



PRC Law Newsflash
19 March 2010

PRODUCT LIABILITY REINFORCED AND EXPANDED UNDER NEW PRC TORT LIABILITY LAW

Introduction

Companies in China will need to reassess their quality standards and risk management strategies in light of the new *Tort Liability Law of the PRC (Tort Law)*, which was promulgated by the National People's Congress (NPC) on 26 December 2009 and will come into effect on 1 July 2010.

The Tort Law is composed of 92 provisions covering a range of areas, and contains some key changes to the current law on product liability. The obligations of manufacturers, sellers and other entities have been expanded in order to provide greater protection for consumers. In particular, new provisions have been introduced on product recalls and warnings, punitive damages and third party defects.

This newsletter sets forth the main provisions on product liability in the Tort Law and analyzes their potential impact on individuals as well as manufacturers, sellers and other relevant entities.

Background

The key current laws on product liability include: the *General Principles of the Civil Law* (promulgated by the NPC on 1 January 1987), the *Product Quality Law* (promulgated by the NPC and effective as of 1 September 1993; amended on 8 July 2008), the *Law on the Protection of Consumers' Rights and Interests (Consumer Rights Law)*, promulgated by the NPC and effective as of 1 January 1994) and the *Food Safety Law* (promulgated by the NPC and effective as of 1 June 2009).

The Tort Law stipulates that it is intended to both reinforce and supplement existing law.

Product Liability Under the Tort Law

1. Warnings and Mandatory Product Recalls

Rules Prior to the Tort Law

With a few exceptions (e.g., food, which is addressed by the Food Safety Law), PRC law does not currently require manufacturers or sellers to take remedial measures where their products are found to be defective after entering public circulation.

Tort Law

The Tort Law requires remedial measures - such as product recalls and warnings - to be taken by the manufacturer as well as by all sellers, for any product found to be defective after being publicly circulated.

2. Punitive Damages

Rules Prior to the Tort Law

Under the Consumer Rights Law, consumers who incur damages from a defective product are eligible to be compensated for up to twice the price they paid for it, if the product was supplied through "fraudulent activities".

The Food Safety Law stipulates that injured consumers can recover up to 10 times the amount they paid for food that does not conform to national food safety standards from the relevant producer or seller, who sold the food knowing that it failed those standards.

Tort Law

The Tort Law states that an injured party has the right to claim punitive damages against anyone who knowingly produced or sold defective products (including food) which caused serious injuries or death.

Damages are not capped under the Tort Law; nor are they based on the cost of the defective products or food in question.

3. Defects Caused by Third Parties

Rules Prior to the Tort Law

Under current PRC law, only manufacturers and sellers are subject to liability for product defects. As such, they are forced to assume responsibility for damages to consumers even where the defects are caused by third parties, such as transportation and storage entities. The only exception to this rule is where the third party responsible for a defect agreed in writing to indemnify the relevant manufacturer or seller against any damages caused to consumers.

Tort Law

Third parties which are responsible for defects must indemnify the manufacturers and sellers of the products in question against all resulting liability – regardless of whether any contractual relationship exists. However, the burden of proof rests on the manufacturers and sellers to demonstrate that the defects were, indeed, caused by a third party. This can be difficult in practice.

TAL Commentary

The Tort Law will not only consolidate product liability rules included in different laws and regulations, but will also enhance the remedies available. The rights of consumers will thus be better protected, and manufacturers, sellers and other related entities will have a greater obligation to ensure that products are not defective.

Manufacturers and sellers in China will need to start immediately adapting to their new obligations under the Tort Law, such as taking remedial measures (e.g., warnings and product recalls) for products discovered to be defective after they are put into circulation. In addition, companies not previously subject to product liability rules, such as transportation companies, will need to focus on the standard of their services, failing which they will be liable for any product defects caused by them.

In the wake of the Tort Law, all companies in China which produce or otherwise handle consumer goods should ensure that they have a proper quality assurance system in place, to help avoid incurring liability for defective products.

* * *

This article was written by partner Joonho Tan (jhtan@TransAsiaLawyers.com), together with associates Ting Xu and Geoffrey Mullen.

Beijing

Suite 2218 China World Office 1
1 Jianguomenwai Avenue
Beijing 100004, China
Tel: (86 10) 6505-8188
Fax: (86 10) 6505-8189 / 98

Shanghai

Unit 1101 Platinum
233 Tai Cang Road
Shanghai 200020, China
Tel: (86 21) 6141-0998
Fax: (86 21) 6141-0995 / 6

<http://TransAsiaLawyers.com>

This newsflash is for informational purposes only and does not constitute legal advice. Use of this newsflash does not create an attorney-client relationship between TransAsia Lawyers and the reader. Readers should contact appropriate legal counsel for advice on any particular issue. Entire content copyright is owned by TransAsia Lawyers. Reproduction and distribution of this newsflash in whole or in part without the written permission of TransAsia Lawyers is expressly prohibited.

This newsflash may have been sent via e-mail. We cannot guaranty the completeness of messages transmitted by e-mail, and will not be responsible for any modification made to this message after sending by us.

Uploaded on 19.03.2010

© 2010 TransAsia Lawyers