

Product Liability - Taiwan

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1. LIABILITY

1.1 What are the principal sources of law and regulation relating to product liability?

The dominating legislation addressing product liability in Taiwan would be the Consumer Protection Act (CPA) enacted in 1994, last amended in 2005, which provides the basis standards of the quality of products and services. Most specifically, it is required that the business operators engaging in the design, production, manufacture or import of goods or in the provisions of services have the following obligations:

- (i) prior to selling goods into the market or at the time of rendering services, to ensure that goods and services provided meet safety standards that can be reasonably expected based on contemporary technical and professional standards; and
- (ii) where goods or services may endanger the lives, bodies, health and/or properties of consumers, to label at a conspicuous place a warning and the urgent handling method.

Business operators failing to comply with the above obligations thereby endangering consumers and/or a third party will be jointly and severally liable therefor; the court may reduce their liability for damages if the business operators can prove that they have not conducted any intentional or negligent acts.

The business operators engaging in the distributing, retrofitting and repackaging of goods should be jointly and severally liable for such damages unless they can prove that they have exercised the level of due care necessary to prevent such damages from occurring, regardless of the outcome.

Under the Tort section of the Civil Code, Article 191-1 was added in 1999 to provide a shift of burden of proof to manufacturers to show due care, which is commonly referred to as one of the foundations of product liability legislation. Please note that the consumers may claim damages based on both the Civil Code and the CPA if the requirements under these two statutes are all met. Specific requirements related to product liability of different industries are provided in their respective laws and regulations, such as the Food Sanitation Act (FSA) and the Financial Consumer Protection Act.

1.2 What is required to establish causation under the most common causes of action available?

To establish causation between the defected product and the damages sustained by the product user, the standard of adequate causation theory should apply. An explanation of such theory that is commonly quoted in written judgments as the basis of the courts' determination of the establishment of causation is provided as follows:

'Causation is established if such damages would not have occurred if a specific act does not exist, while the existence of such act usually would result in such damages. Causation is not established, however, if such damages would not have occurred whether such act exists or not.'

Given the vague nature of such standard, it is commonly perceived that the burden of proving causation placed upon consumer is quite high and that the determination of causation establishment is at the judge's sole discretion.

1.3 Is strict liability available and, if so, in what circumstances?

While the CPA imposes strict liability, the Civil Code does not. As mentioned in section (1)(a) of this report, according to the CPA, as long as business operators engaging in the design, production, manufacture or import of goods fail to provide goods or services of contemporary safety standards or fail to provide necessary warning labels, they should be liable for damages sustained by consumers regardless of existence of intention and negligence. Even if the business operators can prove that they did not conduct any intentional or negligent acts, their liability for damages can only be reduced, not exempted, by the court. On the other hand, the liability of business operators engaging in the distributing, retrofitting and repackaging of goods can be exempted if they can prove that they have exercised the level of due care necessary to prevent such damages from occurring, regardless of the outcome.

However, according to the Civil Code, although the manufacturer and importer are liable for damages to another arising from the common use or consumption of their merchandise, such liability can be exempted if the manufacturer and importer can prove that there is no defective in the production, manufacture or design of the merchandise, that the damages is not caused by the existence of the defective if there is defective, and that the manufacturer has exercised reasonable care to prevent such damages from occurring.

1.4 Are guarantees or warranties as to quality implied by law?

The business operators should ensure that goods and services provided by them meet safety standard that can be reasonably expected based on contemporary technical and professional standards. Moreover, it is specifically required that under the CPA, if the business operators additionally warrant to consumers concerning the quality of goods or services, they should voluntarily provide written warranties, specifying, among others, the quantity of goods or services, the contents and period of such warranties, and the contact information of the manufacturer or the distributor. Even if the business operators do not provide such written warranties, it would still be deemed that they must honour the quality warranty that they had previously offered.

1.5 How is a product 'defect' defined?

A product is deemed defective as long as it does not meet safety standards that can be reasonably expected based on contemporary technical and professional standards. Local precedents further indicated that when determining whether a product meets the above standards, whether damages would occur even if use instructions and warning notes on label are drafted in a way that consumers can easily understand and the consumers had reasonably followed such instructions to use the product, should be considered. If the answer to the above is affirmative, then it would be deemed that the product does not meet contemporary standards and is defective. In light of the above, a defective product should be defined based on the common and reasonable anticipation of goods quality of average consumers rather than an actual malfunction. Please note that it is the business operators who bear the burden to prove that their products meet safety standards. However, goods

and services cannot be presumed defective simply because better goods and services are subsequently provided.

1.6 Who in the supply chain has obligations or duties for defective products? What obligations or duties do they owe and to whom?

Almost all business operators in the supply chain have some level of duties for defective products. As mentioned in section 1.3 above, those involved in the designing, producing, manufacturing importing, distributing, retrofitting and repackaging of goods should jointly and severally compensate the consumers for the damages caused by defective products. In addition, as required under the CPA, if any business operator, based on the facts available, believes that certain goods or services are likely to endanger the safety and health of consumers, or if any business operator fails to label necessary warning notes in a conspicuous place, such business operator should immediately recall such goods or discontinue such services, unless other necessary treatments taken by the business operators are sufficient to remove such danger.

1.7 By what means can a supplier limit its liability for defective products?

It is specifically provided in the CPA that the business operators' liability for compensating damages sustained by customers cannot be limited or exempted in advance through mutual agreement. A supplier, however, may shift some of the ultimate liabilities to other business operators in the supply chain through contractual arrangements.

1.8 Are there particular goods or services which have specific obligations or duties attached to them?

Obligations imposed on food and pharmaceutical products are stricter. The FSA requires that entities engaging in food supply chain and exceeding certain business scale should have product liability insurance. Recall requirements and procedures for defective food products are detailed in such act and its relevant regulations. As for drug products, drug importers and/or local manufacturers are required to pay an imposition, a ratio of its revenue of drug sales of the preceding year, to the Drug Injury Relief Fund, which will be used to compensate patients for damages caused by necessary and legitimate drug use as defined in the Drug Injury Relief Act.

2. DEFENCES

2.1 What are the possible defences to a product liability claim?

It can be summarised from the legal framework outlined in section 1 above that when consumers claim for product liability against business operators, the business operators would bear the burden of proving that their products meet safety standards that can be reasonably expected based on contemporary technical and professional standards, while consumers should bear the burden of proving that their use of the product is common and reasonable and that the damages occurred during their reasonable use of such products. In addition, business operators engaging in the design, production, manufacture and import of goods can further prove that they did not conduct any intentional or negligent acts to reduce their liabilities, while business operators engaging in the distributing, retrofitting and repackaging of goods can prove that they have exercised with the level of due care necessary to prevent such damages from occurring regardless of the outcome so as to

remove their liabilities.

Therefore, business operators may use the following defences to counter a product liability claim:

- their products meet safety standards that can be reasonably expected based on contemporary technical and professional standards;
- the consumers did not follow the use instructions to correctly use the product;
- there is no causation between the defective product and the damages;
- they did not conduct any intentional or negligent acts; and
- they have exercised due care to prevent such damages from occurring.

2.2 Is there a limit on the time in which proceedings may be brought (limitations and repose)?

The CPA is silent on statutory limitation regarding product liability claim. Local courts tend to hold that product liability is a special type of tort and most precedents indicate that statutory limitation of torts should apply to product liability claim. In this regard, the claim for damages in tort must be extinguished by prescription, if not exercised within two years from the date on which the injured person becomes aware of damages and the person liable for compensating or within 10 years from the date of the wrongful act. However, certain scholars hold the view that in order to better protect the rights and interests of consumers, statutory limitation should be the general rule given in the Civil Code, 15 years from the date of the wrongful act.

Moreover, it should be noted that under consumer class action, the statutory limitation period for consumers to seek damages should be separately determined for each consumer. In addition, the Ministry of Justice has issued an interpretation clarifying that, in addition to filing civil complaint, the filing for mediation can also *estop* the statutory limitation.

3. LITIGATION OF PRODUCT LIABILITY DISPUTES

3.1 In which courts are product liability proceedings brought?

Litigation of product liability may be brought to the district court of the place where the defendant business operator is registered in accordance with the Taiwan Code of Civil Procedure (TCCP) or to the district court of the place where the transaction of the goods/services at issue takes place in accordance with the CPA. The High Court, its lower courts and branches thereof may establish a consumer affair tribunal or designate a magistrate dedicated to the hearing of litigation of product liability cases as well as other consumer litigations.

3.2 How are proceedings commenced?

The litigation proceedings may be commenced upon the plaintiff consumer's filing of a complaint against the defendant business operator(s). A claim for product liability under NT\$500,000 is required to be submitted to mediation before a litigation can be commenced.

3.3 Are disputed issues decided by a judge or a jury?

The disputed issues concerning product liability litigation will be decided by a judge at the first instance of trial and a panel of three judges at the second and the third instances of trial. The concept of jury trial is not adopted under the TCCP.

3.4 Who has the burden of proof and to what standard?

The defendant business operator shall bear the burden of proof to the following standards:

- (i) the goods or services at issue were in compliance with the contemporary technical and professional standards of reasonably expected safety at the time when such goods were launched into the market or when the services at issue were rendered, they were in compliance with the contemporary technical and professional standards of reasonably expected safety;
- (ii) where goods or services may likely cause personal injury or damage to property, a warning and the urgent handling measures shall be labelled at a conspicuous place;
- (iii) in case of personal injury or damage to property caused by the goods or services at issue, it has exercised due care for the prevention of such injury or damage, or even if it had exercised due care, injury or damage would still have occurred;
- (iv) in case of personal injury or damage to property caused by the goods or services at issue, it is not guilty of negligence, in which circumstances the court may reduce its liability for damages compensation.

3.5 How is evidence given in proceedings and are witnesses cross-examined?

Evidence may be submitted to the court by the parties to the litigation. For evidence kept by the other party or a third party, either party may request the court to subpoena for such evidence kept by the other party or the third party to be produced. Either party may also request that the court subpoena witnesses to testify in front of the presiding judge. The request for evidence investigation should detail the scope of the evidence to be produced by the other party or the third party and/or the issues or facts which need to be clarified by a competent witness. Cross-examination is not mandatory under the TCCP; however, the presiding judge may cross-examine witnesses, *ex officio* or at the request of the parties, if he/she deems it necessary.

3.6 Are the parties able to rely on expert opinion evidence and, if so, are there any special rules or procedures for expert opinion evidence?

Yes. The court may, upon the request of either party, instruct a competent individual expert or an institutional expert witness to conduct an assessment. The expert, and the number thereof, will be decided by the court; however, the court should, before making the decision, ask both parties to provide their respective opinions concerning expert witnesses. The court in principle should appoint an expert witness mutually agreed to by the parties unless the court considers the expert witness incompetent to perform the assessment at issue. The court also has the discretion to discharge and replace the appointed expert witness.

An expert witness shall be disqualified in any of the following circumstances:

- (i) when the expert witness, or his/her spouse, former spouse, or fiancé is a party to the proceedings;
- (ii) when the expert witness is or was either a blood relative (within the eighth degree) or a relative by marriage (within the fifth degree), to a party to the proceedings;
- (iii) when the expert witness, or his/her spouse, former spouse, or fiancé is a co-obligee, co-obligor with, or an indemnitor to, a party to the proceedings;
- (iv) when the expert witness is or was the statutory agent of a party to the proceedings, or the head or member of the party's household;
- (v) when the expert witness is acting or acted as the advocate or assistant of a party to the

proceedings.

An expert witness may decline the court's appointment on either of the following grounds:

- (i) where the expert witness is the spouse, former spouse, or the betrothed, or the expert witness is or was a relative by blood (within the fourth degree) or a relative by marriage (within the third degree) to a party;
- (ii) where the testimony of the expert witness will result in a direct loss of property to himself/herself or anyone who has such relationship with him/her as provided in the preceding subparagraph;
- (iii) where the testimony of the expert witness will sufficiently expose himself/herself, or anyone who has such relationship with him/her as provided in the first subparagraph or a person who relates to him/her by guardianship, to criminal prosecution or embarrassment;
- (iv) where the expert witness is to be examined with regard to a matter which he/she is obliged to keep confidential in the course of performing his/her official duties or conducting business;
- (v) where the expert witness cannot testify without divulging his/her technical or professional secrets.

The court may ask the expert to provide a written assessment report certified by him/her. If further explanation or clarification is required, the court may also ask the expert to appear at a hearing to explain/clarify in front of the court.

3.7 Is pre-trial discovery permitted? If so, in what circumstances? If not, what other mechanisms, if any, are available for obtaining evidence from an party or a third party?

Pre-trial discovery is not adopted under the TCCP. However, either party may, prior to the commencement of the litigation or during the proceedings, request the court to conduct an evidence preservation procedure against the other party or a third party if: (i) the evidence at issue is likely to be destroyed or concealed or otherwise become difficult to use; or (ii) the other party agrees to the request. If the court approves the request for evidence preservation, it usually will keep the evidence (eg, documents or objects) under the custody of the court or a court-appointed third-party custodian.

3.8 Is there liability for spoliation of evidence/a remedy for destruction of or failure to preserve evidence (most relevantly, the product)?

There is no penalty under the TCCP if a party or a third party which is bound by a court order to preserve evidence fails to comply with such court order to produce the evidence or otherwise destroys the evidence. In the above circumstances, however, the court may *ex officio* deem the other party's contentions in respect of such evidence to be proven as true/correct.

3.9 Is interlocutory or interim relief available prior to the full trial of a proceeding?

A court order for preliminary attachment and/or preliminary injunction may be available under the following circumstances:

- Preliminary attachment: For monetary claims, It would be impossible or extremely difficult to enforce a favourable final judgment by compulsory execution in the future without freezing the defendant's attachable assets in advance.

- Preliminary injunction: For non-monetary claims, it would be impossible or extremely difficult to satisfy the claim by compulsory execution in the future should there arise a change in the status quo of the claimed object.

In addition, if a court renders a judgment unfavourable to the business operator(s), the court may, *ex officio*, declare provisional execution of the judgment without a security bond, or with reduced security bond, to be lodged by the plaintiff.

3.10 Can the winning party recover its costs?

Yes. The prevailing party in the action (the party that eventually wins the litigation) is usually awarded recovery for court costs against the losing party. The costs payable by one party to the other are imposed by the court pursuant to a tariff in the TCCP. The rules for calculating the court fees under the tariff are based on the value of the claim. The concept of the value of a claim is similar to that of the amount in dispute. For a lawyer's fees, only when the lawyer is appointed by the court or retained to appear at the court of third instance can the lawyer's fees be recovered. The maximum amount recoverable for lawyers' fees in the court of third instance is NT\$500,000.

3.11 What avenues of appeal are available?

If the claim amount is less than NT\$100,000 and is heard via summary proceedings, the losing party can appeal against the decision made by the judge at the summary tribunal to the civil tribunal of the district court, whose decision shall be final and irrevocable. If the claim amount exceeds NT\$100,000 but is less than NT\$1,650,000, the losing party may appeal to the High Court, whose decision shall be final. If the claim amount exceeds NT\$1,650,000, the losing party can appeal to the High Court and then to the Supreme Court if the appeal is dismissed by the High Court.

4. CLASS ACTIONS/REPRESENTATIVE PROCEEDINGS

4.1 Is there a mechanism for class actions or representative proceedings, or coordinated proceedings for product liability claims? If so, what are the basic mechanics?

Under the CPA, a consumer protection group which has been established for more than three years after its registration has obtained upon application a rating of excellence by the Consumer Protection Commission (CPC), maintains a special staff dealing with consumer protection and meets any of the following requirements may, with the approval of the consumer ombudsman, bring in its own name a class action for damages compensation on behalf of the consumers or a class action for injunction on account of omission in accordance with the CPA.

- (i) An association registered with the competent authority and having more than 500 members; or
- (ii) a foundation registered with the competent authority and having total registered assets of NT\$10 million or more.

To initiate a class action, a consumer protection group will have to assign the rights of claims (including pecuniary and non-pecuniary claims) from 20 or more consumers involved in the subject product liability incident in order for it to litigate in its own name. Consumers may revoke such assignment of the rights of claims before the close of oral arguments, in which case they shall notify the court.

In the above scenario, if the number of beneficiaries (ie, the consumers) is reduced to less than 20 as a result of the revocation of such assignment, the consumer protection group's standing as the plaintiff will not be affected.

At the end of the class action, the consumer protection group shall distribute the compensation awarded by the court less necessary expenses for the litigation, and lawyer fees to those beneficiary consumers. Consumer protection groups are not entitled to receive any reward from the consumers for conducting the class action.

5. LITIGATION FUNDING

5.1 Is litigation funding by third parties permissible in your country? If so, is it common?

No. However, legal aid is available under the Legal Aid Act and may be provided via the Legal Aid Foundation. Legal aid includes legal consultation, mediation and settlement, the drafting of legal documents, acting as a representative of the defendant in litigation or arbitration, necessary assistance in respect of services and fees incurred from other legal matters, and other resolutions reached by the Foundation. In addition, for a class action initiated by the consumer protection group in accordance with the CPA, the court fees for the portion of the claim exceeding NT\$600,000 shall be waived.

5.2 Are contingency fee or 'no win no fee' arrangements permissible?

There is no statutory limitation under local laws on cost/fee arrangements for legal services. In principle, a client is allowed to agree on a cost arrangement with its lawyers, which can either be a fixed fee arrangement, an hourly charge arrangement or a contingency fee arrangement (a fixed fee plus a fee contingent on success). Those arrangements are acceptable under local ethics rules. However, a 'no win no deal' arrangement might be deemed contrary to ethics rules since it may violate the restriction on solicitation for business.

Local bar associations have promulgated a set of service fee guidelines listing the maximum amount for every kind of legal service that may be charged to a client. Furthermore, the Judicial Yuan of Taiwan has also promulgated restrictions on lawyers' fees at the third instance when the lawyer is appointed by the court in accordance with the TCCP.

6. REMEDIES

6.1 What remedies are available to a party who successfully pursues a product liability claim?

The following remedies are available to the plaintiff consumer(s) who successfully pursues a product liability claim:

- (i) Compensation for pecuniary claims: loss and damage resulting from the product liability incident, including medical expenses reimbursement, increased living expenses, and funeral expenses reimbursement, loss of wages, financial support obligations, etc.
- (ii) Compensation for non-pecuniary claims: ie, compensation for mental distress suffered as a result of the product liability incident.
- (iii) Injunction to discontinue or prohibit a business operator's conduct which has constituted a material violation of the CPA relating to consumer protection.

6.2 How are damages calculated/are there limitations on available damages?

Compensation for pecuniary claims will be determined by the court based on the actual damage and loss suffered as a result of the product liability incident. Compensation for mental distress is usually determined on the basis of, among others, the social and financial background(s) of the tortfeasor(s) (ie, the business operator(s)) and the victim (ie, the consumer(s)), and the severity of the misconduct or negligence. There is no limitation on available damages discussed above.

6.3 Are punitive or exemplary damages available and in what circumstances?

In a litigation brought in accordance with the CPA, the plaintiff consumer(s) may claim for punitive damages up to three times the amount of actual damages as a result of injuries caused by the wilful misconduct of the defendant business operator(s). However, if such injuries are caused by negligence, a punitive damage of up to one times the amount of the actual damages may be claimed for. For a litigation of product liability concerning food products, in the event of difficulty for the plaintiff consumer(s) to provide or inability to provide evidence to support the actual amount of damages, he/she may request the court to determine the compensation in the amount of between NT\$500 and NT\$30,000 for each case of damage per person based on the given circumstances.

6.4 Is liability joint and several/how does apportionment of liability work, including where a partially responsible entity is not a party to the proceeding?

According to Article 8 of the CPA, business operators engaging in distribution of goods and services shall be jointly and severally liable for damages with those business operators engaging in the design, production or manufacture of goods or services with respect to personal injury and/or property damage caused by such goods or services.

Among the business operators who are held by a court judgment to be jointly and severally liable for a product liability claim, they shall share the compensation liability equally unless otherwise provided under the law

or under their contracts, except for the damages and the costs resulting from facts for which one of the parties/entities shall take up the sole responsibility, who shall in such case, bear the entire liability.

7. ROLE OF REGULATORS

7.1 Please explain the role, responsibilities and powers of the regulators in your country which have jurisdiction over product liability issues.

As specified in the CPA, the competent authorities of consumer protection matters at the central level shall be each of the central authorities having primary jurisdictions over matters of different industries. For example, product inspection matters are governed by the Bureau of Standards, Metrology and Inspection (BSMI), product liability issues of food, pharmaceutical, cosmetic industries are governed by the Taiwan Food and Drug Administration (TFDA) under the Ministry of Health and Welfare, electronic products are governed by the Ministry of Economic Affairs, and matters relating to financial sectors are governed by the Financial Supervisory Commission. These central competent authorities are responsible for setting product standards for their respective industries and for providing guidance to local authorities.

The competent local authorities of consumer protection matters at are regional governments at the municipal/county level. The regional governments have the authority to investigate

into products and services that might endanger the life, body, health or property of consumers and may demand business operators to rectify their violations within a prescribed period of time, and ask them to immediately cease the design, production, manufacture, import, distribution of products and/or services concerned, and may take necessary measures to protect the rights and interests of consumers. For serious violations, the authorities may also publish the names and products of the business operators.

Although the CPC was established shortly after the enactment of the CPA, it only plays the role of a consultant in implementing consumer protection matters. Consumer ombudsmen should be established within the CPC and regional governments; consumer ombudsmen handle consumer complaints and mediation and may file for injunction relief with the court to effectively halt any major violations of the CPA.

7.2 Are there any mandatory reporting requirements related to product safety issues?

The CPA set forth obligations for the immediate recall of products if there are sufficient facts to support the belief that the products of a business operator are likely to result in damaging the safety or health of consumers or if the label provides insufficient or inaccurate information. However, the CPA does not require reporting the incident triggering recall to any authority in charge of consumer protection matters.

Matters relating to the notification of product safety issue to local authority are governed by the Commodity Inspection Act (CIA) and the central authority in charge is the BSMI. The CIA divides commodities into two categories:

- Category I: commodities subject to inspection under the CIA; and
- Category II: commodities not subject to inspection under the CIA.

While local manufacturers or importers of Category I products have a mandatory obligation to report product safety issues to the BSMI, those of Category II products do not have the same mandatory obligation. More specifically, in case of the following events, the local manufacturer or importer of Category I products must notify the BSMI of such events:

- (i) ignition, explosion, or fusion of the product that results, or is likely to result, in physical injury or property damage; and
- (ii) death or injury that requires hospitalisation caused by use of the product.

7.3 Do the regulators have the power to:

(i) ban certain goods or services?

According to the CPA, competent local authorities have the power to ban goods and services if after investigation, it is determined that such goods and services may endanger the life, body, health, or property of consumers or may be incorrectly or insufficiently labelled. Similar legal basis to ban defective goods in different industries can also be found in other legislations, such as the CIA, the Pharmaceutical Affairs Act (PAA), the FSA, and the Tobacco and Alcohol Control Act (TACA).

(ii) require a supplier to recall a product?

Competent regional authorities may ask business operators to recall defective products within a period of time prescribed by such authorities pursuant to the CPA. Similar legal basis to recall defective goods can also be found in the CIA, the PAA, the FSA, the TACA.

(iii) prescribe standards in respect of certain goods or services and require that the goods or services meet those standards?

It is required under the CIA that Category I products can only be imported or manufactured after such products have passed the inspection required by the CIA unless the BSMI deems that the associated risk of such products is low. The commodities subject to inspection and the inspection procedures and standards are specified in a public notice issued by the BSMI. In addition, it is specified in the Telecommunications Act that for certain controlled telecommunication radio frequency devices, the Chinese national standards (CNS) published by the BSMI must be met. Furthermore, as required under the FSA, foods, food cleansers, food utensils and food containers or packaging being sold must conform to sanitation, safety and quality standards prescribed by the TFDA, such as the General Food Sanitation Standards, the Dairy Products Sanitation Standards, and the Food Containers Sanitation Standards. On the other hand, although no such standards have been promulgated for pharmaceutical products, such products would need to undergo complicated registration procedures to ensure their safety and quality.

(iv) require production of information without court process?

As long as the competent central and regional authorities consider that certain goods and services are likely to cause damage to consumers, they may initiate an investigation. During such investigation, the CPA grants the authorities with the administrative power to request the investigated business operators to provide information to prove that their goods and/ or services will not cause any harm to consumers. The authorities may also conduct random on-site inspection of the products. It is also stipulated under the CIA, the FSA, the TACA, the PAA, and many other legislations that their competent authorities may order the obligated entity to provide records of manufacture and other necessary documents for the inspection of the quality of product.

If so, broadly explain the circumstances in which the regulator can exercise the power and any penalties that apply if a supplier fails to comply.

If business operators fail to label their products accurately and sufficiently, to provide proper packages for the products, or to issue written warranty as required under the CPA and fail to rectify their acts within the period of time prescribed by the authorities, the authorities may impose a penalty of NTD20,000 to NTD200,000 (approximately US\$670 to US\$6,700). If the business operators are uncooperative towards the authorities' investigation, they may be subject to a penalty of NTD30,000 to NTD300,000 (approximately US\$ 1,000 to US\$ 10,000) and further consecutive penalties for continuation of non-cooperation. If the authorities have ordered a business operator to cease its manufacturing, importing, distributing, retrofitting and repackaging of the goods, to rectify its violating acts, to recall or destroy defective products, and/or to publish a notice of urgent handling measures for defective product(s) but the business operator still fails to comply with any of such orders, the authorities may impose a penalty of NTD60,000 to NTD1,500,000 (approximately US\$2,000 to US\$50,000). For any violations that are deemed serious by the authorities, the business operation of the business operator may be entirely shut down by the authorities.

The CIA provides heavier penalties for violating product labelling, recalling, selling products without passing the required inspection standards, and not cooperating with investigation; a penalty ranging from NTD10,000 to NTD7,500,000 (approximately for US\$333 to US\$2,500,000) may be imposed depending on the seriousness of the violation and the

damages sustained by consumers; consecutive penalty is also available for continuous violations.

8. VOLUNTARY CONDUCT

8.1 Are there regulations pertaining to the voluntary conduct of a product repair or recall by a supplier?

The CPA requires that where there are sufficient facts to suspect the existence of goods or services would endanger the safety and health of consumers, business operators should, at its own initiative, immediately recall such goods or discontinue such services. Similar regulation can also be found in the FSA, the PAA, and other laws that require once the relevant business entities learn about the potential safety or quality issues of the goods, they should immediately recall such goods at their own initiatives. While the CPA does not provide detailed recall procedures for business operators to follow, guidelines relating recall procedures and requirements for food or pharmaceutical related acts are promulgated by the TFDA pursuant to the FSA and the PAA.

9. EMERGING ISSUES AND LAW REFORM

9.1 Are there important developing and emerging issues or trends in product liability law in your country?

Due to the surfacing of dozens of serious food safety scandals in Taiwan over the recent years (such as the illegal use of one plasticiser, DEHP (bis(2-ethylhexyl)phthalate), to substitute palm oil in food and drinks as a clouding agent in 2011 and the illegal use of copper chlorophyllin as a colouring agent for cooking oil in 2013), the FSA was amended substantially in June 2013 and February 2014 to upgrade food regulatory control mechanism. More specifically, it is now required that an enterprise must certify the safety of all food product ingredients it uses or sells, including all raw materials, semi-products and end products. It must either perform an accreditation testing by itself or commission a certified accreditation laboratory to do so. Any enterprise that is not in compliance with such requirement and fails to correct the violation within the time limit prescribed will be fined ranging between NTD30,000 and NTD3 million (approximately US\$1,000 and US\$101,300). In addition, the maximum amount of a fine for the adulterated or fraudulent production or sale of food products that are harmful to human health has been raised from NTD10.5 million (US\$355,000) to NTD50 million (US\$1.7 million). The maximum amount of a fine for labeling, advertisements and promotions that are false, exaggerated or misleading has been raised from NTD200,000 (US\$7,000) to NTD4 million (US\$135,000). The longest prison sentence for the adulterated or fraudulent use of food additives or additives not authorised by the central government has been raised from three years to five years. Attendant fines for violating legal entities and their representatives have also been increased. Furthermore, a food safety protection fund will be set up to maintain food safety and sanitation standards and safeguard consumers' rights.

9.2 Please describe any proposed important law reform in the area of product liability in your country.

Since the CPA, the dominating legislation for product liability in Taiwan, was last amended in 2005 which is almost a decade ago, a local private foundation, the Consumers' Foundation proposed an amendment bill to the CPA in April 2013. Such foundation also proposed a draft

Consumer Protection Fund Act at the same time. These bills aim to introduce more stringent liability upon business operators so as to prevent illegal profiting by adding ingredients that might be damaging to human health and safety and to provide more safeguard for consumers by setting up the Consumer Protection Fund. More specifically, if a business operator is found to have conducted the above-mentioned illegal acts, it should surrender all profit earned from conducting such illegal acts to the public by donating such profit to the Consumer Protection Fund.

10. REGULATORY WEBSITES/INFORMATION

10.1 Please identify any useful regulatory references relating to product liability law in your country, for example, a product safety/ consumer law website maintained by the main regulator.

The regulatory references are mostly taken from the Laws and Regulations Database of the Republic of China website (<http://law.moj.gov.tw/Eng/>) maintained by the Ministry of Justice. Below are some of their links:

- Civil Code: <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0000001>
- Consumer Protection Act:
<http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=J0170001>

Detailed regulations are provided in the websites of the relative regulators:

- Consumer Protection Committee: http://www.cpc.ey.gov.tw/cpc_en/default.aspx
- Bureau of Standards, Metrology & Inspection:
<http://www.bsmi.gov.tw/wSite/lp?ctNode=3563&CtUnit=1959&BaseDSD=7&mp=2>
- Food and Drug Administration, Ministry of Health and Welfare:
<http://www.fda.gov.tw/EN/law.aspx>