

PRODUCT LIABILITY REGULATION IN VIETNAM

For companies exporting to Vietnam as well as for those manufacturing in the country and selling to the local market, it is important to know about product liability risks under Vietnamese law. Actually, Vietnam has enacted laws and regulations that cover many, even if not all of the issues covered in the EU by COUNCIL DIRECTIVE 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

1) Who is Entitled to Claim Product Liability?

The Civil Code of Vietnam addresses damages caused to consumers by manufacturers failing to ensure the quality of goods in the chapter about Liability for compensation for non-contractual liability (Art. 608), without regulating further details. We learn from this provision that Vietnam, as many other countries, classifies product liability as a kind of tort liability.

The Consumer Protection Law (Law No. 59/2010/QH12 dated 17 November 2010) regulates the main aspects of Vietnam's product liability regime. According to the systematic framework of the CPL, the law protects the interests of consumers.

Consumer is defined in Vietnamese law as a person who purchases or uses goods and/or services for personal use or for families or organizations. Therefore, product liability claims can be mainly raised by end-users, which, however, could also include organizations or companies that have purchased goods for self-use. Traders, resellers or companies purchasing materials or parts for processing or production are not entitled to claim product liability, but need to rely on contractual claims instead.

2) Who Can be Liable?

Under the systematic framework of Vietnam's Consumer Protection Law, the liability shall be borne by organizations or individuals producing goods (manufacturers); organizations or individuals importing goods (importers), organizations or individuals attaching their trade name to goods or using trademark or commercial instruction, by which organizations or individuals producing or importing goods are identified (known also as quasi-manufacturer), and organizations or individuals directly providing defective goods to consumers (retailers) in case of that the previously mentioned organizations or individuals responsible for damages cannot be identified.

Based on this, an overseas manufacturer can be held liable by a Vietnamese consumer for damages caused by defective goods sold in the local market.

3) Defective Goods

As a general principle, organizations or individuals trading goods shall be liable for damages in the case where defective goods supplied by them cause damages to life, health, or to the property of consumers.

Defective goods are defined as goods that do not ensure safety to consumers, are likely causing damage to life, health and property of consumers, even though such goods are manufactured in accordance with current technical standards or norms, with no defects being detected at the time the goods are supplied to consumers, including:

- a) Mass-produced goods with defects arising from engineering design;
- b) Single goods with defects arising from the production, processing, transportation and storage;
- c) Goods with the potential of a deterioration in safety during use, and with a lack of adequate instructions or warnings being provided to consumers.

4) How Can Product Liability Cases Settled in Vietnam?

In principal, disputes between consumers and manufacturers or traders can be resolved through negotiation, mediation, arbitration, or in court, in which case the normal rules on civil disputes and litigation will apply. Consumers can also file complaints to district-level state management agencies for protection of the interests of consumers.

However, a dispute that relates to damage to the interests of the State, the interests of many consumers or the public interest is excluded by law from negotiation or mediation. This provision indicates that such public interest-related disputes will be solved through administrative channels.

Vietnam does currently not have a legal framework for class-action lawsuits. However, under the Civil Procedure Code, multiple parties (co-plaintiffs) can bring a lawsuit against another party regarding one legal relation or many interrelated legal relations for settlement in the same case. Moreover, certain organizations protecting consumer and social interests are allowed to bring civil lawsuits to request courts to protect the public interest.

5) Which Court has Jurisdiction?

Under the Vietnamese Civil Procedure Code, the plaintiff in a dispute over compensation for non-contractual damage may select to sue before the Court of a) the area where he/she resides, or works or b), at the place where his/her headquarter is located or c) where the damage is caused. Based on this territorial jurisdiction, a Vietnamese consumer may in principal sue a local or even a foreign manufacturer before the People's Court at the consumer's place of residence in Vietnam in a product liability case.

6) Burden of Proof

In product liability cases, the claimant has the burden to prove that it has suffered damage as a direct and foreseeable result of a product defect, and was not at fault for causing the loss and damage. Manufacturers, quasi-manufacturers or traders shall be exempt from compensation if they can prove that the defects of the good could not be detected with the scientific and technical knowledge at the time when the goods were supplied to the consumer.

We can see from Art. 91 para 1 a) of the Civil Procedure Code that consumers are not required to prove the fault of manufacturers or traders, but rather instead manufacturers and traders that are sued for product liability shall be obliged to prove that they have no fault that leads to the damage as provided for in the CPL.

7) Product Liability for Medicine, Food Products and Cosmetics

Although product liability claims can arise in connection with the sale of many different categories of goods, a significant risk of product liability claims is connected to the sale of medicine, food products and cosmetics. It is therefore not surprising that special product liability rules can be found in circulars and decrees applicable to these product categories.

Taking medicines as an example, manufacturers, importers, and import commission establishments are liable for the quality of the medicines that they have manufactured or imported. Wholesalers and retailers are liable to their customers for their medicines' quality and product information. Marketing authorization holders are liable for the safety, effectiveness or quality of medicines, and for ensuring that the medicines are circulating in the market according to the registered drug registration dossiers.

8) New CPL Draft under Discussion

It is interesting to notice that the Ministry of Industry and Trade (MOIT) has published a new amended draft version of the CPL, on which public comments have been solicited until 10 March 2022. The new version of the CPL is scheduled to be promulgated by the National Assembly in May 2023.

Among other proposed changes, the draft contains provisions applicable to internet-based and cross-border trading activities.

We will continue monitoring the legal developments in this field. If you want to assess the potential impact of the new CPL already at this stage, please let us know.

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