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The International Comparative Legal Guide to:

Product Liability 2019

17th edition

A practical cross-border insight into product liability work

Published by Global Legal Group, with contributions from:

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Published by
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
May 2019

ISBN 978-1-912509-73-7
ISSN 1740-1887

Strategic Partners

General Chapters:

Country Question and Answer Chapters:

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1 Liability Systems

1.1 What systems of product liability are available (i.e. liability in respect of damage to persons or property resulting from the supply of products found to be defective or faulty)? Is liability fault based, or strict, or both? Does contractual liability play any role? Can liability be imposed for breach of statutory obligations e.g. consumer fraud statutes?

A person is entitled to seek compensation from a product manufacturer/distributor for his/her personal injury or damage to property incurred in connection with defective or faulty products relying upon the following legal bases:

1. If the product distributor has warranted the quality of the products, the consumer may claim for damages according to Article 360 of the Civil Code, which provides that: "If the quality of the product sold is not in accordance with the product which was guaranteed by the seller, the buyer may demand compensation for the damages due to non-performance, instead of rescission of the contract or of a reduction of the price. The same rule shall be applied if the seller has intentionally concealed a defect in the product."
2. If a product distributor fails to perform the contractual obligations due to a reason attributable to the product supplier, the buyer may claim compensation for the damages arising therefrom, if any (Article 227 of the Civil Code).
3. A manufacturer is liable for any damage caused due to the common use of its products, unless the products have no deficiency, or there is no causation between the damage and the deficiency, or the manufacturers have exercised reasonable care to prevent such damage (Article 191-1 of the Civil Code).
4. A manufacturer shall be liable for any damage caused by their products, unless it is able to prove that the products have met and complied with the contemporary technical and professional standards of reasonably expected safety requirements prior to the launching of such products into the market (Paragraphs 1 and 3, Article 7 and Article 8 of the Consumer Protection Act ("**CPA**")).

A distributor should be liable for any damages caused by the products unless it has exercised due care for the prevention of such damages, or even if they had exercised due care, damages would still have occurred (Article 8 of the CPA).

Furthermore, if the products may endanger consumers' lives, bodies, health or property, a warning and the methods for emergency handling of such danger shall be labelled at a conspicuous place (Paragraph 2, Article 7 of the CPA). Whether a particular warning should be specifically labelled depends on the nature of the subject matter of the warning, i.e., if it is a well-known use of the product, no warning is required. If an enterprise fails to perform its labelling obligations in this regard, it will be held liable for the damage caused thereby (Paragraph 3, Article 7 of the CPA).

For a product liability claim, a manufacturer would be held strictly liable under the CPA and will be presumed to have been negligent under the tort law of the Civil Code, while a distributor would be presumed to have been negligent under the CPA. To defend oneself from the product liability claim, a manufacturer has the burden of proving that the products have met and complied with the contemporary technical and professional standards of reasonably expected safety requirements. Nevertheless, according to Paragraph 3, Article 7 of the CPA, if a manufacturer can prove that the defect of the products was not caused by negligence, the court may reduce the compensation.

Claims initiated based on points 1 and 2 above are classified as contractual liabilities in Taiwan. In addition, for a defective product, if a manufacturer/distributor breaches his/her/its statutory obligations, such as fraud, criminal or civil liability may also be imposed on the manufacture/distributor.

1.2 Does the state operate any schemes of compensation for particular products?

No. There is no scheme of compensation for particular products in Taiwan.

1.3 Who bears responsibility for the fault/defect? The manufacturer, the importer, the distributor, the "retail" supplier or all of these?

According to Articles 7 through 9 of the CPA, manufacturers, importers, designers, providers of services, producers, distributors, dealers and retailers bear responsibility for the defect of a product.

1.4 May a regulatory authority be found liable in respect of a defective/faulty product? If so, in what circumstances?

Generally speaking, neither regulatory authorities nor public servants are liable in respect of a defective/faulty product.

1.5 In what circumstances is there an obligation to recall products, and in what way may a claim for failure to recall be brought?

The business operators shall immediately recall goods or discontinue services when any of the following situations occur, unless necessary treatments taken by the business operators are sufficient to remove such danger:

1. Where facts are sufficient to prove the existence of suspicion that goods or services provided will endanger the safety and health of the consumers.
2. Where goods or services are a threat to the lives, bodies, health or property of consumers, and in the absence of conspicuous warning labels with descriptions of the methods for emergency handling of such danger (Article 10 of the CPA).

In addition to voluntarily recalling goods or discontinuing services, in some circumstances such obligation would become compulsory. The competent authorities of the central or local Government could order the business operators to recall goods and/or immediately cease the design, production, manufacturing, processing, importation and distribution of such goods or the rendering of such services, or take other necessary measures if it is believed that the goods or services provided have endangered or will endanger the lives, bodies, health or property of consumers (Articles 36 and 38 of the CPA).

If a business operator violates the recall order of the competent authorities under Articles 36 or 38 of the CPA, it shall be punished by an administrative fine of not less than NT$60,000 and not more than NT$1,500,000, and which may be imposed successively; if there is a severe violation, the competent authorities may issue an order for suspension of operations and assist consumer protection groups in bringing litigation in their own name as soon as possible (Articles 58 and 60 of the CPA).

The breach of Article 10 of the CPA will not spontaneously constitute a claim. In this situation, the claim shall be brought only if all legal requirements of the specific provision mentioned in question 1.1 are met.

1.6 Do criminal sanctions apply to the supply of defective products?

Article 61 of the CPA stipulates that: "Where a certain conduct is punishable in accordance with this law and other laws providing for more severe punishments, then such other laws shall apply; where such conduct constitutes a criminal offense, the case shall be immediately transferred for a criminal investigation." Hence, if a defective product causes damage to any individual or property, criminal sanctions might be imposed on the manufacturer, distributor, or importer of the defective product.

2 Causation

2.1 Who has the burden of proving fault/defect and damage?

With respect to a fault/defect, if an injured person bases its claims on Article 7 of the CPA or tort law under Article 191-1 of the Civil Code, the existence of defects/faults is presumed. The business operator has to prove that there is no defect/fault. If the injured person bases its claims on contractual rights, it is the injured person that bears the burden of proof of defects/faults.

With respect to damages, the injured person bears the burden to prove his/her damage, no matter which legal base is relied upon.

2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?

Generally speaking, the proof of causation in Taiwan is similar to the factual causation in the common law system, which means but for the defendant's act, the injury would have not occurred (but for rule). In other words, the claimant has to show that the injury would not have arisen without the defendant's actions, instead of just proving that the defendant wrongly exposed him/her to an increased risk of a type of injury known to be associated with the product.

Normally, the burden of proof is imposed upon the claimant (e.g., the claims based on Article 360 or 227 of the Civil Code or the CPA). However, if the claimant claims for damages according to Article 191-1 of the Civil Code, then the causation is presumed and the burden of proof is shifted to the defendant.

Besides, even when the burden of proof is imposed upon the claimant, the judge may shift the burden to the defendant if the situation is significantly unfair to the claimant (Article 277 of the Code of Civil Procedure).

2.3 What is the legal position if it cannot be established which of several possible producers manufactured the defective product? Does any form of market-share liability apply?

According to Paragraph 3, Article 7 of the CPA, business operators causing injury to the consumers or third parties shall be jointly and severally liable. In addition, according to Article 273 of the Civil Code, the creditor is entitled to demand one or several or all of the joint-and-several liability debtors simultaneously, or successively tender total or partial performance. Before the complete performance of the obligation is fulfilled, all of the joint-and-several liability debtors are jointly bound to tender the performance. According to Paragraph 1, Article 281 of the Civil Code, if one of the joint-and-several liability debtors has caused the other joint-and-several liability debtors to be released from the obligation by virtue of his performance of the obligation, he is entitled to demand from the other joint-and-several liability debtors the reimbursement of their respective shares in the joint-and-several liability, plus interest from the date of release.

As such: (1) unless the producers are able to prove that its products have met and complied with the contemporary technical and professional standards of reasonably expected safety requirements, all of the producers should be liable for the defective products; and (2) if a consumer claims for a total amount of the compensation against one of the multiple producers, then the producer, based on his joint-and-several liability, shall pay the entire amount to the consumer at first, if the consumer demands so.

In addition to the CPA, if a consumer claims for damages according to Paragraph 2, Article 191-1 of the Civil Code, manufacturers who attach a service mark to the merchandise, or other characters or

signs, which show to a sufficient extent that the merchandise was produced, manufactured or processed by them, shall be deemed to be the producers. Furthermore, if these producers have wrongfully damaged consumers jointly, they are joint-and-several liability debtors under Article 185 of the Civil Code.

There is no a specific principle called "market-share liability" in Taiwan. However, the manufacturers would be jointly and severally liable for a defective product; therefore, a plaintiff (consumer) may claim against a group of product manufacturers for an injury caused by a defective product, even when the plaintiff does not know by which defendant the product is manufactured.

2.4 Does a failure to warn give rise to liability and, if so, in what circumstances? What information, advice and warnings are taken into account: only information provided directly to the injured party, or also information supplied to an intermediary in the chain of supply between the manufacturer and consumer? Does it make any difference to the answer if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, e.g. a surgeon using a temporary or permanent medical device, a doctor prescribing a medicine or a pharmacist recommending a medicine? Is there any principle of "learned intermediary" under your law pursuant to which the supply of information to the learned intermediary discharges the duty owed by the manufacturer to the ultimate consumer to make available appropriate product information?

If the products may endanger consumers' lives, bodies, health or property, a warning, as well as the methods for emergency handling of such danger, shall be labelled at a conspicuous place (Paragraph 2, Article 7 of the CPA). Whether a particular warning should be specifically labelled depends on the nature of the subject matter of the warning, i.e., if it is a well-known use of the product, no warning is required. If a business operator (e.g. a manufacturer or distributor) fails to perform its labelling obligations in this regard, it will be held liable for the damage caused thereby (Paragraph 3, Article 7 of the CPA).

In Taiwan, if information regarding the use of a product is not well-known, the business operator shall label the warning on the product. Therefore, only information, advice and warnings provided directly to the consumer would be taken into account. Even if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, if information regarding the use of a product is not well-known, a business operator cannot discharge its obligations to label a warning on the product.

There is no principle of "learned intermediary" applied in Taiwan.

3 Defences and Estoppel

3.1 What defences, if any, are available?

The following defences are commonly asserted in a product liability action:

1. Comparative Fault or Comparative Negligence

A plaintiff's improper conduct might negate some or all of the defendant's liability for an injury. Under the comparative fault, damages are apportioned according to each party's fault. The plaintiff's recovery would be reduced in proportion to the amount of his or her negligence.

2. Lack of Negligence

If a business operator proves that the defect of the product or a missing label from the products at issue was not caused by negligence, the court may reduce its liability for damages (Paragraph 3, Article 7 of the CPA).

3. State of the Art/Development Risk Defence

According to Articles 7 and 7-1 of the CPA, an affirmative defence of "state of the art" applies in Taiwan. That is, if a manufacturer is able to prove that the products have met and complied with the contemporary technical and professional standards of reasonably expected safety requirements prior to the launching of such products for sale into the market, the manufacturer will not be held liable for the damage caused thereby.

4. Causation Defence

If the damage is not caused by a product's defect, a business operator will not be held liable for such damages.

5. Statute of Limitations

According to the CPA and the Civil Code, a person should exercise his/her right regarding product liability within two years from the date that he/she is aware of the damage and the identity of the liable person or 10 years from the date of the wrongful act.

3.2 Is there a state of the art/development risk defence? Is there a defence if the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply? If there is such a defence, is it for the claimant to prove that the fault/defect was discoverable or is it for the manufacturer to prove that it was not?

According to Articles 7 and 7-1 of the CPA, an affirmative defence of "state of the art" applies in Taiwan. That is, if a manufacturer is able to prove that the products have met and complied with the contemporary technical and professional standards of reasonably expected safety requirements prior to the launching of such products into the market, the manufacturer will not be held liable for the damage caused thereby. Furthermore, it is the manufacturer's obligation to prove that the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply.

3.3 Is it a defence for the manufacturer to show that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product?

Generally speaking, if a manufacturer shows that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product, then he can defend that he has met the state of scientific and technical knowledge at the time of supply as aforementioned (see question 3.2). However, if the injured person can prove that these regulatory and/or statutory requirements were not compatible with the "state of the art", and that the manufacturer ought to know such situation in his business, then the manufacturer will still be liable for the injury.

3.4 Can claimants re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage, provided they arise in separate proceedings brought by a different claimant, or does some form of issue estoppel prevent this?

Where part of the injured parties involved in a matter regarding specific product liability have selected one or more representatives among them to initiate a lawsuit against the business operator based on Article 41 of the Code of Civil Procedure and Article 54 of the CPA, the court may, with the consent of the plaintiffs initiating the lawsuit, announce the status of the lawsuit to the public. Thus, other potential claimants could opt into the same procedure. In such a case, the claimants who opt in cannot re-litigate the issues of fault, defect or the capability of a product to cause this certain type of damage in separate proceedings.

3.5 Can defendants claim that the fault/defect was due to the actions of a third party and seek a contribution or indemnity towards any damages payable to the claimant, either in the same proceedings or in subsequent proceedings? If it is possible to bring subsequent proceedings, is there a time limit on commencing such proceedings?

According to Paragraph 3, Article 7 of the CPA, business operators causing injury to the consumers or third parties shall be jointly and severally liable. In addition, according to Article 273 of the Civil Code, the creditor is entitled to demand one or several or all of the joint-and-several liability debtors simultaneously or successively to tender total or partial performance. Before the complete performance of the obligation is fulfilled, all of the joint-and-several liability debtors are jointly bound to tender the performance. According to Paragraph 1, Article 281 of the Civil Code, if one of the joint-and-several liability debtors has caused the other joint-and-several liability debtors to be released from the obligation by virtue of his performance, he is entitled to demand from the other joint-and-several liability debtors the reimbursement of their respective shares in the joint-and-several liability, plus interest from the date of release.

Therefore, if a claimant claims for a total amount of the compensation towards one of the joint-and-several liability persons, then this liable person, based on his joint-and-several liability, shall pay the entire amount to the claimant at first, if the claimant demands so; he can then demand reimbursement from other joint-and-several liability persons who have not paid the compensation. Based on the above analysis, a defendant cannot claim that the fault/defect was due to the actions of a third party and seek a contribution or indemnity towards any damages payable to the claimant in the proceeding initiated by the claimant.

3.6 Can defendants allege that the claimant's actions caused or contributed towards the damage?

Yes. According to Article 217 of the Civil Code, defendants can make a defence of comparative fault or comparative negligence. A plaintiff's improper conduct might negate some or all of the defendant's liability for an injury. Under the comparative fault, damages are apportioned according to each party's fault. The plaintiff's recovery would be reduced in proportion to the amount of his or her negligence.

4 Procedure

4.1 In the case of court proceedings, is the trial by a judge or a jury?

Since Taiwan does not adopt the jury system, a trial will be held before a judge only.

4.2 Does the court have power to appoint technical specialists to sit with the judge and assess the evidence presented by the parties (i.e. expert assessors)?

According to Articles 326 and 339 of the Code of Civil Procedure, the court may appoint an expert assessor to assist in assessment of the evidence presented by the parties. Nonetheless, the court has the discretion on the adoption of the assessment report issued by the expert assessor, i.e., the court is not necessarily bound by the assessment report.

4.3 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Is the procedure 'opt-in' or 'opt-out'? Who can bring such claims e.g. individuals and/or groups? Are such claims commonly brought?

A class action for multiple claims is permissible in Taiwan. Article 41 of the Code of Civil Procedure stipulates that: "Multiple parties, who have common interests…, may appoint one or more persons from themselves to sue or to be sued on behalf of the appointing parties and the appointed parties." The types of class action commonly used in Taiwan are as follows:

1. Environmental Lawsuit

Where there is a lawsuit involving environmental pollution, the injured parties may sue the polluter(s) based on Article 41 of the Code of Civil Procedure, or Article 44-1 of the Code of Civil Procedure. The latter states that: "Multiple parties with common interests who are members of the same charitable incorporated association may, to the extent permitted by said association's purpose as prescribed in its articles of incorporation, appoint such association as an appointed party to sue on behalf of them."

2. Consumer Protection

Article 50 of the CPA stipulates that: "Where numerous consumers are injured as the result of the same incident, a consumer protection group may take assignment of the rights of claims from 20 or more consumers and bring litigation in its own name."

3. Investors Protection

Article 28 of the Securities Investor and Futures Trader Protection Act states that: "For protection of the public interest, within the scope of this Act and its articles of incorporation, the protection institution may submit a dispute to arbitration or institute an action in its own name with respect to a securities or futures matter arising from a single cause that is injurious to multiple securities investors or futures traders, after obtaining authorization from 20 or more securities investors or futures traders."

4. Personal Data Protection

Article 34 of the Personal Information Protection Act ("**PDPA**") states that: "For incidents arising from a single cause that is injurious to multiple data subjects, a qualified foundation or charitable incorporated association as prescribed in Article 32 of the PDPA may bring a lawsuit for damages in its own name, after obtaining written authorization from 20 or more data subjects."

Given the above, it is clear that a class action would be initiated by an individual (e.g., Article 41 of the Code of Civil Procedure) or a group (e.g., Article 50 of the CPA, Article 28 of the Securities Investor and Future Trader Protection Act). In addition, class actions in Taiwan adopt the procedure "opt-in" and such action is fairly common.

4.4 Can claims be brought by a representative body on behalf of a number of claimants e.g. by a consumer association?

Yes. According to Article 50 of the CPA, where numerous consumers are injured as a result of the same incident, a consumer protection group may take assignment of the rights of claims from 20 or more consumers and bring litigation in its own name. In addition, Article 44-3 of the Code of Civil Procedure stipulates that: "A foundation or a charitable incorporated association may, after the competent authority has granted its approval and to the extent permitted by such foundation's or such association's purpose as prescribed in its articles of incorporation, bring an injunction litigation against the person causing injury to multiple people."

4.5 May lawyers or representative bodies advertise for claims and, if so, does this occur frequently? Does advertising materially affect the number or type of claims brought in your jurisdiction?

Strictly speaking, there is no law or regulation prohibiting lawyers from advertising their services. However, the Attorney Regulation Act stipulates that a lawyer shall not instigate or solicit people to file lawsuits by using improper means, and the Attorneys' Code of Ethics prohibits lawyers from promoting their businesses by making an untrue or misleading representation or implication or by paying brokerage fees. Therefore, following the unspoken rules, lawyers in Taiwan rarely place broadcast advertisements to promote their businesses (let alone advertising for claims). On the other hand, Article 157 of the Criminal Code prohibits any person, with an intention to make unlawful profit, from instigating or soliciting people to file lawsuits, and thus representative bodies in Taiwan do not advertise for claims either. Given the above, it is difficult to conclude whether advertising affects the number or type of product liability claims brought in Taiwan as, essentially, advertisement for claims is discouraged or deterred.

4.6 How long does it normally take to get to trial?

For a civil case, normally it takes around 10 to 12 months to obtain a judgment in the District Court, six to 10 months in the High Court, and eight to 12 months in the Supreme Court. If the amount of claim is no more than NT$500,000 or no more than NT$100,000, the summary proceeding or small-claim proceedings shall apply, respectively, and it would take less time to obtain a judgment. However, please note that the time may vary depending on the complexity of a case and whether the higher court upholds or overturns the judgment rendered by the lower court.

4.7 Can the court try preliminary issues, the result of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

Yes. According to Article 383 in the Code of Civil Procedure, where the claims or defences presented are sufficient for the court to render its judgment, the court may enter an interlocutory judgment. In addition, where an interlocutory issue relating to the litigation proceedings is sufficient, the court may also give a ruling on such issue prior to its final judgment. The interlocutory judgment/ruling would bind the judgment of the court for the remainder of the trial. Both matters of law and issues of fact can be determined by the court preliminarily. Given that there is no jury system in Taiwan, the judge would decide the preliminary issues.

4.8 What appeal options are available?

According to Article 437 of the Code of Civil Procedure, a judgment rendered by the District Court can be appealed to the High Court. In addition, a final judgment rendered by the High Court can be appealed to the Supreme Court as long as the amount of the claim is NT$1,500,000 or more. However, an interlocutory judgment or a ruling made during litigation proceedings cannot be appealed independently. Thus, the parties may only appeal against the interlocutory judgment or ruling after the final judgment is rendered.

4.9 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

Yes. Expert testimony is usually presented in product liability actions because the determination of relevant factual and legal issues often requires professional knowledge toward a specific product. Therefore, the court may need the assistance of expert testimony to clarify relevant issues in a product liability case. According to Paragraph 1, Article 326 and Article 328 of the Code of Civil Procedure, an expert shall be a person with special knowledge or experience in giving expert testimony, and shall be appointed by the court. Besides, according to Articles 284 and 286 of the Code of Civil Procedure, the parties may also present expert evidence, since all kinds of evidence may be used as proof of the claim and the court shall accept evidence introduced by the parties.

4.10 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

The Code of Civil Procedure provides the preparatory proceeding which is similar to the system of pre-trial deposition.

According to Paragraph 2, Article 270 and Article 268 of the Code of Civil Procedure, the court can order the parties to present evidence in the preparatory proceeding. If the court deems that the preparation for oral arguments is not completed, the presiding judge may order the parties to submit a preparatory pleading or defence with complete reasons and also order them to specify or state in detail the evidence which they propose to invoke regarding a certain issue/matter.

Given such, assuming that an expert witness is able to clarify relevant issues in a product liability case, the court may ask the parties to present or exchange witness reports in the preparatory proceeding.

The parties can select an expert to provide his professional opinion in a product liability case in both the first and second instance. According to Point 5 of the Expert Counselling Directive, when a complicated case involves a professional field, the court can counsel

the expert when it sees it is necessary. For the same reason, the court can ask an expert witness to present in the preparatory proceeding.

4.11 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

According to Articles 368 and 369 of the Code of Civil Procedure, either before or after court proceedings are commenced, when it is likely that evidence may be destroyed or the use thereof in court may be difficult, or when the consent of the opposing party is obtained, the party may move the court for perpetuation of such evidence; where necessary, the party who has legal interests in ascertaining the *status quo* of a matter or object may move the court for expert testimony, inspection or perpetuation of documentary evidence.

In addition, based on Article 270 of the Code of Civil Procedure, the presiding judge may order parties to disclose evidence during the preparatory proceeding if it is necessary to take the evidence at the place where such evidence is located, if the evidence shall be taken outside the courthouse, or if taking the evidence in the formal proceedings may result in the destruction or loss of such evidence or the obstruction of its use, or it is manifestly difficult to do so. Also, if both parties agree to disclose the evidence during the preparatory proceeding, the judge may order to do so.

4.12 Are alternative methods of dispute resolution required to be pursued first or available as an alternative to litigation e.g. mediation, arbitration?

According to Paragraph 1, Article 403 of the Code of Civil Procedure, if the dispute arises from proprietary rights where the price or value of the object in dispute is not greater than NT$500,000, the matter shall be subject to mediation by the court before the relevant action is initiated.

In addition, parties may utilise various forms of alternative dispute resolution, including arbitration, mediation, negotiation and conciliation. Based on Article 1 of the Arbitration Act, parties may enter into an arbitration agreement to resolve a dispute through arbitration. Also, according to the Articles 43 and 44 of the CPA, when a consumer dispute arises between consumers and business operators, the consumer may file a complaint with the business operators, consumer protection groups, or consumer service centres or their branch offices. If the consumers' complaint is still not properly responded to, a petition for mediation may be made with the consumers' dispute mediation commission of the municipality or county (city).

4.13 In what factual circumstances can persons that are not domiciled in your jurisdiction be brought within the jurisdiction of your courts either as a defendant or as a claimant?

In civil cases, parties may, by agreement, designate a court of first instance to exercise jurisdiction over a dispute between the parties, provided that such agreement relates to a particular legal relationship. Meanwhile, the agreement shall be evidenced in writing.

Without both parties' agreement, persons that are not domiciled in Taiwan may be brought within the jurisdiction of Taiwan courts either as a defendant or as a claimant, provided that the concerned dispute has a connecting factor with Taiwan. However, whether the connecting factor is sufficient enough is subject to determination by the courts on a case-by-case basis.

5 Time Limits

5.1 Are there any time limits on bringing or issuing proceedings?

According to the CPA and the Civil Code, a person should exercise his/her right regarding product liability within two years from the date that he/she is aware of the damage and the identity of the liable person or 10 years from the date of the wrongful act.

5.2 If so, please explain what these are. Do they vary depending on whether the liability is fault based or strict? Does the age or condition of the claimant affect the calculation of any time limits and does the court have a discretion to disapply time limits?

The time limit does not vary depending on whether the liability is fault-based or strict.

The age or condition of the claimant does not affect the calculation of time limits and the court does not have discretion not to allow time limits defence so long as such defence is submitted by the defendant. However, according to Article 129 of the Civil Code, the time limit would be interrupted in any of the following cases: (1) a demand for the satisfaction of the claim; (2) an acknowledgment of the claim; or (3) an action brought for the satisfaction of the claim.

5.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

Concealment or fraud does affect the running of any time limit.

6 Remedies

6.1 What remedies are available e.g. monetary compensation, injunctive/declaratory relief?

In product liability actions, compensation shall be limited to the injury actually suffered and the loss of expected profits based on a fixed plan. In most cases, the plaintiff claims for monetary compensation.

However, according to Article 538 of the Code of Civil Procedure, where it is necessary for the purposes of preventing material harm or imminent danger or other similar circumstances, a petition may be made for an injunction maintaining a temporary *status quo* with regard to the legal relationship in dispute. Moreover, according to Article 53 of the CPA, consumer ombudsmen or consumer protection groups may petition to the court for an injunction to discontinue or prohibit a business operator's conduct which has constituted a material violation of the provisions of the CPA relating to consumer protection.

6.2 What types of damage are recoverable e.g. damage to the product itself, bodily injury, mental damage, damage to property?

Bodily injury, mental damage and damage to property are recoverable based on the product liability claim. However, damage to the product itself due to a product defect is deemed to be "pure economic loss" and courts tend to grant compensation for it based on the contractual claim rather than the tort law. Since the claim that

is based on the CPA and Article 191-1 of the Civil Code bears the nature of a tort claim, it would be more difficult for the claimant to recover damage of the product itself.

6.3 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where the product has not yet malfunctioned and caused injury, but it may do so in future?

No. If the product has not yet malfunctioned and caused injury, a customer cannot claim for the cost of medical monitoring based on product liability. The claim for the cost of medical monitoring is only permitted where a plaintiff customer has suffered actual physical injury.

6.4 Are punitive damages recoverable? If so, are there any restrictions?

Punitive damages are available in product liability actions. According to Article 51 of the CPA, in consumer protection-related cases, the consumer may claim for punitive damages up to five times the amount of actual damages as a result of injuries caused by the wilful act of misconduct of business operators; however, if such injuries are caused by gross negligence or negligence, punitive damages up to three times or one time the amount of the actual damages may be claimed, respectively. It is worth noting that a customer is required to prove that the business operators maliciously, wilfully, intentionally or negligently caused injury.

6.5 Is there a maximum limit on the damages recoverable from one manufacturer e.g. for a series of claims arising from one incident or accident?

There is no cap on damages recoverable from a single manufacturer for claims arising out of a single incident or accident.

6.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required for the settlement of group/class actions, or claims by infants, or otherwise?

Because the settlement proposal shall be made by the court, court approval is substantially required for settlements made at court proceedings, including class actions.

According to Paragraph 1, Article 54 of the CPA and Paragraph 1, Article 41 of the Code of Civil Procedure, if a mass of parties are injured due to the same consumer relationship, they can select one or more persons to bring an action for damages from themselves on behalf of the appointing parties and the appointed parties.

In addition, pursuant to Paragraph 1, Article 51 of the Code of Civil Procedure, in cases involving minor or incompetent persons, the legal guardian can represent him/her when conducting litigation or the court will appoint a special representative.

6.7 Can Government authorities concerned with health and social security matters claim from any damages awarded or settlements paid to the claimant without admission of liability reimbursement of treatment costs, unemployment benefits or other costs paid by the authorities to the claimant in respect of the injury allegedly caused by the product. If so, who has responsibility for the repayment of such sums?

National Health Insurance is founded for people with Taiwanese nationality. According to Paragraph 2, Article 1 of National Health Insurance Act, this health insurance is compulsory social insurance. Benefits shall be provided during the insured term under the provisions of this Act, in case of illness, injury, or maternity occurred to the beneficiary. The insurance is funded by the Government and the insurance premiums are paid by the insured. Benefits provided to the insured by the Government in respect of the injury allegedly caused by the product are not recoverable from a third party.

7 Costs / Funding

7.1 Can the successful party recover: (a) court fees or other incidental expenses; (b) their own legal costs of bringing the proceedings, from the losing party?

According to Article 78 of the Code of Civil Procedure, the losing party shall bear the litigation expenses, including the cost of filing a suit, appeal, rehearing proceeding, re-appeal and petition for payment order, etc. Therefore, court fees and other incidental expenses could be recovered from the losing party. However, based on Article 82 of the Code of Civil Procedure, if the successful party has failed to present means of attack or defence in a timely manner, or to meet a specified date or period, or otherwise delayed the proceeding, the court may order the successful party to bear all or part of the litigation expenses incurred from the delay.

With regards to their own legal costs of bringing the proceedings, such as attorney fees, for the first and second instance, the litigation expenses do not include attorney fees, so the successful party cannot recover such expenses from the losing party. For the third instance, attorney fees are included as a part of the litigation expenses and can be recovered from the losing party, notwithstanding that the amount shall not exceed NT$500,000.

7.2 Is public funding, e.g. legal aid, available?

Based on Paragraph 1, Article 107 of the Code of Civil Procedure, except in cases where there is manifestly no prospect for a party to prevail in the action, where a party lacks the financial means to pay the litigation expenses, the court shall, by ruling on a motion, grant litigation aid. However, the litigation aid only covers court costs and other incidental expenses; attorney fees are not included in litigation aid. In addition, the Legal Aid Foundation may provide legal services for low income individuals or those who need such assistance, as determined by the Legal Aid Foundation, and the whole or part of the attorney fees would be remitted.

7.3 If so, are there any restrictions on the availability of public funding?

For low income individuals, for example, to be eligible for the public funding by the Legal Aid Foundation, a single person living in Taipei shall have a monthly disposable income not exceeding NT$28,000 and shall not have disposable assets with an equivalent value of more than NT$500,000.

7.4 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

No, it is not.

7.5 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

Pursuant to Article 30-2 of the Regulation of Lawyer Ethics, an attorney shall not accept third party funding for attorney fees unless the client's informed consent has been obtained and unless such arrangement will not influence the independent professional judgment of the attorney.

An attorney shall avoid receiving attorney fees from a third party in order to prevent ethical issues and conflicts of interest, or the violation of the duty of confidentiality and of attorney-client privilege.

7.6 In advance of the case proceeding to trial, does the court exercise any control over the costs to be incurred by the parties so that they are proportionate to the value of the claim?

No. According to the Code of Civil Procedure, the court cost shall be levied on the basis of the price or value of claim proportionately; however, the Court does not exercise any control over the costs to be incurred by the parties.

8 Updates

8.1 Please provide a summary of any new cases, trends and developments in Product Liability Law in your jurisdiction including how the courts are approaching any issues arising in relation to new technologies and artificial intelligence.

In the past, the Taiwan Food and Drug Administration ("TFDA") has often been criticised for leaving the regulation of cosmetic products undone. For instance, although there was an adverse event reporting system for cosmetic products, the TFDA neither makes any follow-up nor has the authority to impose any administrative penalty where a business operator fails to comply with the reporting requirement. However, the amendment to the Cosmetic Hygiene and Safety Act ("Amended CHSA") was passed by the Legislative Yuan on April 10, 2018. Under the authorisation of the amended CHSA, the TFDA has began drafting relevant regulations and plans to bring the amended CHSA and such regulations into force in mid-2019.

Pursuant to the draft Regulations on Reporting Serious Adverse Reactions for Cosmetic Products and Health Hazards, a business operator receiving any suspected adverse event report for cosmetic products shall report the same through the TFDA's online system within 15 days thereafter. The draft Regulations on Recalling Cosmetic Products further stipulate that a manufacturer or importer of cosmetic products has to recall a cosmetic product within one month after receipt of the competent authority's notification where such cosmetic product was blended with any prohibited substances or any ingredient of which is harmful to human health.

Under the amended CHSA, if the competent authority discovers that a business operator fails to comply with the reporting or recalling requirements as described above, the competent authority will first designate a time limit for the business operator to rectify the failure. If the business operator does not rectify the failure within the time limit, then the competent authority may impose an administrative fine of up to NT$1,000,000. A material violation may result in an order from the competent authority to suspend business for a period from one month to one year.

There has not yet been any meaningful court case approaching any issues arising in relation to new technologies and artificial intelligence.

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