



CLIENT ALERT

TOUGHER PRODUCT LIABILITY PROVISIONS FOLLOWING THE RELEASE OF LONG-AWAITED AMENDMENTS TO CONSUMER RIGHTS AND INTERESTS PROTECTION LAW IN CHINA

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OVERVIEW

The rise of consumerism in China over the past ten years, accompanied by huge increases in domestic consumption, has spurred greater regulatory enforcement in the area of product liability, as well as greater willingness by consumers to seek legal remedies in China.

In recent years, and in response to major food safety scandals and public outcry, the Chinese government has focused their regulatory oversight on a number of key sectors, including healthcare, food (particularly infant milk formula and health supplements), automobiles, and consumer goods. The Chinese central government continues to revise existing laws and issue new laws and regulations to tackle product liability issues and problems, and some of the major laws introduced or revised in recent years include the *Food Safety Law* and the *Tort Liability Law*¹ just to name a few. Now after twenty years since it came into force, on October 25, 2013, the Standing Committee of the National People's Congress promulgated the first major comprehensive amendment to the Consumer Rights and Interests Protection Law ("**Amended Consumer Law**").

The Amended Consumer Law will come into effect on March 15, 2014. Some of the key changes that it will introduce include:

- specific inclusion of provisions in relation to product recall and collective actions;
- new provisions designed to protect consumers in the face of unprecedented pace of changes brought by the booming internet shopping sector;
- restrictions on the use and disclosure of consumers' personal information by business operators; and
- tougher punishments to be imposed on companies in cases where the defect(s) in the goods or services provided is serious.

¹ Which came into effect on June 1, 2009 and July 1, 2010 respectively.

TRADITIONAL PRODUCT LIABILITY PROTECTION MECHANISMS NOW SPECIFICALLY COVERED BY THE AMENDED CONSUMER LAW

The Amended Consumer Law now expressly provides that (a) business operators (both manufacturers and sellers) are obliged to conduct product recall when they identify a product defect, and (b) in addition, the relevant authorities (for example, the AQSIQ, AIC, MIIT or other authority with market/industry supervision roles²) will order business operators to conduct product recall when the authorities identify a product defect. The Amended Consumer Law does not set out in detail what the recall mechanism will entail in case these recall provisions are triggered.

We note that under the current Chinese product liability regime, specific provisions on product recall mechanisms are found in various laws and regulations as well as Ministry issued measures or rules addressing specific types of product liabilities and products³. What these provisions under the Amended Consumer Law will do is to provide consumers with an additional protection on product recall remedies as opposed to replacing the product recall provisions that are already in place under the current regime. In case of product recall, business operators will be liable for costs necessarily incurred by consumers in connection with the product recall.

In China, a civil action involving two or more claimants and/or defendants is referred to as "collective action" rather than class action as it is known in the U.S. and other common law jurisdictions. Recent amendments made to China's *Civil Procedure Law*⁴ introduced a new provision regarding public interest collective action, under which an authority or organisation prescribed by law may institute a collective action for conduct that pollutes the environment, infringes upon the lawful rights and interests of large group of consumers or otherwise damages public interests. That amendment did not define what an "authority or relevant organisation" encompasses and how such public interest collective action will be carried out differently from a typical collective action. The Amended Consumer Law specifically provides that the "Consumers' Association" will be entitled to represent groups of consumers in collective actions involving product defect claims.

PROTECTION OF CONSUMERS' PERSONAL INFORMATION⁵

In response to complaints about the abused use of personal information from the public, the Amended Consumer Law requires business operators and their employees to maintain the confidentiality of personal information obtained from consumers. They are expressly prohibited from disclosing, selling or providing the same to any other party illegally.

When accessing and using consumers' personal information, business operators are required to:

- obtain the consumers' consent;
- adopt principles of legitimacy and fairness in respect of its use;
- expressly inform the consumer of the purpose, approach and scope of access and use;
- make their policy on information access and use publically available; and
- not to violate any laws, regulations, rules or agreement(s) reached with the consumer.

² "AQSIQ" is the Administration of Quality Supervision, Inspection and Quarantine. "AIC" is the Administration for Industry and Commerce. "MIIT" is the Ministry of Industry and Information Technology.

³ For example, the Food Safety Law, the measures governing the recall of medical devices, etc.

⁴ Which took effect from 1 January 2013.

⁵ Personal information includes but not limited to consumers' names, images, and other private data.

In case of violation, the potential liabilities have been extended to cover civil liability and administrative sanctions, including confiscation of illegal gains, a fine up to RMB500,000 or up to 10 times the value of the illegal gains, suspension or revocation of business license etc.

TOUGHER PUNISHMENTS IN CASE OF VIOLATIONS AGAINST CONSUMERS

One of the many criticisms leveled at the existing law is that its penalties are too low and as such lack strong deterrent effect. The Amended Consumer Law introduces much tougher penalties and sanctions, some of which are summarized in the table below for your ease of reference.

Situation	Existing Law	Amended Consumer Law
A business operator is fraudulent when selling products or providing services	Civil claim for: <ul style="list-style-type: none"> • Refund of purchase price/service fees; • Compensation equal to the purchase price or service fees. No minimum compensation requirement. 	Civil claim for: <ul style="list-style-type: none"> • Refund of purchase price or services fees; • Compensation equal to THREE times of the purchase price or service fees. The minimum compensation is RMB500.
	Administrative Penalties: <ul style="list-style-type: none"> • Subject to provisions of the Product Quality Law and other relevant laws and regulations (in relation to product liability regime); • Subject to the above, potential penalties may include a fine of up to 5 times the value of illegal gains or a fine of up to RMB10,000 if there is no illegal gains. 	Administrative Penalties: <ul style="list-style-type: none"> • Subject to provisions of other relevant specific laws and regulations (in relation to product liability regime); • Subject to the above, potential penalties may include a fine of up to 10 times the value of illegal gains or a fine of up to RMB500,000 if there is no illegal gains.
A business operator who knowingly sells or provides defective products/ services, which results in death or causes body injury	Civil claim for: <ul style="list-style-type: none"> • Damages suffered thereof (including but not limited to medical expenses, nursing expenses, compensation for lost wages); • Disability compensation, living expenses etc. in case of physical disability; • Funeral expenses, death compensation and living expense for the person under care of the victim in case of death. <p>Note: There is no specific punitive compensation provision.</p>	Civil claim for: <ul style="list-style-type: none"> • Damages suffered thereof (including but not limited to medical expenses, nursing expenses, transportation fees, compensation for lost wages, and compensation for psychological injury); • Disability compensation, disability equipment fees etc. in case of physical disability; • Funeral expenses and death compensation in case of death. • Punitive compensation equal to two times the amount of damages suffered by the victim.
	Administrative Penalties: Same as above.	Administrative Penalties: Same as above.

For further information about the Amended Consumer Law or if you have any questions on product liability issues that may have impact on your business, please contact:

KEY CONTACTS



Sammy Fang

Partner

T +86 10 8520 0788

sammy.fang@dlapiper.com



Moore Lu

Associate

T +86 10 8520 0797

moore.lu@dlapiper.com

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