Product Liability & Safety 2023

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China: Law & Practice
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King & Wood Mallesons
CHINA

Law and Practice

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King & Wood Mallesons is a global comprehensive law firm. In China, the firm has over 440 partners and 1,800 lawyers, with 15 offices in Beijing, Shanghai, Shenzhen, Guangzhou and other major cities. Around the world, the firm has over 2,900 lawyers, with 30 international offices. King & Wood Mallesons has expertise in litigation and dispute resolution, regulatory and compliance, banking and finance, corporate/M&A, securities and capital markets, and intellectual property. The firm’s dispute resolution team in China has over 100 partners and 400 lawyers, and has expertise in product liability and safety matters. It has assisted suppliers, manufacturers and distributors in mounting cases involving product liability issues. Recent experience includes representing a multinational technology company in handling a large quantity of consumer litigation related to product liability and safety disputes, responding to administrative inquiries and investigations, and representing an automotive manufacturer in product quality disputes.

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1. Product Safety

1.1 Product Safety Legal Framework

“Products” in the context of Chinese law refer to goods that have been processed or manufactured for sale. In China, a combination of laws, regulations and rules issued by the legislative and administrative agencies, as well as interpretations issued by the judicial organs, together form a complicated legal framework regulating product safety. The key legal instruments governing product safety include the following.

General Laws

General legislation governing product safety includes:

• the Civil Code of the People’s Republic of China (the “Civil Code”), effective as of 1 January 2021;
• the Product Quality Law of the People’s Republic of China, effective as of 1 September 1993, amended on 29 December 2018; and

Sector-Specific Laws

A number of laws and regulations regulate the safety and quality of specific products. These sector-specific instruments include:

• the Food Safety Law of the People’s Republic of China (effective as of 1 June 2009, amended on 29 April 2021);
• the Law of the People’s Republic of China on Import and Export Commodity Inspection (effective as of 1 August 1989, amended on 29 April 2021);
• the Administrative Regulations on the Recall of Defective Automotive Products (effective as of 1 January 2013, amended on 2 March 2019);
• the Regulation on the Supervision and Administration of Medical Devices (effective as of 1 April 2000, amended on 1 June 2021);
• the Implementing Regulation for the Food Safety Law of the People’s Republic of China (effective as of 20 July 2009, amended on 11 October 2019);
• the Measures for the Implementation of the Regulation on the Administration of the Recall of Defective Auto Products (effective as of 1 January 2016, amended on 23 October 2020);
• the Provisions on Administration of Motor Vehicle Emission Recalls (effective as of 1 July 2021);
• the Interim Provisions on Administration of Consumer Product Recalls (effective as of 1 January 2020); and
• the Administrative Measures for Medical Device Recalls (effective as of 1 May 2017).

Product Standardisation

According to the Standardisation Law of the People’s Republic of China (effective as of 1 April 1989, amended on 4 November 2017), the Standardisation Administration of China is responsible for administering the standardisation of products. To date, the Standardisation
Administration has released many national standards providing detailed guidelines on the safety assurance of specific products.

Standards in China can be either mandatory or recommended. Standards beginning with “GB” contain mandatory requirements; eg, the Hygienic Standard for Dried Fruits (GB 16325-2005) and the Stipulation Protecting Drivers From Injury by Motor Vehicle Steering Mechanism (GB 11557-2011). The standards beginning with “GB/T” are recommended; eg, the Education Robot Safety Requirements (GB/T 33265-2016) and the Description Specification on the Risk Information of Consumer Products Safety (GB/T 30135-2013).

1.2 Regulatory Authorities for Product Safety
Under the current product quality regulatory framework in China, administrative authorities exercise two types of regulatory powers: general and specific.

General Regulatory Authority
The State Administration for Market Regulation (SAMR) and local market supervision authorities are responsible for supervising and regulating product quality and safety, covering products manufactured in China and products imported into China. In addition, market supervision authorities are also responsible for the punishment of illegal activities related to product quality. The Standardisation Administration of China, as a branch of the SAMR, organises, coordinates and supervises the implementation of standards, including standards on product quality and safety.

Regulatory Authority for Specific Products
Other than the general regulatory authority described above, specific regulators also have the power to supervise product safety in the relevant industrial sectors. For example, the National Medical Products Administration is in charge of the supervision and administration of product safety in the drugs, medical devices and cosmetics sector.

1.3 Obligations to Commence Corrective Action
Under Chinese law, if a product is found to be defective after it is put into circulation, the manufacturer and the seller must promptly adopt remedial measures or commence corrective actions. Common remedies required by law include suspending sales, providing warnings, and implementing defective product recalls.

Suspending Sales
When a manufacturer identifies defects in its products, it is required by law to suspend manufacturing, sale or importation of the products.

Providing Warnings
A warning refers to a reminder of the relevant dangers associated with the product, or an explanation of how to correctly use the product to avoid these dangers. It is important to direct users’ attention to existing or potential dangers so as to prevent or reduce harm.

Requirements to provide warnings are generally stated in specific product recall regulations. For example, under the Administrative Regulations on the Recall of Defective Automotive Products, the manufacturer of defective automotive products is required to notify automobile owners of the defect in its automobile product and the emergency steps to take to avoid damages or harm.
Implementing Product Recalls
A manufacturer is required to make a recall when it is informed, by way of self-check, reports or complaints by the general public, or notification from a regulatory department, that the products it produces or sells are defective. Where the manufacturer fails to make a recall, or the relevant quality inspection departments deem it necessary, the regulatory authorities may order a product recall to be conducted. Detailed procedures and requirements for conducting product recalls are usually found in the regulations for specific products as discussed below.

Recall of consumer products
The Interim Provisions on the Administration of Consumer Product Recalls Defects regulate the recall of consumer products. Under the regulations, recall is necessary when defects that could cause unreasonable danger compromising personal and/or property safety are found in the same batch, model number or type of consumer goods, due to issues with the product design, manufacturing, warning, etc. Recall information must be published in a “well-known” publication that is easily accessible to the public. Such well-known publications include newspapers and periodicals, websites, and radio and television channels.

Recall of defective automotive products
The Administrative Regulations on the Recall of Defective Automotive Products regulate recalls of automotive products. According to these regulations, the SAMR supervises and administers the recall of defective automotive products in China. When defects are found to exist in the same batch, model number or type of automotive product due to issues with product design, manufacturing or labels, a manufacturer must prepare a recall plan, communicate the plan to the automobile sellers, and file the plan with the SAMR. The manufacturer is also required to release recall information in an easily accessible manner to the general public.

In addition, China has also introduced an emission recall system for motor vehicles, under which vehicle manufacturers are required to recall motor vehicles with “emission hazards”. The emission recall regime is administered by the SAMR jointly with the Ministry of Ecology and Environment (MEE). Refer to 3.1 Trends in Product Liability and Product Safety Policy for further details.

Recall of medical devices
Under the Measures for the Administration of Medical Device Recalls, medical device recalls are divided into three classes according to the severity of the defects:

- Class I recall – use of the medical device may cause or have caused serious health hazards;
- Class II recall – use of the medical device may cause or have caused temporary or reversible health hazards; and
- Class III recall – use of the medical device has a lower likelihood of causing any hazard but such medical device still needs to be recalled.

The different classes of recalls follow different notification time limits and the recall announcements require different levels of media exposure, according to the class.

China has so far required medical device manufacturers to be responsible for co-ordinating product recalls. However, according to a recent amendment to the Regulation on Administration and Supervision of Medical Devices in 2021, the medical device registrant or filing holder is now responsible for ensuring product quality and co-ordinating recall plans. China has yet to update
the measures for medical device recalls to reflect these changes. See 3.1 Trends in Product Liability and Product Safety Policy.

1.4 Obligations to Notify Regulatory Authorities
Where a manufacturer or a seller has discovered a defect in its goods or services, which may harm personal safety or property security, it must immediately report the defect to the relevant administrative authorities. This reporting obligation is widely required in many recall regulations for specific products.

Under the Measures for the Implementation of the Regulation on the Administration of the Recall of Defective Auto Products, upon learning of potential defects in its automobile products, the manufacturer must organise an investigation and analysis thereof, and truthfully report the result to the SAMR. Seller, repairers, rental service providers or spare part manufacturers are also required to report any defects they identify in their business operation to the SAMR.

Under the current Measures for the Administration of Medical Device Recalls, a medical device manufacturer must immediately report any of its medical device products that are found to be defective to the provincial food and drug supervision and administration department. Medical device operation enterprises and users are also required to immediately report to their provincial food and drug supervision and administration department. Medical device operation enterprises and users are also required to immediately report to their provincial food and drug supervision and administration department and notify the manufacturer or supplier of defects. In particular, if the medical device user is a medical institution, it must also report device defects to its provincial health administrative department.

As discussed in 1.3 Obligations to Commence Corrective Action, the new amendment to the Regulation on Administration and Supervision of Medical Devices in 2021 requires medical device registrants or filing holders to co-ordinate recall plans and report the recall plan to the medical administration authorities. The Measures for the Administration of Medical Device Recalls has yet to be updated to reflect these changes. Refer to 3.1 Trends in Product Liability and Product Safety Policy for further details.

1.5 Penalties for Breach of Product Safety Obligations
Failure to comply with product safety obligations may give rise to civil, administrative, and criminal liabilities.

Civil Liability
If a product causes personal injury or property damage, the manufacturer must compensate any losses suffered by the infringed person. Product liability for the manufacturer is a form of strict liability under Chinese law, which means that the manufacturer is liable for damages regardless of whether there is any fault on their part. The seller, on the other hand, is liable for damages only if it is at fault for the injury or loss. However, the infringed person may also bring claims directly against the seller. If the fault ultimately lies with the manufacturer, the seller may ask the manufacturer to reimburse its damages after it compensates the plaintiff.

The manufacturer and the seller also bear liability when their failure to adopt prompt and effective corrective actions leads to aggravated damages. In addition, if the manufacturer or seller knowingly continues to manufacture or sell a defective product, or fails to take effective remedial measures, and the defect results in death or serious damage to the health of another person, the manufacturer or seller will be liable for punitive compensation. Such punitive compensation will
be determined by the court on a case-by-case basis.

Administrative Liability
The regulatory government authorities may impose administrative sanctions on manufacturers and sellers when their product fails to conform to product safety standards, including by requesting rectification of defect, imposing fines, ceasing the operation, and revoking the business licence. For example, in 2020, there were more than 37,200 administrative penalty cases involving food safety.

In addition, the manufacturer and seller might also be subject to administrative penalties if they do not perform their product recall obligations. For example, where an automobile manufacturer breaches the Administrative Regulations on the Recall of Defective Automotive Products by failing to stop manufacturing the products, selling or importing defective auto products, withholding information about the defects or refusing to implement a recall as ordered, the regulatory authorities may order it to make correction, impose a fine of 1–10% of the monetary value of the defective products, and confiscate any illegal gains.

Criminal Liability
If the products are found to have caused death, serious personal injury, or serious property damage, the responsible manufacturers and sellers may be criminally liable. For example, in one criminal case, the defendant was sentenced to a fixed term of imprisonment of 12 years and ordered to compensate for medical fees, nursing fees, funeral expenses and other costs of the victim’s family for knowingly selling counterfeit medicines, which caused the death of the victim (see Case (2018) Liao 02 Xing Chu No 59, decided by Dalian Intermediate People’s Court, Liaoning Province).

2. Product Liability
2.1 Product Liability Causes of Action and Sources of Law
Causes of Action
Flaws in the product itself
Firstly, a consumer can bring a claim in respect of flaws in a product where the flaw has not caused any losses beyond the product itself. Under Chinese laws, a product must conform to the quality standards or specifications as presented by the manufacturer and seller. The consumer can claim against the seller for repair, replacement or return, and for any further damages caused, if a product falls within one of the following categories:

- the product does not have the properties required for use and the consumer has not been informed of the flaws in advance;
- the product quality does not conform to the standards specified on the product or its packaging; or
- the product does not meet the quality stated in the instructions for use or demonstrated via samples provided.

Flaws that cause harm
Secondly, a manufacturer or seller, or both, will be liable for tort if they have manufactured or sold a product that has caused harm to a person’s life or property. In general, the finding of product liability depends on three elements:

- the product being defective;
- the damage or loss suffered; and
- the causal relationship between the defective product and the damage.
Among these elements, the most important condition is whether a product is defective. In this regard, product defects have been categorised into three classes: design defects, manufacturing defects, and inadequate warnings or instructions.

According to Article 46 of the Product Quality Law, there are two tests to determine the existence of product defect: (i) a statutory standard, which considers a product to be defective if it fails to meet one of the applicable national or industry standards on personal or property safety; and (ii) an “unreasonable danger” standard, which considers a product to be defective if it unreasonably endangers the life or property of the consumer. In practice, even if a product meets the relevant national or industry standard, the court will still proceed to examine whether it meets a reasonable person’s expectations regarding product safety. Therefore, compliance with the statutory standard alone does not necessarily exempt a product from liability.

Administrative penalties
Thirdly, manufacturers and sellers of defective products may also be subject to administrative penalties. For example, if the product manufactured or sold is not in conformity with the national and industry standards regarding human life and health, personal safety or property safety, the regulatory authorities can stop the manufacture and sale of defective products, confiscate the defective products, impose fines on the manufacturer and seller, and even revoke their business licence(s).

Criminal penalties
Finally, the Criminal Law of the People’s Republic of China (effective as of 1 October 1997, with 11 amendments so far) contains product-related crimes relating to the manufacturing and sale of fake and shoddy products in various sectors including food, cosmetics and pharmaceuticals. Manufacturers and sellers will face criminal penalties in cases of severe product liability consequences triggering one of these crimes.

Sources of Law
In the context of civil disputes, the following key legal instruments governing product liability allow the victim to raise claims against the manufacturer or the seller of products for losses caused by the product flaw to the product itself, and damages to personal or property safety:

- the Civil Code;
- the Law on the Protection of Consumer Rights and Interests (PCRI); and
- the Product Quality Law.

Over the years, the Supreme People’s Court of China has also issued a series of judicial interpretations in relation to specific issues arising in product liability cases. These judicial instruments guide courts in their interpretation of key statutory definitions and concepts.

Since China is a civil law country, the principle of stare decisis does not apply in product liability litigation. However, judges may still be guided by precedents, particularly if found in judgments of the Supreme People’s Court or other superior courts addressing similar facts or legal issues, or if the area of law is unsettled.

Apart from civil liability, product quality disputes may also give rise to administrative liabilities. In this regard, the Product Quality Law, the PCRI and other laws and regulations for specific products set out the power of the administrative authorities to supervise product liability and to issue administrative penalties.
Lastly, criminal penalties could also be triggered in cases where the product quality issue has resulted in severe and far-ranging consequences. As mentioned above, chapter 3 of the Criminal Law contains a section titled “Crimes of Manufacturing and Selling Fake and Shoddy Goods”. This section specifically provides strict criminal penalties in respect of the manufacturing and selling of fake or defective products that severely infringe upon consumers’ interests.

2.2 Standing to Bring Product Liability Claims
In China’s legal system, consumers and other infringed individuals have standing to bring claims for product liability if their rights or interests are impaired. An individual can file a litigation against the manufacturer or seller in court based on a contractual relationship or an act of infringement.

Multiple injured individuals involved in a product liability case may have standing to bring representative litigation. If the number of injured individuals is unspecified, the court could publish an announcement to notify potential plaintiffs to register as plaintiffs. The registered plaintiffs can nominate co-plaintiffs to be their representatives and participate in the litigation on their behalf. The judgment issued in these cases will bind all registered plaintiffs. If unregistered parties file additional claims, the original judgment will apply and bind the unregistered parties in those claims as well.

Finally, public welfare institutions, organisations or the state procuratorate may file public interest litigations when the legitimate rights or interests of multiple consumers have been harmed. For example, the China Consumers Association and consumer associations at the provincial level are eligible to initiate a public interest litigation in consumer disputes. An amendment to the Civil Procedure Law in 2017 introduced the new mechanism of public interest prosecution, allowing the procuratorate to prosecute a case relating to food and drug safety if there is no relevant institution or organisation with the power to file public interest claims, or the relevant institution or organisation does not file a claim.

2.3 Time Limits for Product Liability Claims
According to the Civil Code, the statute of limitation for a product liability claim is three years. The period of the limitation is calculated from the day when the plaintiff (eg, the consumer or other infringed individuals) knew or should have known that their right had been infringed. In any event, the court will not offer protection to the plaintiff if 20 years have elapsed since the infringement took place. Nevertheless, under special circumstances, the court may decide to extend the period upon the application of the plaintiff.

2.4 Jurisdictional Requirements for Product Liability Claims
According to the Civil Procedural Law, a product liability dispute must meet the following prerequisites:

• the plaintiff is a citizen, legal person or any other organisation with a direct interest in the case;
• there is a specific defendant; and
• the plaintiff has made a specific claim supported by facts and reasons.

In addition, the plaintiff has to file the claim before the court that has jurisdiction (see 2.10 Courts in Which Product Liability Claims Are Brought).
2.5 Pre-action Procedures and Requirements for Product Liability Claims
To date, there are no mandatory pre-litigation procedures under Chinese law. Pre-trial preservation of evidence, which is an optional pre-action procedure, is explained in 2.6 Rules for Preservation of Evidence in Product Liability Claims.

2.6 Rules for Preservation of Evidence in Product Liability Claims
If any evidence may be lost or subsequently become hard to obtain, a party to the dispute can apply for the court to issue an evidence preservation order, either during the proceedings or before the filing of a litigation under urgent circumstances (the latter is also known as pre-trial preservation of evidence).

Evidentiary preservation measures ordered by the court may include making copies in advance, sealing evidence or taking other actions to preserve evidence, depending on the format and location of the evidence in individual cases. The court may impose a fine or detain anyone who forges or destroys important evidence, or it may adopt a presumption of fact against a party found to have breached the rules.

2.7 Rules for Disclosure of Documents in Product Liability Cases
Unlike common law jurisdictions, there is no general process of document production during civil litigation in Chinese courts. Except where the burden of proof is specifically allocated elsewhere (see 2.9 Burden of Proof in Product Liability Cases), each party bears the evidentiary burden of proving its claims.

However, if a party and its representative find it difficult to obtain a particular piece of evidence due to objective difficulties, that party may apply to the court for investigation and evidence collection. For example, in product quality disputes, if the consumer is unable to obtain a vital inspection report regarding product defects kept by the product manufacturer, the consumer could apply to the court to collect the report from the manufacturer.

In addition, if a party refuses to provide evidence without any proper justification, despite indications that the evidence is in its possession, and the other party bearing the burden of proof for a particular fact claims that the evidence is unfavourable to the party that possesses it, a court may presume that the relevant claim has been established.

2.8 Rules for Expert Evidence in Product Liability Cases
To resolve technical issues in a product liability dispute, the court may instruct a qualified institution or person to inspect and test the product in detail upon application by a party or on its own motion. The person responsible for the inspection may be present during the hearing to give testimony on the results of inspection, upon the application of a party or if the court considers it necessary to hear the testimony. The judge hearing the proceedings may pose questions to the expert, and any party may cross-examine the expert. Either party may also introduce other experts to provide professional opinion on the inspection or other technical issues during the hearing. Where permitted by the court, experts may address each other regarding issues arising in the proceedings.

2.9 Burden of Proof in Product Liability Cases
In product liability proceedings, the plaintiff has the burden of proving that:
the product is defective;
- damage or loss occurred; and
- a causal relationship exists between the defect and the damage suffered.

Shifting the Burden of Proof
To the defendant
However, in many cases brought by consumers, the plaintiff usually has limited technical knowledge about the product in dispute. Out of consideration for fairness, courts will generally not impose overly stringent evidentiary burdens concerning the product defect and the causal relationship on the plaintiff. As long as the plaintiff can present prima facie evidence that the product may be defective, the court tends to shift the burden of proof to the manufacturer or seller to prove that the product is not defective. For this purpose, the defendant will usually need to prove that the product meets the national and industry standards (if any), does not present any unreasonable danger to a person’s health, and will not damage a person’s property.

The “presumptive approach”
The same is true in demonstrating the causal relationship between the defect and the damage incurred. Given the difficulty for ordinary consumers to establish an unequivocal causal relationship, the plaintiff is only usually expected to prove the existence of a “connection” between the injury or damage and the defect. When this has been done, the courts usually take a “presumptive approach” and establish the causal relationship when there is a high possibility that the defect is the cause of the injury.

The inspection procedure
In practice, the inspection procedure plays an important role in determining the existence of product defect and causation. A party may apply to a court for an inspection to determine whether a product is defective or the cause of the injury. The inspection will be conducted by inspection institutions with appropriate qualifications or by judicial inspection institutions, which are either appointed based on an agreement between the parties or designated by the court. If necessary, the court may also decide to appoint an inspection institution on its own motion. As mentioned in 2.8 Rules for Expert Evidence in Product Liability Cases, the plaintiff or the defendant may also apply to introduce an expert to give an opinion on the inspection opinion.

2.10 Courts in Which Product Liability Claims Are Brought
Courts and Procedures
There are no special courts or procedures for product liability cases. However, if a product liability dispute is relatively simple and the amount in dispute is relatively small, a simplified procedure or small claims procedure may apply. These two types of procedures are more flexible and are concluded more quickly than the normal procedure for civil litigation. In addition, the judgment or ruling of the first instance court in a small claims procedure is final and not subject to appeal.

District Jurisdiction
In a contractual dispute the parties may, by written agreement (subject to the statutory rules on hierarchical jurisdiction and exclusive jurisdiction), select the court at the place of:
- the domicile of the defendant;
- the signing or performance of the contract;
- the domicile of the plaintiff;
- the location of the subject matter; or
- any other place with a connection to the dispute.
In the absence of a prior agreement of the parties, the court at the place of the domicile of the defendant or where the contract is performed will have jurisdiction over the case.

Product liability claims based on tort are under the jurisdiction of the court at the place where the tortious act occurred or the domicile of the defendant. The place where the tort occurred includes the place where the tortious conduct was committed and the place where the consequences of the tortious conduct occurred. If the manufacturer and seller are domiciled in China, the Chinese courts will, without a doubt, have jurisdiction over the proceedings. If the manufacturing and selling take place outside China, the manufacturer and seller may still fall under the jurisdiction of the Chinese courts if the damage occurs within China.

Hierarchical Jurisdiction
Depending on the amount in dispute, a civil dispute may be heard by courts at different levels including district courts, intermediate courts or high courts. The precise threshold for each level of court to hear a case varies by region. In practice, since the underlying amount in product liability cases is relatively small, these cases are usually heard by the district courts.

The “People’s Juror”
Since China has a legal system based on civil law, there is no trial by jury in Chinese courts. However, there is a “People’s Juror” system, by which a non-judge citizen can serve on the hearing panel in a case governed by normal procedure, with the same power as a judge. The juror can participate in fact-finding, the application of law and the decision-making process.

2.11 Appeal Mechanisms for Product Liability Claims
The rules for appeal in product liability disputes are the same as in other civil proceedings governed by the Civil Procedure Law and its judicial interpretations. The judgments or certain rulings made by the court of first instance may be appealed on grounds including fault in fact-finding, incorrect application of laws, and serious procedural violations.

Once the court of first instance delivers the ruling or judgment, either party may file an appeal with the People’s Court at the higher level within 15 days from the date of service of the judgment, or ten days from the date of service of the ruling. The appellate court may decide to uphold, withdraw or revise the original ruling or judgment, or remand the case back to the lower court.

2.12 Defences to Product Liability Claims
Under Chinese law, the defendant in a product liability dispute can raise procedural and substantive defences. In terms of substantive defences, product quality laws and regulations outline the following three statutory defences under which a manufacturer may avoid liability:

- the products have not been put into circulation;
- the defects did not exist when the products were put into circulation (in other words, the manufacturer can demonstrate that the defect was caused by the victim); and
- the scientific and technological standards at the time the product was put into circulation had not reached a level to enable the manufacturer to discover the defect in the product.

Additionally, as outlined in 2.1 Product Liability Causes of Action and Sources of Law, the
plaintiff has to meet its burden of proving three elements in a product liability claim (i.e., defects, injuries or damage, and a causal relationship between these). A defendant may also avoid liability by successfully challenging any of these three elements. In legal practice, defendants in general tend to challenge the existence of “defects” and a “causal relationship”.

2.13 The Impact of Regulatory Compliance on Product Liability Claims

Regulatory requirements, especially national standards, play an important role in deciding product liability cases. As stated in 2.1 Product Liability Causes of Action and Sources of Law, “defect” is one of the three elements necessary for the establishment of product liability. Compliance with national standards is one of the criteria for courts to determine whether a product is defective.

Under the Product Quality Law, where a product is governed by national or industry standards for the protection of health, personal safety or the safety of property, the term “defect” includes non-compliance with those standards. Similarly, sector-specific regulations also refer to non-compliance with national standards as one of the criteria for defects. For example, the Administrative Regulations on the Recall of Defective Automotive Products provide that products that do not meet the national or industry standards on personal and property safety are deemed to be defective.

That said, regulatory compliance is only a bottom line in product liability disputes. Products that meet the national or industry standards or other administrative requirements are not automatically considered “free from defects”. They also have to meet a reasonable person’s expectations regarding safety (see 2.1 Product Liability Causes of Action and Sources of Law for further details).

2.14 Rules for Payment of Costs in Product Liability Claims

In China, a court fee is calculated in proportion to the amount of the claim and must be prepaid to the court in all cases (including product liability cases) before the hearing by the plaintiff, unless the plaintiff applies for a postponement, reduction or exemption of the court fee and the court permits this.

The court will decide the allocation of the court fee between the parties in the final judgment, as well as other fees such as expert costs and inspection fees. Such fees are usually allocated to the losing party. As for attorneys’ fees, the court usually consider whether the losing party should bear such costs according to the facts in the particular case, taking into account relevant provisions in the parties’ sales contract and whether the attorneys’ fees can be classified as a reasonable expense.

2.15 Available Funding in Product Liability Claims

Litigation Funding

No statutory litigation funding system is currently established in China. It is also difficult to receive legal aid in product liability cases. In practice, however, specific state-supported funding is available for public interest litigation (see 2.16 Existence of Class Actions, Representative Proceedings or Co-ordinated Proceedings in Product Liability Claims) for parties who cannot afford the cost of litigation.

By law, a court can, after investigating the situation, decide to exempt, reduce or postpone the court fee upon application if it finds that a party is financially disadvantaged and has genuine
difficulties in paying court fees. Eligible applicants include disabled persons without a steady source of income, persons on minimal welfare benefits, and persons affected by natural disasters or other types of force majeure. In particular, victims of product quality accidents are allowed to apply for postponement of court fees.

Contingency Fees
In civil cases involving property, which covers most product liability disputes, a contingency fee can be agreed upon between attorneys and clients.

2.16 Existence of Class Actions, Representative Proceedings or Coordinated Proceedings in Product Liability Claims
To date, China’s legal system has not provided for class actions as they exist, for example, in the USA. However, China does allow public interest litigations and representative litigations when a product quality dispute affects multiple individuals (see 2.2 Standing to Bring Product Liability Claims).

In practice, many public interest litigations in China are filed by procuratorates. As an example, a procuratorate in Guangdong province commenced litigation against two individuals for selling pork that did not meet the food safety regulatory requirements and impairing public health. The People’s Court supported all the claims of the procuratorate and ordered the two defendants to remedy the damage caused by their products (by making payments to the State Treasury) and apologise to the public in the newspaper (see Case (2019) Yue Min Zhong No 379 decided by the Higher People’s Court of Guangdong Province).

2.17 Summary of Significant Recent Product Liability Claims
There have been many published decisions concerning product liability in China recently. The cases discussed below – about e-commerce, recall of automotive products and public interest litigation – are significant to judicial practice in interpreting key concepts and supporting new trends in public interest litigations.

Community Group-Buying
On 15 March 2023, the China Consumers Association released “Ten Typical Cases Concerning Consumer Protection”. The following case involving a product quality dispute in community group-buying is noteworthy given the prominence of community group-buying in China.

In Case (2021) Su 01 Min Zhong No 8133 (decided by the Intermediate People’s Court, Nanjing), the plaintiff participated in community group-buying and purchased products from the defendant, but found that the products were inconsistent with the description. The plaintiff argued that such conduct constituted consumer fraud and the defendant should assume the responsibility and make compensation.

The court upheld the plaintiff’s claims. Community group-buying is a new online sales model, but the online shopping contract was still established between the consumer and the seller. The defendant, as the seller in this case, published misleading statements which made consumers believe that they could purchase genuine products at a lower price. Such conduct constituted consumer fraud, and the defendant should be liable for three times the amount of money.

Sale of Used Automotive Products
Among the ten typical cases selected by the China Consumers Association in 2023, another
case involved the sale of used automotive products. In Case (2022) Hei 10 Min Zhong No 33 (decided by the Mudanjiang Intermediate People’s Court, Heilongjiang), the plaintiff purchased a used car from the defendant, who claimed that the car was blister-free, fire-free and free from major accidents. But the car was later identified as an accident vehicle with obvious cut and burn marks on two pillars. The plaintiff then filed the lawsuit against the seller for consumer fraud.

The court ruled that consumers have the right to obtain true information on commodities purchased or used or services received. The defendant failed to conduct an inspection and deliberately concealed the truth about the vehicle, causing the buyer to receive a wrong impression. Fraud was established in this case and the defendant will bear the punitive compensation liability.

Public Interest Litigation Commenced by the Consumer Association
Case (2017) Yue 01 Min Chu No 384 (decided by Guangzhou Intermediate People’s Court, Guangdong Province) is the first public interest litigation in which punitive damages were supported by the court. In this case, the defendants passed off industrial salt as edible salt and non-iodised salt as iodised salt, which created great danger to public health. Accordingly, the Consumer Association of Guangdong Province initiated a public interest litigation following prosecutorial advice from Guangdong People’s Procuratorate.

The court upheld all of the consumer association’s claims in the public interest litigation. The individuals involved in the production and sale of the inferior salt were ordered to make an apology to the public and pay punitive damages equivalent to ten times their earnings from sales. Since the right to compensation did not belong to the consumer association, but to the unspecified consumers who purchased the inferior salt product, the compensation would first be held in trust by the court and then handed over to the State Treasury by the court, after the expiry of the statute of limitations for the relevant injured consumers.

Public Interest Litigation Commenced by the Procuratorate
Since the newly amended Civil Procedure Law granted procuratorates the power of commencing public interest litigation, procuratorates have developed the model of “Criminal Sanction Plus Public Interest litigation” in product liability disputes to better protect the interests of consumers. On 15 March 2023, the Supreme People’s Procuratorate of the PRC released “Ten Typical Cases of Public Interest Litigation Filed by Procuratorates on Food and Drug Safety and Consumer Rights Protection”.

One of the typical cases where the procuratorate pursued public interest litigation in addition to criminal procedures involved the sale of drugs. From 2017 to 2020, three defendants sold 20 types of drugs without approval for drug production or distribution licences. Since Sildenafil was identified in these drugs, they were considered to be counterfeit medicines. After ascertaining the facts through criminal investigation, the local procuratorate commenced public interest litigation in the Hubei local court.

The court ultimately ordered the defendants to pay punitive damages in the amount of CNY13.09 million and issue a public apology on state media. The appellate court upheld the trial court’s decision on 5 August 2022.
3. Recent Policy Changes and Outlook

3.1 Trends in Product Liability and Product Safety Policy
Recent trends regarding the shift of the burden of proof, liability allocation between medical institutions and manufacturers of medical devices, and strict regulations concerning food safety have been discussed in 2.17 Summary of Significant Recent Product Liability Claims.

The Civil Code
On 1 January 2021, the Civil Code became effective. The Tort Liability Law was replaced by “Part VII Liability for Tort” of the Civil Code. The new Civil Code includes the following key measures:

• remedial measures for product liability have been expanded – besides recalling and issuing a warning, stopping sales has been added as a new corrective action;
• liability for aggravated damage has been clarified by codifying the rules developed through court decisions – where the damage is aggravated as a result of a failure to adopt remedial measures promptly or as a result of ineffective remedial measures, the manufacturer and the seller will also bear tortious liability for the aggravated damage;
• it has been clarified that the manufacturer and the seller will bear the requisite expenses incurred by the infringed person during the recall of defective products; and
• the circumstances in which punitive damages apply have been broadened – where manufacturers or sellers knowingly produce or sell defective products or fail to take effective remedial measures, thus causing death or serious damage to the health of another person, the infringed person will be entitled to claim appropriate punitive damages.

New Emission Recall System for Polluting Vehicles
On 27 April 2021, China introduced a new Regulation on the Administration of Motor Vehicle Emissions Recall, which formally came into effect on 1 July 2021. Implementing the Law on Control and Prevention of Air Pollution, the new Regulation introduced a new recall system for motor vehicles with emission hazards. The main features of this recall system include the following.

• The Regulation requires the recall of all motor vehicles with “emission hazards”, defined as vehicles that emit air pollutants beyond the maximum limits in the national standards, due to (i) defects in the vehicle design or production; or (ii) non-conformity with national standards on environmental protection durability.
• Under the emission recall system, the motor vehicle manufacturer is the party responsible for complying with the recall obligations for motor vehicles with emission hazards. In the case of imported motor vehicles, the recall obligation rests with the importer.
• The SAMR will set up a Motor Vehicle Emission Recall System to record emission control-related information about motor vehicles on the market, including emission control components, warranty protection, repair and maintenance information, system failures, and reports about recall plans, litigations and arbitrations. Motor vehicle manufacturers should promptly submit the relevant information in the system.
• Emission recalls may be initiated by the motor vehicle manufacturer or ordered by the SAMR jointly with the MEE. The SAMR may receive reports about possible emission hazards from motor vehicle sellers and component suppliers, request that motor vehicle manufacturers conduct an investigation into possible emis-
sion hazards, or initiate an ex officio investigation into potential emission hazards.

- Once a particular motor vehicle model is found to have emission hazards, the motor vehicle manufacturer must take recall measures including revising or supplementing vehicle labels, and repairing, replacing or returning the vehicle to remove the emission hazard. The manufacturer must also file periodic work reports through the Motor Vehicle Emission Recall System and provide a summary report within 15 days after completing the recall plan.

Amendment to the Warranty Obligations of Vehicles Manufacturers

A new amendment to the Regulations on Repair, Replacement and Return of Household Automotive Products came into force on 1 January 2022. The newly amended regulation introduced several important changes to the obligations of vehicle manufacturers in guaranteeing product quality and providing after-sale services.

- The amended Regulation has expanded vehicle manufacturers’ warranty obligations to major components of renewable energy vehicles, requiring manufacturers and repairers to provide free replacement if the power battery or the driving motor of a renewable energy vehicle exhibits major quality issues within 30 days of purchase or within the mileage range of 3,000 km.
- The amended Regulation has lowered the threshold for consumers to claim warranty service, requiring repairers to provide a replacement if a vehicle has already undergone repair four times for the same issue or over a 30-day period.
- Under the amended Regulation, vehicle manufacturers, sellers and repairers cannot refuse to provide warranty because the consumer has chosen a specific maintenance provider.

Changes to the Medical Equipment Regulatory Regime

On 9 February 2021, China promulgated a new amendment to the Regulation on the Supervision Administration of Medical Devices, which came into force on 1 June 2021. Major changes incorporated through the amendment include the following.

Registration and filing system

The new amendment requires the registrant or filing person to be responsible for product quality control, risk management, adverse event monitoring, and the implementation of product traceability and recall plans. Foreign registrants are required to designate a local entity in China to assist in implementing these obligations.

Expedited approval procedure

The new amendment also establishes several expedited channels for the granting of registration or filing to medical devices for (i) the treatment of rare diseases, life-threatening diseases or public health incidents; or (ii) the use of medical devices within a limited scope and period during public health-threatening emergencies.

Online sales of medical devices

The new amendment allows only the medical device registrant, filing person and qualified operational entities to sell medical devices online. E-commerce platforms are required to review the registration and filing of the medical devices sold on the platform.

Strengthened sanctions

The new amendment strengthened sanctions over unlawful production and the sale of medical devices. Among other things, production or
sale of Type II or Type III medical devices without registration will be subject to a fine of 15 to 30 times the illegal gains if the overall revenue has exceeded CNY100,000. Production, sale or use of Type I medical devices without proper filing, or medical devices that do not conform to applicable standards and specifications, will be subject to a fine of five to 20 times the illegal gains.

3.2 Future Policy in Product Liability and Product Safety

The general tendency in product liability, as outlined in 3.1 Trends in Product Liability and Product Safety Policy, is to extend the level of protection to consumers. Based on that, legislators also plan to do the following.

• Unify the standard for the determination of defects – to date, “unreasonable danger” and “national or industrial technology standard” are both applied (see 2.13 The Impact of Regulatory Compliance on Product Liability Claims); some believe that these standards are vague and difficult to apply, particularly as regards the meaning of “unreasonable danger”.
• Increase the use and function of punitive damages in product liability cases.
• Expand the use and application of mental distress damage in product liability cases.

3.3 Crisis Management/Situations/ Business Disruption and Product Liability and Product Safety Laws

Any changes to product liability and safety laws have been discussed above.

The topics of new energy vehicles, autonomous vehicles, international e-commerce, online shopping, public interest litigation and others are also under discussion in the context of new legislation.
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