

**ADVANT** Beiten



**CHINA:  
PRODUCT  
LIABILITY LAW  
Q&A**

Welcome to our **ADVANT Beiten** edition on certain questions and answers regarding product liability under Chinese laws! With this publication, we aim to provide you with essential information about this topic and explain certain key legal requirements and considerations thereof. We do this intentionally in a way which seeks to draw your attention to some important issues impacting enterprises dealing with product liability matters. Hence, what we set out in this publication are some of the most common questions and situations we came across in our advisory services and for any specific questions, please contact us anytime!

# Q 1. What are the main pieces of legislation governing product liability in China?

**Answer:** As is often the case in PRC legislation, also for product liability matters the relevant provisions are scattered among a wider range of regulatory texts and the more prominent ones are the following:

- **PRC Product Quality Law**

The PRC Product Quality Law governs product liability claims against manufacturers and sellers of defective products and imposes a '*strict*' liability on the manufacturer of a defective product. Strict liability means that it is not necessary to establish a subjective fault of the manufacturer (e.g. negligence or tortious intent) to hold the manufacturer liable for defective products. It is rather sufficient for such strict liability to apply that a product is defective and that a causality between such defect and any damages resulting therefrom can be established.

Manufacturers can only be exempted from liability if one or more of the following exemption circumstances stipulated in the PRC Product Quality Law apply:

- The defective product has not been put into market circulation.
- The defect causing the damage did not exist when the product was put into market circulation.
- The level of science and technology at the time that the product was put into market circulation was not sufficient to detect the existence of the defect.

The law also imposes a fault-based liability on the seller of a defective product. Fault-based liability means that it is necessary to establish a subjective fault of the seller (e.g. intent or negligence) to hold the seller liable. Yet, the seller may also be held liable in case although no fault of the seller can be established but the seller is unable to identify the manufacturer of the defective product or is unable to identify the supplier/distributor thereof.

- **PRC Civil Code**

The PRC Product Quality Law is not the only legal basis for product liability claims against a manufacturer or seller. A damaged party can e.g. seek other causes of action based on the PRC Civil Code. In regard to tort liability, this means that if a defective product causes damages to others, the manufacturer shall bear tort liability and for general product liability, the damaged party may choose to claim compensation from

the manufacturer or the seller of the product. The party that bears the compensation liability has the right to seek compensation from other responsible entities.

In addition, the PRC Civil Code stipulates that the damaged party has the right to seek appropriate punitive damages from those who knowingly produce or sell products that are defective, or fail to take effective remedial measures in accordance with the law and where such behavior results in death or serious damages to the health of others.

The infringed party may also base a claim on a breach of contract where a contractual relationship is formed. To that end the PRC Civil Code stipulates that where the contract product/matter does not meet quality requirements and, as a result, it is impossible to realize the purposes of the contract, the buyer may refuse to accept the contract product/matter or may rescind the contract.

- **PRC Law on Protection of Rights and Interests of Consumers**

The PRC Law on Protection of Rights and Interests of Consumers and its implementing regulations form the main legislation protecting the rights and interests of consumers who purchase and use commodities or receive services for living consumption. This law imposes duties on business operators (including manufacturers and sellers) and stipulates that if a consumer suffers personal or property damage resulting from the defects of a commodity purchased, it can claim compensation directly from either the seller or the manufacturer.

- **PRC Criminal Law**

The PRC Criminal Law sets out crimes relating to the production and sale of counterfeit and inferior commodities, including provisions covering crimes committed by manufacturers or sellers that are subject to sanctions including both special provisions for special commodities such as food and medicine, as well as provisions for handling general product quality issues. Depending on the type and seriousness of the crime committed, the sanctions imposed include monetary penalties, imprisonment with a maximum of life imprisonment and in very severe cases the death penalty in cases of crimes against public safety (e.g. if deaths or serious consequences are caused by arson, explosion, release of dangerous substances or causing major traffic accidents deliberately or due to gross negligence).

- **Other Special Legal Provisions for Particular Industry Sectors**

Besides, certain product liability provisions are stipulated in specialty laws such as the Food Safety Law (for foods and beverages), the Drug Administration Law (for pharmaceutical and medical products), the Vaccine Administration Law (for vaccination products), Regulations on the Supervision and Administration of Medical Devices (for

medical equipment) and the Administrative Regulation on the Recall of Defective Automotive Products (for automobiles).

## Q 2. What establishes a product defect?

**Answer:** Pursuant to the PRC Product Quality Law, where a product is regulated by national or industrial standards for the protection of personal health or personal or property safety, the term “defect” refers to the non-compliance of the product with such standards.

If no national or industrial standard can be applied, the defect in a product will be established based on the general statutory definition of a “defect”, which refers to the posing of an unreasonable danger in the product that threatens personal safety or the safety of third-party property.

Whether unreasonable danger exists in a product is generally determined by the court on an individual case-by-case basis. According to judicial practice, the consumer expectation test is normally adopted, which refers to the expectation of safety that a reasonable consumer will have when such a product is in normal use, within its general scope of purpose for use. Generally, the common forms of defects are design defects, manufacturing defects, warning/labelling defects and installation defects.

## Q 3. Who bears the burden of proof for a product defect?

**Answer:** As a rule, the injured party as the claimant bears the burden of proof with respect to the circumstances establishing the product liability. As an exception to this rule, the PRC Law on Protection of Rights and Interests of Consumers stipulates that for business operators providing durable goods (e.g. motor vehicles, computers, televisions, refrigerators, air-conditioners, washing machines) or renovation services, where a consumer discovers a defect within six months of the date of receipt of the goods or services and there is a claim, the business operator will bear the burden of proof regarding the defect.

Thus, as a rule the claimant (as the injured party) bears the burden of proof with respect to the existence of the defect and causality between the defect and the damages suffered by the claimant.

Thereafter, the manufacturer (as defendant) must provide evidence to prove the non-existence of the product defect or its satisfaction with the statutory exemption circumstances (see the list of exemptions circumstances under the answer to Q1 above).

The seller (as defendant) bears the burden of proof with respect to its lack of fault and the identification of the manufacturer or supplier of a defective product.

According to a PRC Supreme People's Court's Judicial Interpretation of the Civil Procedure Law, a party with the burden of proof must show that the fact its evidence supports is highly probable.

Once a party has satisfied its burden of proof, the other party wishing to rebut those claims bears the burden of proof for their rebuttal. If the claimant has fulfilled the initial burden of proof, the defendant will be ordered by the court to furnish evidence to prove the non-existence of the defect in the product or one of the statutory exemption circumstances.

Considering that in product liability cases the injured party, compared to the defendant (manufacturer or seller), normally lacks professional knowledge of and information on the product concerned, the court may be more likely than in other cases to exercise its power to lower the standard of proof for the claimant and a reasonable connection between the defect and the damage established by the injured party would be deemed sufficient by the court. For example, if normal use of the product would not usually cause this type of accident, the court might presume the existence of defects and of damage if this type of defect will normally result in this kind of damage.

Failure to fulfil the burden of proof will usually result in the loss of the case. However, considering that as said above the claimant normally lacks expert knowledge and information about the product – especially in cases where the product is manufactured with complex technical processes and with advanced technology – the court may lower the standard of proof on the claimant's side (e.g. a reasonable connection between the defect in the product and the damages incurred will suffice).

## Q 4. Can manufacturers/sellers/distributors limit or exclude their liability for product liability claims?

**Answer:** Sellers/manufactures/distributors may contractually limit or exclude their liability to the rather limited extent allowed by Chinese law.

What this means is e.g. that according to the PRC Civil Code, any limitations/exclusions of liability for personal injury, death, or damage caused by intentional misconduct or gross negligence are void.

Likewise, the PRC Law on Protection of Rights and Interests of Consumers stipulates that terms in standard form contracts (aka General Terms and Conditions) that exempt sellers, manufacturers and distributors from liability for personal injury, death, or damage to property caused by defective products are invalid.

Also, given that under the PRC Product Quality Law, manufacturers (and under certain circumstances also the sellers) are strictly liable for damages caused by defective products, any attempt to exempt or limit liability for defects that harm consumers' health or safety are also invalid.

That begs the question under which circumstances such limitations of liability may at all be valid and the general answer to this question is the following:

- For non-consumer contracts and business-to-business transactions, it is generally permissible to limit liability, as long as the limitation does not violate public order, good morals, or mandatory provisions of law.
- Limitations on liability for minor breaches (e.g., delays in delivery) are more likely to be enforceable compared to limitations for product defects causing serious harm.

## Q 5. Are there any post-sale duties for potentially liable parties, such as e.g. notification or recall obligations?

**Answer:** The PRC Civil Code stipulates that where a product endangers the personal or property safety of others owing to defects, the injured party has the right to request that the manufacturer and seller bear tort liability such as e.g. cessation of infringement, elimination of obstruction or danger.

The PRC Civil Code also obliges the manufacturers/sellers to proactively and promptly adopt remedial measures in case they become aware that any products put into market circulation show defects. These remedial measures entail e.g. stopping sales, issuing warnings or conduct product recalls. If damages of the injured party were aggravated as a result of failure by the manufacturers/sellers to proactively and promptly adopt remedial measures, the manufacturer and the seller will bear tort liability for such failure as well.

The PRC Law on Protection of Rights and Interests of Consumers and its implementing regulations provide a general framework on how to conduct recall actions for defective products and requires business operators to promptly initiate information and recall actions when finding potential defects that may endanger physical or property safety. Besides the business operators who circulated the defective products also the relevant manufacturers and component suppliers are required to assist with product recalls.

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