

QUOTE

The new PRC Tort Liability Law (TLL) has become effective on 1 July 2010. Among other things, it is expected to dramatically force manufacturers, service providers and intermediaries to reassess their risks resulting from products liability.

So far this area of the law was only covered by a handful of general provisions on civil liability as well as, namely, by the PRC Product Quality Law which only incidentally addressed liability. The new law now deals comprehensively with the matter.

While it bears on all sort of other civil liabilities such as traffic accidents, medical malpractice or damage caused by animals, notably the manufacturing and services industry will now have to count with accrued liabilities with respect to products, environmental pollution and internet infringement. Third parties involved in the distribution chain are also touched.

Likewise, the consequences thereof have been severely extended to include not only economic damage interest but also product recalls, punitive damage and compensation for mental injury.

The definition of "product" and "defect" is now clear and far-reaching.

A striking feature of the law, the product recall obligation forces manufacturers to immediately recall all defective products and to take necessary remedy measures, or to feel the pain and have the authorities order it. Unlike in the past, this obligation is not limited to certain products anymore.

Even though this point still needs clarification, it is considered that, unless a shorter safe use period is clearly indicated on the product, the product recall obligation is subject to a time-bar of as long as ten years, this extended duration will force manufacturers to think twice about the durability of their products before marketing them. Likewise, the consumer will have the right to claim as long as ten years after delivery.

For cars however, that period may not be less than ten years, with some exceptions for normal wear and tear such as for tires (three years).

It can be anticipated that manufacturers will face the dilemma of either shortening the safe use period indicated on their products and see their customers turning their back or extend their liability.

While punitive damages are not entirely new in PRC law, the TLL strengthens and broadens their scope. They are limited to product liability cases, serious damages to consumers' health or their death, and to deliberate negligence though. Also, their amount is discretionary, so that their deterrence still remains to be seen.

Except for punitive damages, product liability is an objective one, meaning that the manufacturer's fault is irrelevant.

The manufacturer and the seller bear joint liability so that the victim may act indifferently against either of them or both, thus leaving the former two settle their business among themselves by counterclaims. The manufacturer and the seller may also counterclaim against third parties or intermediaries such as the shipper, the distributor, etc. However unlike in the case of the formers, the latter are only liable in case of fault.

Liability for internet infringement, i.e., its implementation also deserves closer attention with the prominence of e-shopping.

Liability for mental sufferings is a primer in Chinese law. Yet while both the notion of "serious damage to health" and the threshold of compensation are undefined, keeping in mind that other jurisdictions' practice vastly vary in this field, the scope of its application is still open-ended.

Several points still need clarification, including the relationship between the TLL and existing laws and regulations. Be as it may, the TLL should be regarded as a welcomed development by consumers and for the reputation of Chinese brands overall while manufacturers, service providers and sellers will probably be ill-advised to ignore it.

UNQUOTE

[Summary by John Liebeskind (Chair of the LTCS Committee) of the article 'Protecting the People' from China Law & Practice]