or
negligently caused by the tortfeasor; (3) damages; and (4) causation
between the defect and the damages. As such, the burden of proof on
the manufacturer’s intent or negligence is on the injured party, which
in practice would be difficult for the injured party to prove.

This difficulty is overcome by the PLA (see below).

Strict liability under the PLA

Under the PLA, a manufacturer is obligated to compensate for damage
to life, persons and property caused by a product defect. The PLA
imposes strict liability on a manufacturer of a defective product,
meaning a claimant does not have to prove fault or negligence.

Under the PLA, a “manufacturer” is defined as a person who is in the
business of manufacturing, processing or importing a product. The
definition also covers those who present themselves as a
manufacturer, processor or importer of a product. Basically, this
includes all parties in the chain of manufacture of a product.

A product is “defective” under the PLA, if the product lacks safety
that the product should provide. There are three types of defect: (1)
manufacturing defect; (2) design defect; and (3) indication defect.
Manufacturing defect means defects that lack safety caused by
manufacturing or processing of any product that deviates from the
originally intended design; whether the manufacturer faithfully
performs the duty of care and diligence in manufacturing or
processing is irrelevant. Design defect means defects that lack safety
caused by the failure of the manufacturer to adopt a reasonable
alternative design that would otherwise have reduced or prevented any
damage or risk caused by the product. Indication defect, or warning
defect, means conditions where a manufacturer fails to give reasonable warnings or other indications on the product that could have reduced or prevented any damage or risk by the product.

In order to successfully bring a strict liability claim under the PLA, the claimant needs to prove two elements: (1) the existence of a defect in the product; and (2) causation between the defect and the damages. The claimant has the burden of proof on causation and defect. However, in contrast to tort claims, the claimant in PLA litigation is not required to prove that the defect was willfully or negligently caused by the manufacturer.

A manufacturer who is liable for damages that arose from defective products can be exempted under the PLA if the manufacturer can prove that (1) the manufacturer did not supply the defective product; (2) the existence of the defect could not be identified through the scientific or technical knowledge of the time when manufacturer supplied the defective product; (3) the defect has occurred from manufacturer complying with the standard required under the law of the time when the manufacturer supplied the product; (4) the defect is attributable to the design or instruction on manufacturing the raw materials or components of the product. However, if the manufacturer acknowledged or could have acknowledged such defects but failed to take appropriate measures to prevent damage caused by the defects, the manufacturer cannot be exempted under the PLA (Article 4 of the PLA).

Breach of contract

A rarely sought, but possible, claim would be breach of contract. An injured party may bring a claim against a seller/manufacturer for sale of a defective product under Article 393 of the Civil Act, or a breach of contract. However, an injured party would have to show privity of contract with the seller/manufacturer in order to prove its claim. Often consumers are not in a contractual relationship with the seller/manufacturer. Therefore, breach of contract is often not available as a cause of action for recovering.
Criminal liability

Manufacturers or suppliers of products can be criminally liable for violating the FAC or the Korean Criminal Act (the Criminal Act) under certain circumstances, which are further explained below.

Penalties

Violation of the FAPS

Pursuant to FAPS, the MTIE has the authority to (among other things) order the recall of defective products or order the discontinuation of distribution of products that may cause danger to consumers. If a business entity does not follow such orders issued by the MTIE, it can be punished by imprisonment of up to three years or be fined up to KRW 30 million (Article 26 of the FAPS). If a business entity fails to report serious defects in its goods, an administrative penalty of up to KRW 30 million can be imposed on the business entity (Article 27 of the FAPS).

Violation of the FAC

As discussed under the topic Product Recall, pursuant to the FAC, the Korean government agencies have the authority to (among other things) order the recall of defective products or order the discontinuation of distribution of products that pose risks to consumers. If a business entity does not follow such orders issued by the government authorities, it can be punished by imprisonment of up to three years or be fined up to KRW 50 million (Article 84 of the FAC). If a business entity fails to report serious defects in its goods, or makes a false report, an administrative penalty of up to KRW 30 million can be imposed on the manufacturer (Article 86 of the FAC).

Violation of the Criminal Act

Furthermore, manufacturers or suppliers of hazardous or defective products can be subject to criminal punishment under the Criminal Act for their negligent conduct. If a manufacturer’s negligent conduct results in bodily harm, the manufacturer can be fined up to KRW 5
million (Article 266 of the Criminal Act). If such act leads to death, the manufacturer can be imprisoned for up to two years or be fined up to KRW 7 million (Article 267 of the Criminal Act). Gross negligence that leads to bodily harm or death can be punished by imprisonment of up to five years or by a fine of up to KRW 20 million (Article 268 of the Criminal Act).

Class actions

There is no statutory law that provides for product liability class actions in Korea. Consumers can only launch individual product liability lawsuits.

Under the FAC, however, the government, the KCA, a consumer organization, or an enterprise may request or file for collective mediation of disputes to the Mediation Commission with respect to product defect cases that caused similar damage to a group of consumers (Article 68 of the FAC).

Furthermore, certain consumer organizations under the FAC may file for an injunction to prevent the sale of defective products in the market (Article 70 of the FAC). The FAC does not allow consumer organizations or any entity to file a lawsuit claiming damages derived from defective products on behalf of consumers, however.

Reform

There is currently no discussion on product liability law reform in Korea.
Malaysia

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Introduction

Malaysia’s product liability and safety laws are found within the common law and statutes and are similar to those of English Law. They fall into three main categories:

- causes of action under the law of contract
- causes of action under the law of tort
- causes of action conferred by legislation

The Consumer Protection Act 1999 (CPA) is the main statute governing product liability issues in Malaysia.

The CPA covers all main areas of consumer protection such as supply of goods, supply of services, trade protection, product safety and liability as well as redress mechanisms. Part X of the CPA contains the specific product liability provisions. Further, section 71 of the CPA states that parties may not contract out of the Act.

The CPA does not apply to contracts made prior to 15 November 1999, securities and futures contracts, land or interests in land or trade transactions made by electronic means.
Overview of product liability law

There are wide-ranging grounds upon which a plaintiff may pursue a claim for defective products in Malaysia. A claim may be made on several overlapping but separate legal grounds.

The various causes of actions available to a plaintiff for loss due to injury or damage caused by a defective product are:

- breach of contract, including breach of implied terms in the contract under Part X of the CPA and the Contract Act 1950 (CA) and Sales of Goods Act 1957 (SOGA)
- negligence
- direct liability caused by “defective products” under section 68, Part X of the CPA
- statutory causes of action against manufacturers and suppliers of defective goods under Part VI and VII of the CPA
- “unfair trade practices” under Part II of the CPA

Product safety

In general, product safety laws serve as a preventive measure. Under the CPA, the Minister responsible for consumer protection is the Minister of the Ministry of Domestic Trade, Cooperative and Consumerism (Minister).

The Ministry of Domestic Trade, Cooperative and Consumerism (MDTCC) has guidelines setting out the rights of the consumer, which include the right to safety. Part III of the CPA provides for the safety of goods and services where safety standards have been prescribed. Under section 19(1) of the CPA, the Minister is authorized to prescribe safety standards in respect of goods and services, or classes of goods and services. The safety standards may relate to the
performance, composition, contents, manufacture, processing, design, construction, finish or packaging of goods and services.

Where no safety standards are prescribed by the Minister, section 19(4) of the CPA provides that products supplied must reach a reasonable standard of safety to be expected by a reasonable consumer, due regard being had to the nature of the product.

Prohibition of goods

In certain circumstances, the CPA authorizes the Minister to prohibit the supply of any goods or class of goods that have caused or are likely to cause injury to any person or property or are otherwise unsafe. Section 24 of CPA specifically prohibits the importation of any goods or services, or any class of goods or services, which do not comply with the CPA.

Enforcement and administration

The government agency that is generally concerned with the regulation of consumer products is the Consumer Affairs Division within the MDTCC. The functions of the MDTCC include the establishment of product safety standards, the enhancement of consumer protection rules and legislative provisions, and the management of consumer complaints. The MDTCC maintains branches in each state within Malaysia, as well as the federal territories of Labuan and Kuala Lumpur.

The involvement of other governmental agencies may also be warranted for the regulation of certain specific types of consumer products. For example, the Malaysian Communications and Multimedia Commission (MCMC) is entrusted with regulatory and other functions in relation to goods and services associated with the media and telecommunications industries.
Tribunal for Consumer Claims

The CPA established a Tribunal for Consumer Claims (Tribunal) as a redress mechanism for consumers. The Tribunal has jurisdiction with respect to any consumer claim not exceeding RM 25,000. Currently, there are 16 Tribunals across the country, made up of 13 State Tribunals and 3 Federal Territories Tribunals. The Tribunal operates under the MDTCC and is an alternative to court proceedings for a consumer claim for loss suffered from goods or services purchased or acquired.

Several states have created consumer associations which are active in seeking to protect consumers from harmful products. These include the Federation of Malaysian Consumer Association (FOMCA), the National Consumer Complaints Centre, the Consumer Association of Penang (in Penang), and the Consumers’ Association of Subang and Shah Alam (CASSA) in Selangor.

Specific sector regulation

Exemptions from product liability law

The provisions of Part III of the CPA on safety standards do not apply to healthcare goods or foods. These are regulated by the Medicines (Advertisement and Sale) Act 1956 (Revised 1983) and the Food Act 1983. Also, the CPA (and, therefore, any product liability provisions set out in Part X of the CPA) does not apply to any trade transactions effected by electronic means unless prescribed by the Minister.

We set out below a non-exhaustive list of the specific sector regulations that may be of particular interest:

Medicines

The Sale of Drugs Act 1952 (Revised 1989) (SDA) and its subsidiary legislation, including the Control of Drugs and Cosmetics Regulations 1984 (CDCR), regulates the sale and distribution of drugs to be administered for medicinal purposes or to be used as an ingredient of preparation for a medical purpose.
Under the SDA, drugs to be administered for medicinal purposes or to be used as an ingredient of preparation for a medical purpose must be registered with the Drug Control Authority. Further, manufacturers, wholesalers and importers of such drugs must obtain a license to do so.

Under section 12 of the SDA, the penalty for the distribution of drugs by an individual without the appropriate license is a fine not exceeding RM 25,000 and/or imprisonment for a term not exceeding three years for a first offense. For a second or subsequent offense, the penalty is a fine not exceeding RM 50,000 and/or imprisonment for a term not exceeding five years. Body corporates, on the other hand, are liable on conviction to a fine not exceeding RM 50,000 for a first offense and for a second or subsequent offense to a fine not exceeding RM 100,000.

Toys

The Consumer Protection (Safety Standards for Toys) Regulations 2009 (CPSSTR) and the Consumer Protection (Safety Standards For Toys) (Amendment) Regulations 2010 prescribe safety standards to be applied to toys in Malaysia. “Toys” is defined in section 2(2) of the CPSSTR as being any goods designed or intended for use in play by children less than fourteen years of age but does not include the goods specified in the Second Schedule to the CPSSTR.

The purpose of the CPSSTR is to prescribe that toys in Malaysia must comply with certain ISO standards, as set out in the First Schedule to the CPSSTR.

Medical devices

Under Malaysian Medical Device Act 2012 (MMDA) the manufacturers, importers, distributors and local authorized representatives must obtain a license to import, export or place medical devices for sale in Malaysia. The phrase “medical device” is defined with great length in the MMDA itself.
The MMDA also provides that no medical device may be imported, exported, or placed in the market unless the device is registered pursuant to the MMDA.

Any person who contravenes these provisions of the MMDA commits an offense punishable on conviction with a fine of up to RM 200,000 and/or imprisonment for up to three years.

Electrical products

Regulation 101 Electricity Regulations 1994 provides that the Malaysian Energy Commission (MEC) may at any time require a person who manufactures, imports, displays, sells or advertises any electrical products to deliver samples of the product for examination and testing.

The MEC may also prohibit the manufacture, import, display, advertisement or sale of an electrical product and may direct a person to recall immediately any such product from sale or use. Further, the MEC may seize or remove a product if, in its opinion, the product is unsafe or dangerous or is likely to become unsafe or dangerous to use.

Food

In Malaysia, there is a separate regime governing food and food products. The main source of legislation for food is the Food Act 1983 and the Food Regulations 1985. The enforcement of the food safety regime falls under the purview of the Ministry of Health, Food Safety Division.

Product recall

Mandatory recalls

The Minister has power to direct a mandatory recall where a product is defective or unsafe. There are several provisions in the CPA which may trigger a product recall exercise to be conducted pursuant to an order where the consumer products sold are found to be defective or unsafe. For example, section 23 of the CPA provides that the Minister
may give an order to declare any goods or class of goods to be prohibited where the goods have caused or are likely to cause injury to any person or property or are otherwise unsafe. Such an order may require the supplier to, among others, recall the prohibited goods. The supplier may also be required to place clear and reasonable notice in the public news media in respect of the recalled product.

In the case of mandatory recalls, the term “recall” has not been defined under section 23 of the CPA, nor is there any prescribed procedure on the recall exercise. Any procedure as to the notification, method and timing of the recall will be detailed in the Minister’s order at his discretion.

Voluntary recalls

There are no mandatory reporting obligations or procedures for voluntary recalls of defective consumer products in Malaysia. Consumer product recalls are essentially conducted at the discretion of the supplier. Suppliers may liaise with the MDTCC when the supplier decides to conduct a voluntary recall of its products, as a gesture of goodwill. Although there is no legal requirement to do so, it is advisable for a supplier of goods to notify consumers of any defects in its products, as a prudent course of action to lessen the risk of claims of negligence.

The decision as to the appropriate medium to be utilized in communicating the recall to the general public will be left to the supplier’s discretion.

The MDTCC has launched a website called MyStandard to assist businesses and consumers obtain information regarding consumer product safety in particular for goods and services under the purview of the MDTCC. It allows users to access the services provided for compliance to mandatory standards as governed by MDTCC. Users may also obtain the latest information and developments on consumer product safety.
In tort, the failure to recall a defective product after a defect is discovered may itself amount to negligence, particularly if the risk to consumers is serious. Further, such a failure could lead to a claim for aggravated or exemplary damages.

Civil liability

Contract

Contract claims are governed by the Contracts Act 1950, the Sale of Goods Act 1957 and common law principles.

Under Malaysian contract law, it is ordinarily difficult for a consumer to have direct recourse to a manufacturer without there existing a direct contractual relationship between those parties. The Contracts Act provides general principles of contract which are applicable to any type of contract, including contracts for the sale of goods.

The Sale of Goods Act 1957 (SGA) is a specific law governing contracts for the sale of goods. The central provision in the SGA is the requirement that goods sold must be of merchantable quality and reasonably fit for their purpose. Contractual liability is strict in the sense that it does not require proof of fault or negligence. The remedies for breach of contract arising from a defect in the product may extend to consequential damage, including personal injury and pure economic loss.

The doctrine of privity of contract narrows the scope for consumer claims as claims may only be brought between the parties to a contract. As a consequence consumers generally have no claim in contract against the manufacturer, only against the retailer or supplier from whom they purchased the product.

CPA

The harshness of the doctrine of privity of contract is remedied to an extent by Part V of the CPA which introduces the concept of “acceptable quality” and sets aside the privity rule. A mere user of
goods may sue, and a manufacturer may be sued, for breach of implied guarantees. If a manufacturer independently undertakes liability to the purchaser (such as by a warranty), the manufacturer may also be liable.

Where the CPA applies, Part V, VI and VII imply guarantees on the part of the supplier and manufacturer of a product that the product is of acceptable quality, and, on the part of the supplier, that the product is reasonably fit for the purpose for which it was acquired.

Negligence

For a claim in tort to be successful, three elements needs to be proven: the existence of a duty of care, the breach of that duty of care, and foreseeable damage (which is not too remote) being suffered by the plaintiff.

If the product is found to be defective and the resulting injury to the user could have been avoided if the manufacturer had taken “reasonable care” in the manufacture of the product, it is likely that the manufacturer will be held liable for the injury suffered. However, if it is not an inherent defect in the product, the claimant would need to prove that the manufacturer both owed a duty of care to him or her and had breached that duty, resulting in injury to him or her or damage to his or her property. The standard of care is that of a reasonable manufacturer who designs and manufactures the product or good in question. The duty extends to those who might reasonably be expected to suffer injury from lack of care on the part of the manufacturer.

Direct liability caused by “defective products” causing injury (Part X of CPA)

The liability of parties under the CPA is one of strict liability and, accordingly, it is unnecessary for the consumer to establish any fault on the part of the manufacturer or supplier. Under section 67 of the CPA, a product is considered “defective” if the safety of the product is not such as a person is generally entitled to expect. Safety in the CPA is defined to include:
• safety with respect to products comprised therein

• safety in the context of risk of damage to property

• safety in the context of risk of death or personal injury

Where a product is defective, the CPA imposes a direct liability on the producer of the product (the manufacturer, or someone who holds himself out as the manufacturer, or the importer of goods). It states that the following persons would be liable for any damage:

• the producer of the product

• the person who, by putting their name on the product or using a trademark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product

• the person who has, in the course of their business, imported the product into Malaysia in order to supply it to another person

Section 68 of the CPA creates statutory causes of action under which any person who suffers damage as a result of purchasing a defective product is entitled to pursue an action directly against the manufacturer and/or importer of the product. The claimant is still required to prove that the product was defective and that the defect has resulted in loss or injury.

Further, section 68 (7) of CPA provides that the statutory scheme of liability does not affect rights that may arise out of contract or tort. Accordingly, the statutory causes of action are additional to rights existing under the common law.

Statutory causes of actions against manufacturers and suppliers of defective goods under Part VI and VII of CPA

Parts VI and VII of the CPA broaden the rights of consumers by creating statutory causes of action directly against suppliers and manufacturers. These causes of action overcome the doctrine of privity of contract.
As against manufacturers, the CPA provides consumers with a cause of action if a manufacturer’s goods

- fail to comply with the implied guarantees as to acceptable quality
- fail to comply with the implied guarantee due to failure to correspond with material descriptions applied to the goods
- fail to comply with the implied guarantee as to repairs and spare parts of the goods, or express guarantees given by the manufacturer

Unfair Trade Practices (Part II of CPA)

Part II of the CPA protects consumers by regulating the public conduct of businesses, such as their selling practices and advertising and promotional activities. The provisions of Part II set out statutory definitions of “false,” “misleading” or “deceptive” conduct, representation or practice, which include conduct, representation or practice which is “capable of leading a consumer into error.”

The CPA lists various unfair trade practices, including:

- Section 9 – which prohibits a person from misleading or deceiving the public as to the nature, manufacturing process, characteristics, suitability for a purpose or quantity of goods
- Section 10(a) – which prohibits a person from making false or misleading representations that goods are of a particular kind, standard, quality, grade, quantity, composition, style or model
- Section 10(b) – which prohibits a person from making false or misleading representations that goods have had a particular history or particular previous use
- Section 10(d) – which prohibits a person from making false or misleading representations that goods are supplied by any particular person or any person of a particular trade, qualification or skill
• Section 10(f) – which prohibits a person from falsely representing that goods are new or reconditioned

• Section 10(h) – prohibits a person from representing that goods have any sponsorship, approval, endorsement, performance, characteristics, accessories, uses or benefits

• Section 10(i) – which prohibits a person from making false or misleading representations concerning the existence, exclusion or effect of any condition, guarantee, right or remedy

• Section 12 – which prohibits a person from making misleading indications as to the price of goods

As a general rule, for the CPA provisions to apply the goods must be goods which are primarily purchased, used or consumed for personal, domestic or household purposes.

**Criminal liability**

Under the CPA regime, any person may be criminally liable for supplying or offering to supply goods which fail to comply with the relevant safety standards prescribed under sections 19(1) or 19(4) of the CPA.

In addition, there are certain sector-specific laws that provide for criminal liability for products that are dangerous or defective, such as section 37 (1) of the Electric Supply Act 1990 which makes it a criminal offense for any person to manufacture or sell any equipment so as to cause (or be likely to cause) danger to human life or limb or injury to any equipment or other property.
Penalties

CPA regime

Part IV of the CPA provides for penalties for offenses under Part II (unfair trade practices) and Part III (product safety).

- Under section 25(1)(a), a corporate offender is liable to a fine not exceeding RM 250,000 (or for a second or subsequent offense, a fine not exceeding RM 500,000).

- Under section 25(1)(b), a non-corporate offender is liable to a fine not exceeding RM 100,000 (or, for a second or subsequent offense, a fine not exceeding RM 250,000 or to imprisonment for a term not exceeding six years, or both).

A jail term is considered a strong deterrent, which may only be imposed on a natural person. A jail term may not be imposed on a corporation, although section 143 of the CPA notes that a corporation’s principal officers may be held personally accountable and states that when an offense is committed by a corporation any person who, at the time of the commission of the offense, was a director, manager, secretary or other similar officer of the corporation (or who was purporting to act in such capacity) shall also be deemed to have committed that offense.

Class actions

Class action is commonly known as representative action in Malaysia but these are typically unlike those in the United States. Further, representative proceedings are very rare in Malaysia.

That said, the law allows that the representative has the same interest in the proceedings as the persons in the group that he or she represents. The proceeding may be commenced by a representative plaintiff on behalf of others, if the plaintiff can establish that:
• the plaintiff and those represented by them are members of a class and the class members have common interests
• the plaintiff and those represented by them have a common grievance
• the relief sought is beneficial to all the class members

Consent is not needed for a plaintiff suing in a representative capacity.
Myanmar

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Introduction

Product liability laws in Myanmar are not well developed. In general, only pharmaceuticals and food are specifically regulated. However, the Consumer Protection Law 2014 (CP Law) does implement general consumer protection measures.

Overview of product liability law

Currently, and subject to the impact the CP Law will have, product liability law in Myanmar comes from a mixture of common law liability in negligence and the Sale of Goods Act 1930 (SG Act). There is, in addition, some possibility in certain circumstances of prosecution under the Penal Code, and of prosecution under the law relating to trade descriptions under the Merchandise Marks Act 1889 (MM Act), which was recently amended to enhance the penalties associated with violating the MM Act.

Finally, there are specific laws that relate to weights and measures that have penal provisions if broken, in particular the Weights and Measures of Capacity Act 1871 and the Standardization Law 2014 (SL).
Product safety

The Consumer Dispute Settlement Body (CDSB) of the Department of Consumer Protection of the Ministry of Commerce has the power to prohibit the sale or distribution of goods within a limited period, to recall goods from the market, and to order the destruction of goods which may cause danger to consumers.

The Myanmar Food and Drug Administration (FDA) of the Ministry of Health has the power to ban products, recall products, seize and destroy goods, and file complaints in the courts of Myanmar.

Enforcement and administration

The relevant laws relating to enforcement are the National Drug Law of 1992 and the National Food Law of 1997. The FDA was formed under these laws to regulate, administer and enforce all the food and drug related laws and regulations. Over time, the FDA has expanded its scope of authority to include cosmetics.

In addition to the food and drug related laws and their enforcement by the FDA, the CDSB enforces consumer protection under the CP Law.

Below is a summary of different bodies that have enforcement and administrative powers in relation to products in Myanmar:

- The CDSB has the power to investigate complaints and issue warnings and punishments, from compensation to product recalls, order the destruction of the goods and recommend revocation of business licenses.

- The FDA has the power to ban products, recall products, seize and destroy goods, and make a complaint to a judge.

- Under certain circumstances, the police have the power to investigate and begin a prosecution.

- Three areas of Myanmar are designated under Myanmar Special Economic Zones Law of 2014 as special economic zones where
foreign investment is promoted. The management committee of the respective zone has responsibility for administration and enforcement and for standards, safety and other matters within their zones.

Specific sector regulation

The only products with specific industry sector regulation are:

- pharmaceuticals, food and cosmetics, which are regulated by the FDA
- electrical appliances, which are regulated under the Electricity Law 2014 by the Electricity Regulatory Commission

Product recall

There is no specific product recall law in Myanmar. However, the CDSB and the FDA both have power to order a product recall. The FDA makes random checks into the market and if uncertified, adulterated or dangerous products are discovered, the FDA announces publicly that the products are uncertified, adulterated or dangerous for consumption, along with an order to withdraw or destroy those products.

Civil liability

The SG Act

Under the SG Act, there are certain implied conditions, which, if broken, give the buyer a right to reject the goods if the buyer has not accepted the goods, or sue for damages for breach of warranty if the buyer has accepted the goods. Those conditions are as follows:

- where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to rely on the seller’s skill and judgment, and where the goods are of a description which it is in the course of the seller’s business to
supply, there is an implied condition that the goods shall be reasonably fit for that purpose

- where the goods are bought by description, there is an implied condition they shall be of merchantable quality
- there may be also be a warranty implied by trade usage

**Negligence**

There is a tort of negligence in Myanmar, although the surrounding law is not well developed. The precise basis of a duty of care that a court would apply in Myanmar is not known; however, it can be assumed that some kind of “reasonable foreseeability” test would be applied, as in other common law countries.

**Under the CP Law**

The CP Law creates product liability in two ways:

- Firstly, it specifies a number of things that the manufacturer/distributor/seller must not do, and about which the consumer is entitled to make a complaint to the CDSB. The CDSB has a range of potential penalties it may impose if the manufacturers/distributor/seller engages in that prohibited conduct.

- Secondly, the CP Law creates offenses for which there are specific penalties.

* Matters about which the consumer may make a complaint to the CDSB

It appears from the CP Law that consumers may make a complaint to the CDSB in respect of *any* complaint they may have in relation to products. Certain specific complaints are given in the CP Law: for example, the consumer must be given the benefit of the warranty as stated; the goods must conform to any prescribed standards that are
relevant to those goods; goods must comply with their labeling, but it appears these are not exhaustive.

**Specific offenses**

Section 9 of the CP Law creates a number of offenses if the manufacturer/distributor/seller “offers for sale or promotes or advertises *with an intent to mislead* the purchaser or user.” Examples of goods which, if offered for sale or promoted or advertised, would trigger these offenses are goods which are not in a new and good condition, non-usable goods, and goods concealing faults and defects.

**Under the MM Act**

Section 17 of the MM Act implies warranties into contracts for the sale of goods that any mark is genuine and not counterfeit or falsely used, and that the trade description is not a false trade description.

**Criminal liability**

**Under the Penal Code**

A number of offenses that are based on negligence are included in the Penal Code, and could in theory apply to a case of product liability where death or injury ensued. They are:

- causing death by negligence (section 304A of the Penal Code)
- rashly or negligently endangering human life or personal safety (section 336 of the Penal Code)
- causing hurt to any person by doing any act so rashly or negligently as to endanger human life or personal safety (section 337 of the Penal Code)
- causing grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or personal safety (section 338 of the Penal Code)
Chapter XII of the Penal Code also creates a number of offenses relating to the use of false weights and measures.

Under the MM Act

Under Section 6 of the MM Act, it is an offense to apply a false trade description to goods, unless the offender proves that he or she acted with no intent to defraud. Section 7 creates the offense of selling, or exposing, or having in possession for sale any goods to which a false trade description has been applied (trade description in this context means certain measurements of length).

Under the SL

Section 25 of the SL creates the offense of intentionally providing substandard goods or products.

Penalties

Under the SGA

The SGA does not specifically provide for damages for breach of warranty. Damages would therefore be measured under the Myanmar Contract Act 1872 as “compensation for any loss or damage caused to him [by the breach of contract] which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it . . . [s]uch compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.”

In negligence

Damages in cases of negligence would be based on common law tortious principles, therefore would in principle be obtainable for all losses flowing from the act of negligence, provided they were not too remote. The court would have a wide discretion as to the actual amount of damages awarded.
Under the CP Law

Where a consumer complaint is upheld or the CDSB decides to take action following investigation, the powers of the CDSB in such circumstances depend on the severity of the offense. They range from issuing a warning to ordering product recalls, recommending revocation of business licenses and awarding compensation. The discretion of the CDSB to award compensation appears to be very wide in these circumstances, although there is an appeal procedure to the Consumer Protection Central Committee.

Where the offender commits any of the specific offenses created by section 9 of the CP Law, punishment is up to three years’ imprisonment, or a fine of up to MMK 500,000 or both.

Under the Penal Code

- Causing death by negligence carries with it a punishment of to seven years’ imprisonment and a fine.

- Rashly or negligently endangering human life or personal safety carries with it a punishment of up to one year’s imprisonment and a fine.

- Causing hurt to any person by doing any act so rashly or negligently as to endanger human life or personal safety carries with it a punishment of up to two years’ imprisonment and a fine.

- Causing grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or personal safety carries with it a punishment of up to five years’ imprisonment and a fine.

Offenses in relation to false weights and measures under the Penal Code all carry with them a penalty of imprisonment of up to one year, or a fine, or both.

A person using false trade marks, counterfeiting trade marks, making or possessing any instrument for counterfeiting trade marks, or selling goods marked with counterfeit trade marks, may face criminal
prosecution under sections 482, 483, 485 and 486 of the Penal Code. Punishments range from a fine to three years imprisonment and possibly a court order for the seizure and destruction of the infringing articles and goods.

Under the MM Act

Offenses under section 6 and section 7 of the MM Act are both punished in the same way: a fine of up to MMK 50,000 or up to three months’ imprisonment, or for a second or subsequent conviction, up to one year’s imprisonment and/or a fine.

Under the SL

Penalties under section 25 of the SL are up to three years’ imprisonment and a fine of up to MMK 3 million, or both.

Class actions

There is no precedent for class actions in Myanmar, although consumer protection organizations can make complaints to the authorities on behalf of multiple consumers.

Reform

We are not aware of any current plans for reform, although there are likely to be rules and regulations that are promulgated under the CP Law.

The newly established Department of Consumer Protection is actively engaged in efforts to educate the public on consumer rights, safety awareness and protection.
Introduction

Product liability law in Singapore comprises a mix of statute-based and common law protection.

The statutory regimes generally fall into two categories — legislation that governs goods and/or services generally, and legislation that governs specific classes or types of products.

The statutory regimes are supplemented by the common law, which provides a host of possible actions that aggrieved consumers may have recourse to, in addition to or in place of proceedings based upon their statutory rights.

Overview of product liability law

Singapore has two main pieces of legislation dealing generally with consumer protection. The Consumer Protection (Trade Descriptions and Safety Requirements) Act (CPA) is more limited in scope and seeks to prohibit the application of false trade descriptions onto goods. The CPA has been supplemented with the Consumer Protection (Fair Trading) Act (the CPFTA), which was enacted to deal with deceptive, unfair or misleading trade practices in consumer transactions. Other legislation that may have an incidental impact on consumer protection issues includes the Regulation of Imports and Exports Act (the
RIEA), the Sale of Goods Act, the Hire Purchase Act and the Unfair Contract Terms Act.

There are also statutes that contain provisions relevant to the protection of consumer interests in respect of specific categories of products, such as food, medicines and drugs (for example, the Sale of Food Act, the Intoxicating Substances Act, the Health Products Act, the Medicines Act and the Poisons Act).

Besides the statute-based protection highlighted above, an aggrieved consumer may also potentially be able to commence common-law proceedings based upon causes of action in contract or tort.

Lemon laws

The CPFTA was amended to include new lemon laws in Singapore (Lemon Laws), effective 1 September 2012. The Lemon Laws provide consumers with an alternative simplified regime for obtaining redress for non-conforming goods at the time of delivery.

The Lemon Laws apply when:

- the contract in issue is a contract of sale of goods or transfer of goods, or a hire purchase agreement

- the person who buys, obtains or hires the goods (the transferee) deals as a consumer (that is, he or she is not making the contract in the course of business); the other party (the transferor) is not a consumer; and the goods involved are of a type ordinarily supplied for private consumption

- the goods do not conform to the contract (for example, because they are defective) at the time of delivery (non-conforming goods)

If the non-conformity or defect is found within six months of delivery, it is presumed that the defect existed at the time of sale or delivery unless the transferor can prove otherwise. If the non-conformity or
defect is discovered beyond six months from the date of delivery, the transferee can still seek remedies under the Lemon Laws but they will bear the burden of proving that the non-conformity or defect existed at the time of delivery.

Non-conforming goods are goods that breach an express term of the contract in issue, and/or a statutory implied term under the Sale of Goods Act, the Supply of Goods Act and/or the Hire Purchase Act.

Examples of implied conditions under the Sale of Goods Act include:

- where the contract is for the sale of goods by description, the goods will comply with the description
- where there is a sale by reference to a sample, the bulk will correspond with the quality of the sample and be free from defects which are not apparent
- that the goods are of satisfactory quality, taking into account considerations such as their fitness for all the purposes for which goods of the kind in question are commonly supplied, their appearance and finish, freedom from minor defects, safety and durability

The Lemon Laws introduce additional remedies for aggrieved consumers. Under the provisions, the transferee may demand the transferor to repair or replace the non-conforming goods. If the transferor fails to repair or replace the non-conforming goods or if the repair or replacement is impossible or disproportionately costly, the consumer may require the transferor to reduce the price paid for the non-conforming goods or reject the goods altogether and get a refund instead. Any refund may be reduced to take into account the use that the consumer has had of the goods.
Product safety

As previously alluded to, the CPA prohibits the application of a false trade description in the course of trade or the supply of goods for trade to which a false trade description has been applied. The definition of a “trade description” under the CPA is very broad and includes details relating to the method of manufacture, production, processing or reconditioning of any goods, the composition of any goods, the approval of any goods by any person or their conformity with a type approved by any person, and the testing of any goods by any person and the results thereof. The application of a false or incorrect trade description may also constitute an offense under the RIEA (see below).

Certain home appliances, electrical accessories and other items have been designated as controlled goods pursuant to the Consumer Protection (Safety Requirements) Regulations (the SR Regulations) promulgated under the CPA. Any person who supplies or advertises the supply of controlled goods must ensure that such goods conform to the safety requirements specified by, and have been duly registered with, the Safety Authority. In this regard, the Ministry of Trade and Industry (MTI) has appointed SPRING Singapore as the Safety Authority, and SPRING Singapore administers the Consumer Protection (Safety Requirements) Registration Scheme for the registration of controlled goods and their suppliers. Registration of controlled goods may be based upon a Certificate of Conformity issued by a designated third-party Conformity Assessment Body.

Controlled goods must also have affixed onto them a safety mark, consisting of the safety logo enclosed in a square on the left, the words “Safety Mark” enclosed in a rectangle on the right, and a unique eight-digit registration number traceable to the registration across the bottom (see example below).
The Consumer Protection (Consumer Goods Safety Requirements) Regulations 2011 (the CGSR) promulgated under the CPA took effect on 1 April 2011. They set out the safety requirements for all consumer goods not otherwise covered by specific legislation. Under the CGSR, consumer goods have to meet certain safety standards as formulated or adopted and published by international, regional or national standards bodies.

The CPA also covers financial products and services regulated by the Monetary Authority of Singapore.

Product safety standards have also been imposed on other products such as telecommunication equipment. Under the Telecommunications Act, all equipment used in Singapore for connection to a telecommunication system must be approved by the Infocomm Development Authority of Singapore (IDA) before use.

The CPFTA is a comprehensive piece of legislation that governs deceptive, unfair or misleading trade practices. Unlike the CPA, the CPFTA applies to all consumer transactions for goods as well as services. The CPFTA also applies to consumer transactions conducted via electronic means, so long as either the consumer or the supplier is a resident in Singapore. An unfair practice may occur before, during or after a consumer transaction and may consist of a single act or omission.

It is an “unfair practice” under the CPFTA for the supplier to do any of the following:

- Do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled.
- Make a false claim.
• Take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer is not in a position to protect his own interests, or is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction.

A list of 20 specific instances of unfair practices is set out in the Second Schedule of the CPFTA.

Under the CPFTA, retailers have to alert SPRING Singapore when there are changes to their shop’s address of employment status, failing which they may be charged with contempt of court.

The RIEA provides, *inter alia*, that any person who imports, exports or transships any goods and does any of the following shall be guilty of an offense:

• applies or causes to be applied to such goods an incorrect trade description

• has in his possession for sale or for any purpose of trade any such goods to which an incorrect trade description has been applied

For the purposes of the relevant section of the RIEA, a person shall be treated as applying a trade description to the goods if he does any of the following:

• affixes or annexes the trade description to, or in any manner marks the trade description on or incorporates it with (a) the goods themselves; or (b) anything in, on or with which the goods are supplied

• places the goods in or with anything that the trade description has been affixed or annexed to, marked on or incorporated with or places any such thing with the goods

• uses the trade description in any manner likely to be taken as referring to the goods
The RIEA defines “trade description” very broadly to mean any
“description, statement or indication which, directly or indirectly and
by whatever means given, relates to the place of origin, manufacture
or production of the goods.”

Enforcement and administration

SPRING Singapore has been appointed as the Safety Authority for the
purposes of the regulation of controlled goods pursuant to the SR
Regulations, and consumer goods pursuant to the CGSR. Under the
SR regulations, SPRING Singapore has the power to suspend or
prohibit the supply of controlled goods for a number of reasons (for
example, where the registered controlled goods no longer conform to
the prescribed safety requirements). SPRING Singapore also has the
power to investigate incidents relating to the use of controlled goods
and to obtain relevant information from any person who may have
knowledge of the matter, including the supplier of the controlled
goods.

Under the CGSR, SPRING Singapore may issue a public notice
declaring goods to be unsafe, or direct a supplier of the goods to
control or cease the supply of such goods and to inform users of such
goods of the potential danger. Any person who fails to comply with
such directions will be guilty of an offense.

Under the CPFTA, SPRING Singapore has the power to search and
enter the premises without a warrant to gather evidence against a
persistent errant retailer, allowing SPRING Singapore to quickly file
an injunction if necessary. Errant retailers, have to alert customers that
they are under an injunction, such as by printing a notice on their
invoices.

Certain categories of goods and services may be regulated by other
statutory bodies or governmental agencies. For example, medicinal
and quasi-medicinal products and devices are mainly governed by the
Health Sciences Authority (HSA).
The Consumer Association of Singapore (CASE) is a non-political, non-profit and independent organization founded in 1971 by the National Trade Union Congress to inform, educate and protect consumers. CASE gives advice on consumer problems and helps aggrieved consumers obtain redress, although complaints may only be initiated by members since CASE is an association. CASE also represents consumers on various national committees and councils responsible for input on consumer policies and lobbies for consumer protection legislation.

**Specific sector regulation**

Certain categories of goods are subject to product-specific regimes for consumer protection. For example, medicinal and quasi-medicinal products and devices are subject to regulation under statutes such as the Medicines Act and the Health Products Act. Such statutes may impose specific requirements in relation to product information and labeling, as well as product recalls, that go beyond the general requirements specified in the CPA and the CPFTA.

**Product recall**

Under the SR Regulations, where SPRING Singapore decides to prohibit the supply of controlled goods, it may also exercise its powers to require the supplier to effect a recall of the goods, and to keep it informed of the progress of the recall. SPRING Singapore may also require the supplier to notify the public of the potential dangers surrounding the use of the goods.

It is prudent for suppliers of controlled goods to consult SPRING Singapore before initiating a voluntary or giving effect to a compulsory recall. Suppliers of goods other than controlled goods also often consult with SPRING Singapore prior to effecting a recall even though this is not statutorily required.

Specific requirements relating to notification and recall procedures may be prescribed in relation to certain categories of goods such as
medicines, quasi-medicinal products and cosmetic products regulated by the HSA.

Civil liability

Consumer Protection (Fair Trading) Act

The CPFTA gives consumers who have entered into a consumer transaction involving an unfair practice the right to commence an action in a court of competent jurisdiction against the supplier for a claim not exceeding SGD30,000, or for any non-monetary remedy or relief provided the value of the subject matter underlying the claim does not exceed SGD30,000.

Where a claim is brought in the district or magistrate’s courts, the CPFTA provides that the court may do any of the following:

- order restitution of any money, property or other consideration given or furnished by the consumer
- award the consumer damages in the amount of any loss or damage suffered by the consumer as a result of the unfair practice
- make an order of specific performance against the supplier
- make an order directing the supplier to repair goods or provide parts for goods
- make an order varying the contract between the supplier and the consumer

In Singapore, an action may be commenced in the Small Claims Tribunal, which provides a quick and inexpensive forum (without the need for legal representation) for the resolution of small claims between consumers and suppliers. Pursuant to the Small Claims Tribunals Act, the jurisdiction of the Small Claims Tribunal does not extend to claims exceeding SGD 10,000, albeit the parties to a dispute may, by filing a memorandum of consent, extend such jurisdiction to claims not exceeding SGD 20,000. The CPFTA, however, extends the
jurisdiction of the Small Claims Tribunal to empower it to hear claims under the CPFTA not exceeding the prescribed limit of SGD 30,000, and further extends the jurisdiction of the Small Claims Tribunal to cover actions arising from timeshare-related contracts and actions related to the deposit paid pursuant to a motor vehicle sale contract.

Financial products and financial services are also included within the ambit of the CPFTA, and claims related to such products and services may also be raised with the Financial Industry Disputes Resolution Centre Limited.

Sale of Goods Act and Unfair Contract Terms Act

The Sale of Goods Act contains various implied conditions and warranties that would apply to a contract for the sale of goods (for example, satisfactory quality and fitness for purpose). Pursuant to the Unfair Contract Terms Act, some of these implied conditions and warranties may not be excluded or restricted by reference to a term in the contract, or may only be excluded or restricted to the extent that such exclusion or restriction satisfies the requirement of reasonableness (particularly against a person dealing as a consumer or on standard terms of the other party).

In the event that a seller contravenes any of the implied conditions and warranties (to the extent that such implied conditions and warranties are not effectively excluded), the buyer may bring a civil suit against the seller in respect of such breach.

Breach of contract

Where privity of contact exists, a consumer may also bring an action for a breach of any term or condition of the contract (for example, failure to conform to agreed specifications or breach of guarantee). Damages would typically be awarded for defective or non-conforming goods based upon the ascertained value of the goods and the contract price, although other remedies and other measures of damage exist.
Tort

There is generally no clear concept of strict liability in relation to defective goods in Singapore. However, a consumer who suffers any injury or loss as a result of a defective product may potentially bring an action against the manufacturer, distributor or the retailer to the extent that the consumer can prove some fault (for example, negligence) by the manufacturer, distributor or retailer. For a claim based on negligence to succeed, the consumer must establish that a duty of care exists, that such duty of care has been breached and that such breach has caused reasonably foreseeable loss to the consumer. Local jurisprudence confirms that the importer, wholesaler or distributor of a product may be in a sufficiently proximate relationship and may owe a duty of care to consumers. Precedents also establish that a director can be personally liable for torts committed by the company.

Misrepresentation

To the extent that there has been some misrepresentation (as opposed to mere sales puff) in the sales pitch or in advertisements for a product, an affected consumer may potentially also bring an action for misrepresentation. Where a transaction was induced by an actionable misrepresentation, the contract may be set aside or damages might be awarded to the consumer.

Criminal liability

Consumer Protection (Trade Descriptions and Safety Requirements) Act

A person guilty of an offense under the CPA for which no other penalty is specified shall be liable on conviction to a fine not exceeding SGD 10,000 or to imprisonment for a term not exceeding two years or to both. Where an offense committed by a body corporate is proved to have been committed with the consent and connivance of, or is proved to be attributable to any neglect on the part of, any director, manager, secretary or any other similar officer of the body
corporate, or any person who was purporting to act in any such capacity, he or she as well as the body corporate, shall be guilty of that offense and shall be liable to be proceeded against and punished accordingly.

A person guilty of an offense under the CGSR shall be liable for a fine not exceeding SGD 2,000 or to imprisonment for a term not exceeding 12 months, or to both. Heavier penalties may be imposed for subsequent convictions.

Regulation of Imports and Exports Act

A person convicted of an offense relating to the application of an incorrect trade description on goods may be liable to a fine not exceeding SGD 100,000 or three times the value of the goods in respect of which the offense was committed, whichever is the greater, or to imprisonment for a term not exceeding two years, or to both. Heavier penalties may be imposed for subsequent convictions.

Penal Code

Although there has been limited authority in this regard, we should also highlight that it may potentially be possible for a supplier of defective goods to be exposed to criminal liability under the Penal Code. In particular, there are offenses associated with a rash or negligent act which causes hurt or jeopardizes the safety of others. Depending on the severity of the injury caused, the penalties imposed could vary from imprisonment for a term from two months to two years, a fine of an amount between SGD 250 and SGD 1,000, or both.

Penalties

The civil and criminal penalties arising from a contravention of consumer protection laws have been described in the two preceding sections.
Class actions

There is no concept of a class action as is available in jurisdictions such as the United States, but it is possible for multiple plaintiffs in Singapore to file legal action in court under common legal representation. Such actions are referred to as representative actions. The claims on which a representative action is filed should be based upon the same or similar facts and give rise to common issues.
Taiwan

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Introduction

Taiwan’s product liability and product safety laws are statute based and rooted in tort provisions of the Civil Code. Taiwan has no comprehensive product safety statute.

The Consumer Protection Act (CPA) of 1994 is the principal legislation establishing Taiwan’s product safety and liability regimes. Underlying the CPA is a tort-based Civil Code that historically required plaintiffs to prove negligence and a causal relationship between a defendant’s action and the injury. In May 2000, revisions to the Civil Code shifted the burden of proof to the manufacturer to show due care, although the standard of proof remained high. In 2003, Taiwan adopted the theory of strict liability with respect to the CPA, that is, liability for consumer injury or damage without regard to fault. In June of 2015, CPA was amended to entitle the consumers to claim an even higher punitive damage against business operators.

Several sector-specific laws contain product safety provisions that overlap with those of the CPA on consumer health and safety matters. While these sector-specific laws do not in themselves grant private rights of action to consumers, most do cover consumer products that fall within the ambit of the CPA. Notable sector-specific legislation includes the Commodity Inspection Act which regulates technical, safety and health standards for many agricultural, mining and
industrial commodities. Similarly, the Food Sanitation Act regulates and provides mechanisms for enforcing quality and safety standards in food and food-related products. It also imposes product recall criteria unique to the food industry. Other laws and regulations with product safety aspects include labeling and pharmaceutical laws, product registration regulations, tobacco legislation, and motor vehicle laws and regulations.

Overview of product liability law

Consumers may seek remedies for product safety violations pursuant to Taiwan’s Civil Code and the CPA. Business operators (usually manufacturers, designers, importers or service providers) may be jointly and severally liable in civil suits under the CPA, and penalized under both the CPA and the product safety provisions of other laws to which they are subject. The causes of action available to a plaintiff-consumer or a third party injured by a defendant’s product or service include:

- strict liability for damage or injuries caused by the defendant’s products (Article 7 of CPA)
- negligence (Civil Law remedy)
- statutory or civil law breach of contract (pursuant to the consumer dispute remedies of the CPA)
- statutory breach of Subchapter Three of the CPA, extraordinary purchase and sale provisions, such as mail order (pursuant to the CPA consumer dispute remedies)

Product safety

No single government agency, body or consumer safety commission is responsible for regulating and ensuring the application of product safety standards. Rather, the laws of Taiwan delegate regulatory responsibilities, including enforcement, to “competent authorities.” Competent authorities are usually local and/or central government
agencies or departments that have been delegated the express responsibility to establish and enforce applicable standards for specific types of products or affairs.

Consumer Protection Act

The competent authorities for the CPA are ministerial-level entities with jurisdiction over the applicable industry and local (municipal and county) governments. These authorities are responsible for ensuring that goods and services meet and comply with contemporary technical standards before they enter the market. In addition, the CPA obliges business operators (primarily manufacturers, importers or service providers, but also distributors/sellers) to coordinate with the competent authorities to ensure that goods meet packaging guidelines, conform to weight and measure requirements, comply with other laws and regulations (such as sector-specific laws), and, if required, ensure goods are labelled with warnings.

Competent authorities may compel product recalls, destructions and bans. They may also order business operators to cease exports and imports, and compel them to affix or change warnings labels.

Sector-specific laws

The competent authorities for other laws with product liability provisions regulate products within their sphere in a manner similar to that described above. For example, the Food and Drug Administration (TFDA) establishes safety and quality standards for foods, food-related items and pharmaceuticals under the Food Sanitation Act and the Pharmaceutical Affairs Law. Similarly, the Bureau of Standards, Metrology and Inspection (BSMI) determines the goods subject to the Commodity Inspection Act, establishes technical standards, conducts inspections of covered agricultural, industrial and mining commodities, and coordinates with local government authorities to ensure compliance.
Enforcement and administration

The delegated competent authorities are responsible for administering and enforcing the CPA and sector-specific laws covering product safety. Separately, the product liability sphere is enforced by criminal prosecutions and civil litigation.

Enforcement of the CPA usually takes place at local government level. Competent authorities at the local government level are empowered to investigate suspected breaches, require businesses to disclose relevant information, seize evidence for their investigations, conduct tests and notify consumer protection groups. After concluding an investigation, the local government authorities may order business operators to comply with specific provisions of the CPA (such as by directing them to attach warning labels) or ban unsafe products, publicize safety breaches or dangers via the media if urgent, and take other necessary measures, including ordering a recall if the business operators have not initiated a voluntary recall. The central government authorities are also authorized to do the above actions if the authorities deem necessary. The competent authorities may also impose statutory fines on business operators who fail to take corrective actions, violate orders or obstruct investigations under the CPA. The competent authorities may also recommend criminal prosecutions under other laws.

Specific sector regulation

Food, pharmaceuticals, agricultural, mining and all industrial commodities, toys, electrical appliances, and consumer electronics are among the consumer products that are regulated by separate legislation with sector-specific product safety requirements. As with the CPA, “competent authorities” are delegated express authority to regulate, administer and enforce these laws. Application of these laws often overlaps with the CPA.

- The Commodity Inspection Act is a multi-sectorial, multi-purpose law that subjects a range of agricultural, mining and industrial
commodities to inspection by the BSMI. The law seeks to promote economic development, uphold technical standards, encourage environmental protection, and protect health, safety and consumer interests. The BSMI conducts inspections and administers the technical aspects of the Commodity Inspection Act, while local governments and industry-specific ministries investigate alleged breaches and share other enforcement responsibilities. Breaches of the Act, usually in the form of avoiding inspections, may lead to large fines, confiscations and/or mandatory recalls when accompanied by actual or likely damage to the life, body and health of consumers.

- The Food Sanitation Act sets health, safety, quality and labeling standards for food (including raw materials) and food additives intended for human consumption, as well as cleaners, utensils, containers and packaging intended for food-related uses. Food businesses, which include manufacturers, retailers, processor, transporters, and importers/exporters of food as well as food additives, are required to comply with the standards applicable to their food commodities. In addition, they are required to remove, recall and/or destroy, as necessary, commodities which do not meet the standards. Further, the Food Sanitation Act authorizes the competent authorities to initiate compulsory recalls if severe breach of the Act is found.

- The Commodity Labelling Law (CLL) and the CPA overlap with respect to warning labels for commodities. For example, the implementing regulations of the CLL mandate warning labels for toys, electric appliances and electronics. As with other laws, administration and enforcement is undertaken at both central and local government levels.

- The Pharmaceutical Affairs Law establishes standards for pharmaceuticals in Taiwan and regulates recalls of pharmaceutical products.
Taiwan has other laws and regulations with product safety dimensions that overlap with the CPA. These include product registration and labeling requirements for medical devices, pharmaceuticals, environmental agents and toxic chemicals, veterinary products, and tobacco and alcohol.

**Product recall**

The CPA provides a legal basis for both voluntary and compulsory product recalls in Taiwan. Other sector-specific laws overlap with the CPA with respect to the specific goods, services and commodities they regulate.

Article 10 of the CPA requires business operators to recall their products when necessary to protect the safety and health of consumers. With respect to mandatory recalls, Articles 36 and 37 of the CPA authorize mandatory recalls when the competent authorities either:

- believe that goods or services have or will endanger consumers
- conclude that there is a sufficient threat of major injury or damage to consumers

A series of food safety incidents occurred in Taiwan from 2009. The TFDA responded by intensifying its control over food safety. Relevant reforms include further specifying conditions triggering product recall. Under the current Food Sanitation Act, food businesses need to recall food products voluntarily, or have to recall food products in accordance with a mandatory order from the competent authorities, if there are any of the following circumstances:

- Voluntary recall: If a food business finds its food product may have safety or sanitation concern, it is obligated to cease manufacturing, processing, sale and recall food products by themselves.
Mandatory recall:

- When a significant or an unexpected food safety incident occurs, the TFDA may require a food business to recall specified products or products from specified areas, when deemed necessary, on the basis of a risk assessment made by the TFDA or an epidemiological survey result.

- The local competent authorities may, at their discretion, order the food business to recall food products if a violation of the Food Sanitation Act is found (for example, if a food product contains an additive that has not been approved by the TFDA).

In addition, mandatory recalls may be ordered for violations of the Commodity Inspection Act, the Pharmaceutical Affairs Law, and the Regulations for Motor Vehicle Safety Investigation where the relevant products endanger or have caused damage to the safety and health of consumers.

Neither the CPA nor any of the industry-specific laws and regulations specifies how a recall should be implemented. Moreover, while none of the laws have express notification requirements in the event of voluntary recalls, the CPA implicitly requires such notifications as it requires that business operators work together with the competent authorities to ensure the safety and interests of consumers. As a general rule, competent authorities acting under the CPA will only order a recall after investigating and concluding that a recall is necessary to protect consumers. The CPA compels the authorities to use the media to inform consumers when they believe that consumer goods or services threaten consumers’ health and safety.

Civil liability

Strict liability is the most notable aspect of the CPA. The law compels “business operators” to ensure that their products meet contemporary technical and safety standards and to warn consumers of goods and
services that may endanger lives, bodies, health, or property. Within the meaning of the CPA, “business operators” include manufacturers, producers, designers, importers as service providers. The CPA also treats importers and distributors as business operators. Notably, however, distributors and sellers are protected from liability if they exercised reasonable care to avoid injury to consumers and the injury would have occurred regardless of the care exercised.

The language of the law is broad. It applies to any danger alleged to be present in the product. Under the broadest reading of the law, a manufacturer would be liable for a plaintiff’s injury for failing to remove all health and safety dangers from its products.

The CPA does not specify the type or amount of damages payable. However, a business operator will be liable for the plaintiff’s actual harm/losses, regardless of fault. Actual losses covered by the CPA would likely include medical expenses, loss of income, property damage and, possibly, pain and suffering.

In addition, as a result of the amendment to CPA in June 2015, punitive damages up to 500% of actual damages may be imposed pursuant to Article 51 if the plaintiff’s injuries are shown to be the result of the defendant’s willful misconduct. In case of gross negligence, the punitive damages may be up to 300%. Last, if the injury is the result of the defendant’s negligence, the defendant can still be required to pay punitive damages equivalent to the plaintiff’s actual damages.

**Criminal liability**

Although the CPA does not prescribe criminal liability for product safety violations within its scope, it expressly endorses criminal sanctions for serious consumer protection violations that may be prosecuted under other laws.

Most notably, the Food Sanitation Act sets out a penalty of up to seven years’ imprisonment for food safety violations that result in
injury to human health. Moreover, if a violation results in death, a life imprisonment or imprisonment of not less than seven years would be imposed.

Penalties

Consumer Protection Law

Business operators violate the CPA when they commit any of the offenses set out below:

- Failure to correct the operator’s non-compliance with product labeling required under the CPA or CLL.
- Failure to take corrective action to furnish warranties as specified in the CPA.
- Failure to provide adequate packaging to protect a product.
- Circumventing or obstructing an investigation authorized under the CPA.
- Breaching an order of a competent authority.

Administrative penalties against business operators range from fines of NTD 20,000 (USD 600) to NTD 1,500,000 (USD 45,000). Where breaches are deemed material and serious, the competent authorities may cause a business to cease its operations in Taiwan. In particularly serious cases, the competent authorities may recommend criminal prosecution where CPA breaches fall within the ambit of a law with criminal penalties.

Sector/Industry-Specific Laws

Violations of any of the sector-specific laws noted above carry administrative penalties. In addition, the Food Sanitation Act imposes criminal liability on business operators whose violations result in injury to human health. With respect to product safety, the most
relevant penalties are those under the Commodity Inspection Act and the Food Sanitation Act.

Although it applies to a more limited range of commodities than the CPA, the Commodity Inspection Act carries some of the most serious administrative penalties in Taiwan. Failing to correct inspection breaches or to label products properly can result in fines of NTD 100,000 (USD 3,000) to NTD 1,500,000 (USD 45,000), while breaches accompanied by harm to humans will result in fines of NTD 750,000 (USD 23,000) to NTD 7,500,000 (USD 230,000).

Failing to comply with the Food Sanitation Act may result in punitive fines ranging from NTD 60,000 to NTD 200,000,000 (approximately USD 2,000 to USD 66,666,666), as well as possible business license revocation, for putting non-compliant foods and food utensils, containers, cleaners and food packaging into the market. Moreover, criminal penalties will be imposed when a breach of the Food Sanitation Act results in harm to human health. The criminal penalties are usually imposed on the most senior manager, company representative and any actual wrongdoers and may be up to life imprisonment or detention (other than prison) and/or criminal fines up to NTD 150,000,000 (approximately USD 50,000,000). The punishment/penalties may be reduced — but not waived — if the business and/or wrongdoers demonstrate that their breaches were the result of negligence.

Class actions

Article 41 of the Code of Civil Procedure authorizes class actions by representative plaintiffs for multiple parties with claims arising out of common circumstances. The CPA expressly permits such class actions for claims arising out of consumer product safety violations. In addition, Article 50 of the CPA gives consumer protection groups standing to bring class action suits on behalf of 20 or more consumers.
Reform

No reforms are pending at this time.
Introduction

Thailand introduced two laws that specifically govern product liability in 2008. They have brought about significant changes in the product liability regime in Thailand. These laws are:

- The Act on Liability for Injuries from Unsafe Products, B.E. 2551 (A.D. 2008) (*Product Liability Act*), which was Thailand’s first specific product liability law
- The Act on Court Proceedings for Consumer Cases, B.E. 2551 (A.D. 2008) (*Consumer Case Procedure Act*), which was complementary legislation designed to facilitate and simplify court proceedings concerning consumer cases, including cases concerning the new product liability law
Overview of product liability law

Product liability

These two pieces of legislation provide a number of consumer-friendly procedural elements designed to give consumers advantages when taking cases to court against business operators.

Product Liability Act

The Product Liability Act sets conditions that all business operators are jointly liable for an unsafe product sold to consumers, irrespective of whether the injury arises from a willful or negligent act.\(^1\) The Product Liability Act expands the concept of strict liability, whereby all operators in the distribution chain of the unsafe product will be jointly liable even if they have not caused the product to be unsafe. An innocent operator can also initiate separate proceedings to seek indemnification or retributions from the blameworthy operator.

In a product liability case, the plaintiff only needs to prove that injury occurred and that such injury was caused by the product. The plaintiff

\(^1\) Section 4 of the Act on Liability for Injuries from Unsafe Products, B.E. 2551 (2008) stipulates that “business operator” means (1) manufacturer or hirer for manufacture; (2) importer; (3) seller of a product when the product itself does not indicate the manufacturer, hirer for manufacture or importer; or (4) person who uses name, trade name, trademark, mark, wording or who displays any of the foregoing in a manner that would give rise to misunderstanding that such person is the manufacturer, hirer for manufacture or importer.

“Unsafe product” means a product that causes or may cause injury whether because of its defective manufacturing or design process or due to the failure to provide information on instructions for use and storage, warnings, and other product information, or such information is provided but is inaccurate or unclear as it fails to take into consideration the condition of the product and the normal manner of using and storing the product as might be expected.

“Injury” means an injury occurred from unsafe products, whether it be an injury to life, body, health, hygiene, emotions, or property, but excluding injury to the said unsafe products.
does not have to prove that the injury arose from the acts of any particular operator. Moreover, the Product Liability Act also provides that an agreement between the consumer and the operator before the injury, and any statement of the operator to disclaim or limit its liability for injury caused by an unsafe product, cannot be asserted as an exception or limitation of the operator’s liability.

However, the Product Liability Act sets out three defenses available for the operator. These defenses are limited in scope and content and it must be proved by the operator that:

- the product is not unsafe
- the injured party already knew the product was unsafe
- the injury arose from the improper use or storage of the product, in a manner not in accordance with directions on usage or storage, warnings, or information regarding the product, which has been correctly, clearly and reasonably provided by the business operator

Furthermore, the prescription period for product liability claims is three years from the date the injured party became aware of the injury and identified the liable operator, or ten years from the date that the product was sold. In the event that the injury was caused by substances accumulating in the body, the prescription period is three years from the date that the injured party became aware of the injury and identified the liable operator, but not exceeding ten years from the date that the injured party became aware of the injury.

**Consumer Case Procedure Act**

The Consumer Case Procedure Act gives the courts broad powers in conjunction with the Product Liability Act in adjudicating cases, including the ability to grant remedies. The Consumer Case Procedure
Act applies to all consumer cases\(^2\) arising from the consumption of goods and services, and includes cases under the Product Liability Act. Claims for damage to the product itself, claims for damages arising from the consumption of services and claims for damages for delays to the delivery of products or services are subject to the Consumer Case Procedure Act, but not within the scope of the Product Liability Act.

Consumers are allowed to file a complaint either verbally or in writing and are not required to pay court fees. A case administrator will also be appointed by the court to assist the consumer throughout the process. According to the Consumer Case Procedure Act, the business operator bears the burden of proof with respect to the manufacture, assembly, design or components of the products, provision of services, or any actions, which the court is of an opinion that such facts are known only by the party that is the business operator.

Unlike normal civil cases, the court is empowered to request any evidence and witnesses that it deems appropriate. Furthermore, if injury occurs to the consumer’s body, health or well-being and it is impossible to set the exact amount of actual damages during the trial, the court may stipulate in the judgment that the judgment can be amended to cover additional damages within a specified time period, but not more than ten years from the date of judgment.

If the court believes that the defect found in the product cannot be rectified to restore the product to its normal usable condition, or that even if the product is fixed, it could still cause injury, the Consumer

\(^2\) Section 3 of the Consumer Case Procedure Act, B.E. 2551(2008) stipulates that “consumer case” means (1) a civil case between a consumer, or a person who has the power to enter an action on behalf of a consumer under Section 19 or under other laws, and the business operator, regarding a dispute relating to rights or duties under the law arising from the consumption of goods or services; (2) a civil case under the law governing product liability; (3) a civil case related to the cases under (1) or (2); and (4) a civil case that is required by law to be governed by this act.
Case Procedure Act empowers the court to order the business operator to give the customer a new product instead of fixing the defective product, taking into account the nature of the product, the behavior of the business operator and the honesty of the customer. Moreover, if it appears to the court that products sold or remaining in the market could be harmful to the life, health or hygiene of consumers as a whole, and no other preventive measures can be taken, the Consumer Case Procedure Act empowers the court to order a compulsory recall. If the business operator fails to comply with the court order, the court can order the arrest and detention of the business operator until the business operator duly complies with the court’s order.

Additionally, if the court finds that a company has operated its business dishonestly or committed fraudulent acts against consumers, or when the company’s assets are insufficient to satisfy the claim, then the court can apply the doctrine of “piercing the corporate veil” in order to force the business operator’s shareholders, partners or controlling persons to be jointly liable to consumers.

Consumer Protection

Significant areas of product liability law are developed from principles found in consumer protection legislation, especially areas regarding defective products. It is therefore necessary to give some background information on the laws that related to consumer protection.

Consumer protection law usually refers to statutes or government efforts to regulate sales practices, advertising, product quality and other aspects of marketing to consumers. There are some specific statutes that, while not always providing direct or appropriate protection to all consumers, provide some indirect protection against defective products. These laws include the Consumer Protection Act, the Food Act, the Drug Act, the Cosmetic Act, the Medical Device Act, the Industrial Product Standards Act and the Hazardous Substance Act. They all prescribe certain standards or levels for the quality of the products that are manufactured, imported or sold in
Thailand. Also discussed below are some recent efforts by the government to protect consumers against defective products.

**Consumer Protection Act**

The Consumer Protection Act, B.E. 2522 (A.D. 1979) (**Consumer Protection Act**), as revised in 1998, aims to protect the interests of consumers, rather than to preserve business competition. The Consumer Protection Board, established under the Consumer Protection Act, is responsible for protecting the rights of consumers, charged with considering complaints made by consumers and taking action against those that infringe on the rights of consumers. The Consumer Protection Board is also authorized to require a business operator who wishes to sell a particular product to conduct tests, at the operator’s expense, to ensure that the product is safe.

**Food Act**

The Food Act, B.E. 2522 (A.D. 1979) (**Food Act**) imposes various requirements, restrictions or prohibitions on manufacturers, importers and sellers of food products. Apart from regulatory requirements regarding product approval (for example, the requirement to obtain a food manufacture/import/product license for certain types of food), the Food Act also addresses certain issues that relate to product liability. Those failing to comply with these requirements, restrictions and prohibitions may be subject to fines and/or imprisonment. The requirements, restrictions and prohibitions under the Food Act cover matters that include the types and amounts of ingredients that may be used in foods, the labeling of the foods, the manufacture, importation or distribution of impure or adulterated food, as well as food that does not comply with standards stipulated by the Thai Food and Drug Administration (**FDA**).

Moreover, the Food Act seeks to control the advertising of foods. In this respect, food advertisements cannot contain false or deceptive statements in relation to the benefits, qualities or properties of the food. Additionally, any persons wishing to advertise foods for
commercial purposes must first submit the advertising materials for the FDA’s review and approval, and obtain a license from the FDA, prior to being able to use and release the advertisement to the general public. However, in practice, the FDA may have specific requirements for certain types of foods, which may not be outlined under the Food Act.

*Drug Act*

According to the Drug Act, B.E. 2510 (A.D. 1967) (*Drug Act*), the manufacturers, importers or sellers of drugs are required to follow the requirements regarding labels and package inserts.

The Drug Act also prohibits persons from, among other things, manufacturing, importing or selling fake, substandard, deteriorated or unregistered drugs. Furthermore, the Drug Act requires any persons wishing to advertise drugs through audio, visual or printed media to first submit the advertising materials for the FDA’s review and approval, and obtain a license from the FDA, prior to being able to use and release the advertisement to the general public, as well as follow the conditions set by the FDA.

Furthermore, drug advertisements cannot be impolite, contain singing and dancing or show the suffering or distress of patients. The prohibition relating to advertising drugs also extends to advertising via the provision of gifts or lucky draws. It should be noted that the advertising license issued by the FDA only remains valid for as long as the drug’s ingredients or properties remain the same as they were when the license was originally granted. However, in practice, the FDA may have specific requirements for the advertisement of certain types of drugs, which may not be outlined under the Drug Act.

*Cosmetics Act*

All cosmetics under the Cosmetics Act, B.E. 2558 (A.D. 2015) (*Cosmetics Act*) are now considered to be controlled cosmetics. This
means that the labels for all cosmetic products must now meet the requirements of the Cosmetics Act.

Essentially, the statement used on the label must be true and must not contain any statements that may cause a misunderstanding about the essence of the cosmetics.

The statements on the label must be in the Thai language (but it may also have the corresponding foreign language).

Moreover, the statement used on the label must contain all necessary information stipulated under the Cosmetics Act.

In addition, no persons may manufacture for sale, import for sale, or sell unsafe, fake or substandard cosmetics.

The Cosmetics Act now contains specific provisions governing the advertisement of cosmetics. The term “advertisement” is clearly defined under the Cosmetics Act as any form of action taken in order to allow the general public to see, hear or know of a statement for commercial purposes.

The Cosmetics Act stipulates that cosmetics advertisements must not contain statements that are unfair for consumers or that may cause damage to society as a whole. Such statements include but are not limited to false or exaggerated information, or information indicating that the cosmetic product has therapeutic qualities.

Whilst the Cosmetics Act does not require the person who wishes to advertise cosmetics to first obtain a license, the FDA nevertheless has the authority to order that the advertising of the cosmetics be accompanied with recommendations or warning statements regarding the use or danger of the cosmetics where the FDA deems that such cosmetics may cause danger to consumers.

The FDA is also given authority under the Cosmetics Act to order the advertisement to be amended, to prohibit the use of certain statements or matters that appear in the advertisement, or to order the cessation of
the advertisement in the event that the FDA deems that the advertisement is in violation of the requirements under the Cosmetics Act.

Nevertheless, in practice, the FDA may have specific requirements for the advertisement of certain types of cosmetics that may not be outlined under the Cosmetics Act.

**Medical Device Act**

The Medical Device Act, B.E. 2551 (A.D. 2008) (**Medical Device Act**) outlines specific requirements regarding labels and package inserts for medical devices. It requires that business operators who manufacture or import medical devices provide labels and package inserts for medical devices, which conform to the rules, procedures, and conditions set out by the Minister of Public Health in a Ministerial Notification. The most important requirement is that information on these labels or package inserts cannot be false or contain exaggerated information.

In addition, the Medical Device Act prohibits persons from, among other matters, manufacturing, importing or selling fake, substandard, deteriorated or unsafe medical devices. In this respect, the FDA has the authority to request the manufacturer or importer of a medical device to provide documents or evidence regarding the quality, standards, efficacy or safety of the said medical device. The purpose of this is the protection of the health and safety of consumers, where there is reason to believe that the medical device does not possess the required quality, standards, or efficacy, or is unsafe.

Furthermore, the Medical Device Act sets out regulations governing the advertisement of medical devices. The term “advertisement” is clearly defined under the Medical Device Act as any form of action taken in order to allow the general public to see, hear or know of a statement for commercial purposes and includes sales promotion activities. In short, a license is required for persons wishing to advertise medical devices. The Medical Device Act stipulates that the
advertising of medical devices must not show or contain certain information, for example, false or exaggerated properties or qualities, a guarantee of the medical device’s properties by a particular person or any wording that may cause a misunderstanding relating to the medical device. The FDA is given authority under the Medical Device Act to order the advertisement to be amended, to prohibit the use of certain statements or matters that appear in the advertisement, or to order the cessation of the advertisement in the event that the FDA deems that the advertisement is in violation of the requirements under the Medical Device Act.

Nevertheless, in practice, the FDA may have specific requirements for the advertisement of certain types of medical devices which may not be outlined under the Medical Device Act.

Lastly, the Medical Device Act contains interesting provisions relating to product liability. It provides protection to consumers harmed by unsafe medical devices by stipulating that manufacturers, importers, or sellers of medical devices are responsible for damages incurred from their use, unless they can prove that the damage was caused by force majeure or the injured person’s own mistake, rather than defects in the medical device. However, consumers may wish to claim damages under the Product Liability Act, as it offers more protection and possibility for recourse.

**Industrial Product Standards Act**


The Ministry of Industry may issue a notification prescribing industrial standards for any industrial product, for the promotion of industry, with which manufacturers or importers may voluntarily
comply. Any manufacturer or importer who wishes to comply with the standards must obtain a license from the Ministry of Industry and once the license is granted, the products of the manufacturer or importer can bear the industrial standards logo.

The Ministry of Industry may, by way of a royal decree, also prescribe compulsory industrial standards for any industrial product, either manufactured in, or imported into, Thailand. Compulsory industrial standards are issued to ensure the safety of, or prevent harm to, the public, the industry or the economy. Once any product becomes subject to a compulsory industrial standard, it cannot be manufactured or imported unless the appropriate license is obtained from the Ministry of Industry. Once a license is obtained, manufacturers or importers must display the industrial standards logo on their products.

A licensed manufacturer is prohibited from using the standards logo on products that do not conform to the industrial standards prescribed by law. In addition, a licensed manufacturer is prohibited from advertising or selling a product known to violate standards defined by law. In the event of a violation, the Ministry of Industry is empowered by the Industrial Product Standards Act to revoke or suspend the license of the manufacturer or importer.

_Hazardous Substance Act_


By definition, a hazardous substance means any of the following substances: explosives, flammable substances, oxidizing agents and peroxides, toxic substances, infectious substances, radioactive substances, mutation-causing substances (mutagens), corrosive substances, irritating substances and other substances that may be harmful to humans, animals, plants, properties, or the environment.
Besides regulatory requirements in relation to product approval, the Hazardous Substance Act also addresses certain issues regarding product liability. Those failing to comply with these requirements, restrictions and prohibitions may be subject to fines and/or imprisonment.

Product safety


According to the Consumer Protection Act, if the Consumer Protection Board considers that a product is harmful, it has the power to prohibit the sale of or order the destruction of the unsafe product. Moreover, all types of commercial advertisements in Thailand are governed by the Consumer Protection Act. Particularly, the Consumer Protection Act prohibits advertising by any method that would be harmful to the physical or mental health of consumers. For products that could be harmful to consumers, the competent authority has the power to order that advertisements be made with a warning of the dangers related to the products or prohibit the advertising of such products.

In addition, any unsafe product that is a label-controlled product must contain a label with truthful statements and have no other statements that may induce misunderstanding as to the material facts concerning such products. The label shall also contain the name or trademark of the manufacturer, the importer for sale, the place of manufacturing, the operating location of the import business, and statements that indicate what the products are. Furthermore, the label must contain necessary statements such as price, quantity, usage, recommendation, caution and an expiry date in the case of products that may expire, or in other cases to protect the consumers in accordance with the rules and conditions prescribed by the Committee on Labels.

The Industrial Product Standards Act empowers the Ministry of Industry to announce products that must conform with compulsory
industrial standards. These compulsory industrial standards could include safety standards for any product. Any person who manufactures or imports a compulsory industrial standard product for sale without a license is exposed to criminal penalties.

Enforcement and administration

The main government regulators in Thailand that are most relevant are the Office of Consumer Protection Board, Office of the Secretariat of the Prime Minister; the Office of Food and Drug Administration, Ministry of Public Health; the Industrial Standards Institute, Ministry of Industry; and the Hazardous Substance Control Bureau, Department of Industrial Work, Ministry of Industry.

The Consumer Protection Board’s main areas of responsibilities are the verification of potentially unsafe products, the prohibition of the distribution of potentially unsafe products, ordering for the destruction of unsafe products and developing mechanisms of consumer protection to meet international standards.

The Office of Food and Drug Administration is responsible for regulating and monitoring health products to meet quality and efficacy standards, quality control of health products to ensure consumer safety and developing the effectiveness of the consumer protection system for health products.

The Industrial Standards Institute focuses in monitoring products and conformity assessment procedures to ensure standards and recognition, developing standards that meet the needs and international norm, promoting standards implementation and development of national standardization.

The Hazardous Substance Control Bureau is responsible for implementing laws regarding hazardous materials, formulating and preparing guidelines and measures to prevent harmful effects from hazard substances, and coordinating with international organizations in relation to hazardous substances.
Specific sector regulation

Thailand does not have sector-specific regulation for product liability.

Product recall

There are many laws and regulations relevant to product recall in Thailand. They include the Product Liability Act, the Consumer Case Procedure Act, the Consumer Protection Act, the Drug Act and the Medical Device Act.

In this regard, the Product Liability Act does not expressly refer to product recalls. Nonetheless, the Product Liability Act enables the court to impose punitive damages (in addition to actual damages) where the business operator in the chain of distribution of a defective or unsafe product fails to act reasonably to prevent injury caused by the product from occurring. Failure to conduct a product recall may well constitute a failure to act reasonably. Conversely, the requirement to act reasonably to prevent injury may well include an obligation to conduct a product recall.

The Product Liability Act also imposes strict liability on business operators who may be liable even though they have not been negligent and have acted reasonably. In one sense, one effect of the Product Liability Act is to switch the focus of attention from the conduct of the defendant (such as whether the operator was negligent) to the manner in which the product operates (such as whether the product caused injury or damage). Acting reasonably is no longer a defense to an action for actual damages. However, in another sense, failure to act reasonably (such as the defendant’s conduct) remains relevant to the issue of punitive damages. On one hand, the conduct of a product recall will not be a defense to an action for actual damages. On the other hand, failure to conduct a product recall may well constitute grounds for punitive damages.

The Consumer Case Procedure Act contains an express reference to product recalls. The Consumer Case Procedure Act confers upon the
court a discretionary power to order the business operator to publish an announcement and to recall the products which may be hazardous from the consumers for rectification or replacement within a stipulated time frame, prohibiting the business operator from selling the remaining products and ordering them to recall the products not yet sold to the consumers until they have been duly rectified to an extent that they are safe, if the operator’s products remaining in the market may cause danger to life, health or hygiene of the consumers.

Under the Consumer Protection Act, if there is a reason to believe that the product may be harmful to the consumer, the Consumer Protection Board is empowered to order the business operator to proceed with the product testing or to test the product by itself. In addition, the Consumer Protection Board is empowered to order the suspension of the sale of the product until the test result is known. If the test result indicates that the product is harmful, the Consumer Protection Board is empowered to order the business operator to prohibit the sale of such products or recall the products or re-export the products, or destroy those products remaining on the market.

Similarly, the Drug Act, the Cosmetics Act, the Medical Device Act and the Hazardous Substance Act do not impose obligations on the business operators to initiate product recalls until ordered to do so by the competent authorities.

Under the Drug Act, if the competent officials learn that any drug is not safe or might be harmful, they are empowered to call for the storage, order the licensee (who produces or imports the drug) to recall the drug within a period fixed by the competent official, and destroy the drugs.

According to the Medical Device Act, for the purpose of protecting consumer health and safety, when the quality of any medical equipment is inconsistent with the issued license or notified specification, or it is unsafe to use, potentially dangerous to health, or its standards have changed, the competent official will have the power to collect any medical equipment from the producer, importer, seller
or owner; or order the producer, importer or seller to cause the medical equipment that they produce, import or sell to be stored or sold to the market within a time period prescribed by the competent officer.

Under the Hazardous Substance Act, if it appears to the competent official that any producer, importer, exporter or person having hazardous substance in possession violates or fails to comply with this Act, the competent official may, if there is a reasonable ground, order that person to return such hazardous substance to the producer or the person who is the sender thereof or to act otherwise as appropriate in accordance with the rules, procedure and conditions as determined by the competent official.

In sum, Thailand does not currently have any mandatory legislation which requires business operators to notify local authorities for conducting product recalls nor mandatory requirements as to how product recalls should be carried out. However, if a case goes to court, the court has the power to order the business operator to publish an announcement and recall the affected products for rectification or replacement. If the products cannot be rectified or replaced, the court may award damages in an amount it deems appropriate given the condition and nature of the products at the time of the recall and the perceived integrity of the business owner. Furthermore, the court has the power to prohibit the business operator from manufacturing or importing such products and to order the destruction of any remaining products.

Civil liability

The Product Liability Act prescribes civil liability for loss and damages on the basis of strict liability for all business operators involved in the chain of distribution of defective or unsafe products. These business operators include manufacturers, hirers for manufacture, importers, distributors and anyone who represents themselves to consumers as a manufacture, hirer for manufacture or importer. This is regardless of whether they have acted deliberately,
negligently or exercised all due care. An injured party is only required to prove that they have suffered loss or damage, and that their loss or damage has been caused by the defective or unsafe product.

The strict liability nature of the law has switched focus from the conduct of a business operator (whether the operator was negligent) to the manner in which a product operates (whether the product caused injury or damage). There is no requirement for any contractual relationship between the injured party and the business operator. Any party injured by an unsafe product may claim for damages.

The Product Liability Act also expands the type of damages available under the Civil and Commercial Code as it allows an injured party to recover damages for emotional distress by empowering the Court to award compensation for emotional distress suffered by an injured party on account of injury to the body, health or well-being. If the injured party dies, the Court is empowered to award compensation for emotional distress to the injured party’s relatives.

Furthermore, the Product Liability Act and the Consumer Case Procedure Act permit the Court to award punitive damages if the Court finds that:

- the business operator was fully aware that the manufactured, imported or sold products were unsafe products
- the business operator was not aware that the manufactured, imported or sold products were unsafe products because of his/her gross negligence
- the business operator discovered that the products were unsafe after having manufactured, imported, or sold the products and failed to take reasonable steps to prevent injury

In addition, the Consumer Case Procedure Act states that the Court may order the operators to replace products if a defect existed at the time of delivery and cannot be rectified to usable condition (or could be hazardous after being rectified).
The Medical Device Act provides that any person who produces, imports or sells medical equipment shall be responsible for any damage incurred from the use of such medical equipment, unless it can be proved that such damage is caused by circumstances beyond their control, or not caused by the defects of such medical equipment, or caused by the injured person’s mistake.

In addition, any person who uses medical equipment or causes medical equipment to be used on any other person which causes damage to life, body, or health shall be responsible for the damage of such person caused by the use of such medical equipment, unless it can be proven that the person who uses the medical equipment has exercised proper care according to the technical standard, or that such damage is caused by circumstances beyond their control, or a mistake on the part of the injured person.

Moreover, the Hazardous Substance Act states that the producer, importer, carrier, person in possession, seller, or deliverer of a hazardous substance, or person who takes part in any stage of distribution from the producer to the liable person, shall be liable for damages arising from hazardous substance, except where it can be proven that such damage was caused by circumstances beyond their control or by fault of the injured person.

**Criminal liability**

Generally, there are no criminal sanctions imposed on the sale or distribution of defective products under the Product Liability Act and the Consumer Case Procedure Act.

However, there are certain laws and regulations governing general and specific products that impose criminal sanctions for the sale or distribution of defective or unsafe products, for example,, the Consumer Protection Act, the Food Act, the Drug Act, the Cosmetics Act, the Medical Device Act and the Hazardous Substance Act.
Class actions

Thailand recently enacted the Act to Amend the Civil Procedure Code (Number 26) B.E. 2558 (A.D. 2015) (the Class Action Act). The Class Action Act now provides the framework for class actions in Thailand. Under the Class Action Act, Thailand has adopted an opt-out system. This means that the injured person will automatically be a member of the class, if he/she fits the criteria of the certified class, and does not elect to opt out.

In order to initiate a class action lawsuit, the plaintiffs’ lawyer must file a complaint and then a motion for class certification.

In certifying the class, the court must be satisfied as to the commonality of issues, the size of the class, the efficiency of the class action proceedings as compared with normal civil proceedings using joinder, and the adequacy of the lawyer and plaintiffs representing the class.

Judgments and orders are binding on all members of the class except those who decide to opt out from the class. Members who decide to opt out must notify the court within specific time periods.

If the court later finds that class action proceedings are not appropriate to protect members of the class, it may decertify the class and direct the plaintiffs to initiate normal civil proceedings.

Settlements must be approved by the court in order to be valid. Once the court approves a settlement, class members will be notified of the date by which they may opt out of the class settlement.

The Consumer Case Procedure Act also has a provision granting the Consumer Protection Board, or an association recognized by the Consumer Protection Board under the law governing consumer protection, the power to enter an action and to proceed with a consumer case on behalf of the consumer (which includes injured
parties under the Product Liability Act). This may be regarded as class action mechanisms provided for product liability claimants if the Consumer Protection Board, or an association recognized by the Consumer Protection Board under the law governing consumer protection, is a representative for more than one injured person at the same time.

Reform

As Thailand introduced the two laws that specifically govern product liability in 2008, reform of product liability law in Thailand is unlikely in the near future.

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Section 19 of the Consumer Case Procedure Act, B.E. 2551(2008) stipulates that:
The Consumer Protection Board or an association recognized by the Consumer Protection Board under the law governing consumer protection shall have the power to enter action and to proceed with consumer case on behalf of the consumer, in which case the provisions relating to the entering of action and the proceeding of case on consumer’s behalf under the said law shall apply thereto mutatis mutandis.
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Introduction

In Vietnam, the subject of product liability is addressed in several different laws and regulations. These include the Civil Code, the Law on Product and Goods Quality and the Law on Protection of Consumers’ Rights.

The Law on Protection of Consumers’ Rights and the Law on Product and Goods Quality assign liability to all members of the product supply chain for violations related to defective or substandard goods. These laws also set forth product recall requirements and procedures. Regulations addressing product liability in specific industries are issued by ministries, such as the Ministry of Health (MOH), the Ministry of Agriculture and Rural Development (MARD), the Ministry of Transportation (MOT), the Ministry of Science and Technology (MOST) and the Ministry of Industry and Trade (MOIT). Violations of the aforementioned laws and regulations may result in civil or even criminal liability, depending on the seriousness of the violation.
Overview of product liability law

The following are the key regulations on product liability:

- The Civil Code\(^{4}\) provides the general legal basis for private actions seeking compensation for contractual or non-contractual damage(s).

- The Penal Code [Law No. 15/1999/QH10, passed by the National Assembly on 21 December 1999, effective as of 1 July 2000, as amended in 2009 and 2016 under Supreme Court Guidance No. 276] criminalizes the manufacturing and/or sale of counterfeit goods as well as violations of regulations pertaining to food safety and food hygiene.

- The Law on Product and Goods Quality [Law No. 05/2007/QH12 on Product and Goods Quality, passed by the National Assembly on 5 December 2007, effective as of 1 July 2008] sets product liability obligations for producers/manufacturers, importers, distributors/sellers and users. In particular, the law provides that standards for the quality of goods may be regulated by the government, and/or may be set by producers or importers who are then obligated to meet the standards and quality commitments they have made.

- The Law on Protection of Consumers’ Rights [Law No. 59/2010/QH12, passed by 17 November 2010, effective as of 1 July 2011] sets out the general principles for protection of consumer rights, including the right to claim for damages caused by defective products.


\(^{4}\) Law No. 91/2015/QH13, effective 1 January 2017.

• Decree No. 80/2013/ND-CP, dated 19 July 2013, regulates administrative violation sanctions in the field of standards, metrology and product and goods quality.

• Decree No. 185/2013/ND-CP, dated 15 November 2013, as amended by Decree No. 124/2015/ND-CP, provides administrative violation sanctions in commercial activities, manufacturing and/or sale of counterfeit and banned goods and consumers’ rights protection.

Product safety

The Law on Protection of Consumers’ Rights provides general product safety requirements for consumer products. Pursuant to Article 70.2 of the Law on Product and Goods Quality, product safety requirements for specific industries are regulated by the following ministries:

• The MOH regulates quality standards for food, pharmaceuticals, vaccines, medical and bio-medical products, cosmetics, materials used in the manufacture of pharmaceuticals and drugs for human use, domestically produced chemicals, insecticides, disinfectants and medical equipment and facilities.

• The MARD regulates quality standards for plants, animals, fertilizers, animal feed, veterinary drugs, bio-products used in agriculture and related products.

• The MOIT regulates quality standards for pressure equipment, industrial lifting equipment, as well as industrial petroleum, chemicals and explosives and equipment used for the exploitation of petroleum and gas resources.
• The MOT regulates quality standards for transportation-related products, including vehicles, loading and unloading equipment, specialized transportation equipment used in construction, marine exploration and exploitation and traffic management.

These ministries have the authority to suspend the circulation of goods that fail to conform with the quality standards established by their regulations. They can also order product recalls and take other administrative actions when necessary, including revoking practice certificates, imposing administrative fines and the seizing or destroying defective products.

Enforcement and administration

While Vietnam has no single administrative body that handles product safety, the government, at both the national and local levels, and a number of ministries and corresponding local-level authorities are involved in the process.

Of particular note, the MOIT has the function of state management of product liability and consumer protection (especially the Consumer Protection Division under the Vietnam Competition Authority). The MOH administers product liability in the health sector. The MOST is charged by the government with the overall task of managing standards and quality requirements for goods. Other ministries coordinate with the MOST to meet their obligations to manage the standards and quality requirements for goods falling under the scope of their regulations. Additionally, local governmental authorities (for example, the People’s Committees at provincial and local levels) perform the same function within the areas they administer.

Specific sector regulation

The Law on Product and Goods Quality and the Law on Protection of Consumers’ Rights contain general product safety, quality and recall provisions. More specific product safety provisions are contained in regulations issued by the relevant ministries.
Products that are deemed to present a particular risk of harm to users (such as pharmaceuticals, vehicles, elevators, etc.), must meet regulated product safety requirements provided in the relevant regulations before they can be certified for sale in Vietnam.

The MOST has general responsibility for product quality control. Various other ministries are responsible for product quality control of products that specifically fall under their regulatory mandate. For example, the MOH is responsible for standards applicable to food products, pharmaceuticals, vaccines, medical bio-products, cosmetics, drugs, domestic chemicals, medical equipment and facilities. The MARD is in charge of plants, animals, fertilizers, animal feed, plant protection drugs, veterinary drugs, bio-products used in agriculture, forestry and aquaculture. The MOT is responsible for means of transportation, loading and unloading equipment, specialized transportation equipment used in construction, marine exploration/exploitation and traffic management. The MOIT is responsible for pressure equipment, industrial lifting equipment, chemicals, industrial explosives and equipment used in oil and gas exploitation (except for marine exploration and exploitation equipment and facilities).

Different ministries have quality examination agencies for goods and products that fall within their assigned scope of regulation. Municipal and provincial People’s Committees also have agencies that perform the same function within their respective localities in accordance with the regulations of the different ministries. The products and goods quality examination agencies of the concerned ministries are required to coordinate with the product and goods quality examination agencies of the provincial and municipal People’s Committees with regard to quality examinations for products and goods.

The ministries also have specialized inspectorates to inspect observance of law by organizations and individuals involved in the production and trade of products under their management and in product quality-related activities.
Product recall

Product recall requirements and procedures are provided for in the Law on Product and Goods Quality, the Law on Protection of Consumers’ Rights and other specialized ministerial regulations.

Under these regulations, manufacturers and importers are obligated to recall defective products. Defective goods are goods that do not ensure safety to consumers, will likely cause damage to consumers’ lives, health and/or property, despite the fact that such goods are manufactured in accordance with current technical standards or norms, with no defects being detected at the time the goods were supplied to consumers. Defective products can include:

- mass-produced products with design defects
- individually produced products with defects caused by production, preparation, transportation and/or storage methods
- products that are potentially unsafe for use by consumers because of a failure to warn or as a result of inadequate instructions for use

Distributors and suppliers are also required to coordinate with manufacturers and importers to implement the recall of defective products. Additionally, manufacturers and suppliers must inform the public of a recall through mass media announcements made via the print media, radio and/or television.

Civil liability

Vietnamese law assigns liability for defective goods that cause injury as follows:

Under the Civil Code of Vietnam, any individual or organization that has suffered harm to their person or their property related to the purchase or use of a defective product may be compensated for their loss. In such cases, liability extends to all levels of the supply chain,
including manufacturers, importers, distributors, wholesalers and retailers.

Under the Law on Protection of Consumers’ Rights, consumers or social organizations that protect consumer rights may bring consumer protection cases to Vietnamese civil court. Under the Civil Procedure Code\(^5\) (CPC), for civil cases initiated by consumers, consumers are under no obligation to prove the fault of organizations, individual trading goods or services. Rather, the organizations or individuals that are sued must provide evidence proving that they are not at fault for the damage(s). Civil cases on the protection of consumer rights may be resolved by simplified procedures prescribed in the law on civil proceedings when all the following conditions are met:\(^6\)

- An individual consumer brings a lawsuit against an organization or individual that directly provides goods or services to consumers that form the subject of the lawsuit.

- The case is simple and evidence is clear.

- The transaction in question was of a value less than VND 100 million (approximately USD 4,491).\(^7\)

Simultaneously, the CPC regulates necessary conditions to proceed with civil cases on the protection of consumer rights under simplified procedures as follows:\(^8\)

- The case has simple details, a clear legal relationship and the involved parties have admitted their obligations; evidence is sufficient, ensuring the sufficiency of grounds for the resolution of the case and the court does not need to collect evidence.

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\(^5\) Article 91.1 (a) of the Civil Procedure Code [Law No. 92/2015/QH13 dated 25 November 2015, effective as of 1 July 2016].

\(^6\) Article 42 of the Law on Protection of Consumers’ Rights.

\(^7\) Exchange rate: USD 1 = VND 22,265.

\(^8\) Article 317 of the new Civil Procedure Code [the Civil Procedure Code No. 92/2015/QH13 dated 25 November 2015, effective as of 1 July 2016].
• Addresses of all involved parties are determined.

• None of the involved parties reside overseas and have no properties in dispute in foreign countries, unless the involved parties residing overseas and the parties residing in Vietnam have reached an agreement to request the court to resolve the case according to simplified procedures or the involved parties have presented evidence about the legitimate right to ownership of the properties and have reached an agreement pertaining to the handling of the properties.

Compensation for non-contractual damages provided under the Civil Code

A person who suffers loss or injury that is caused by a product may also be able to bring an action seeking compensation for non-contractual damages against the manufacturer or, in some cases, a supplier or importer.

Criminal liability

The Penal Code of Vietnam

The Penal Code of Vietnam codifies several crimes that pertain to the manufacture and provision of dangerous, defective or counterfeit goods, including:

• manufacturing and/or trading in fake goods

• manufacturing and/or trading in fake goods that are foods, foodstuffs, curative medicines or preventive medicines

• manufacturing and/or trading in fake goods that are animal feed, fertilizers, veterinary drugs, plant protection drugs, plant varieties or animal breeds

• breaching the regulations on food safety and hygiene
These offenses currently carry penalties of between six months and 15 years in prison, depending on the seriousness of the offense in question, except for the crime of manufacturing and/or trading in fake goods that are foods, foodstuffs, curative medicines or preventive medicines, which carries a minimum penalty of two years in prison and a maximum penalty of life imprisonment, capital punishment and/or fines of up to VND 50 million (USD 2,246) and the confiscation of the property in question.

Penalties

Violations of the regulations on product liability may result in various disciplinary measures. These include administrative fines or injunctive measures, civil liability and criminal liability. Fines for breaches of product quality standards may range from one to five times the value of the non-conforming goods.

Organizations and individuals that violate the Law on Product and Goods Quality may be administratively sanctioned and, if a violation results in damage(s) to persons or property, shall be required to pay compensation. The administrative fines for violations range from one to five times the value of the goods involved.

A consumer who suffers damage(s) to his/her person or property which is caused by a defective product may seek compensation through a settlement negotiated in coordination with a relevant state authority or bring a lawsuit to civil court.

In the transportation sector, a certificate of product quality will become automatically invalid and withdrawn if the manufacturer fails to recall a defective product that may cause harm to users.

Class actions

Vietnamese laws do not contain provisions for a “class action” such as those in common law countries such as the United States and Australia. The CPC, however, provides that multiple plaintiffs may bring a case against a defendant. For such a case, all plaintiffs must
include their names on one or separate petitions with signatures, and all must take part in the case procedure on their own or through their representatives.

The Law on Protection of Consumers’ Rights allows social organizations to bring an action on behalf of consumers or on their own accord if it is in the public interest.

Reform

As analyzed above, with stricter penalties and the extension of criminal liability for corporate legal entities for offenses pertaining to the manufacture and/or sale of counterfeit goods, the new Penal Code (which has not taken effect and is under amendment) positively contributes to enhance consumer rights. Furthermore, the CPC allows consumers not to provide evidence to prove faults of individuals or organizations trading defective goods and/or services when the consumers decide to bring the lawsuits to trial. This gives more rooms for consumers to effectively protect their legitimate rights and force individuals or organizations trading goods and/or services to comply with registered product quality requirements. In addition, the protection of consumer rights is now a priority of the Vietnamese government and relevant authorities. In 2015, the VCA hosted or cooperated with relevant competent authorities to organize seminars/talk shows/training courses in order to publicize consumers’ basic rights as regulated in the Law on Protection of Consumers’ Rights to the community. Moreover, in March 2015, the VCA operated a call center (free of charge nationwide) that received and responded to consumers’ questions/concerns.
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