

### **Laws and regulations in relation to product liability and consumer protection**

There is no comprehensive legislation in Hong Kong governing product liability and consumer protection. The law in this area comprises of legislation and case law, on both civil and criminal aspects.

Various ordinances and regulations impose criminal liability on manufacturers, retailers or suppliers for unsafe products. The main governing statute is the Consumer Goods Safety Ordinance (Chapter 456 of the Laws of Hong Kong) (the “CGS Ordinance”) which requires manufacturers, importers and suppliers of consumer products to comply with a general safety requirement or the safety standards and specifications prescribed by the Secretary for Commerce and Economic Development of Hong Kong. The CGS Ordinance also imposes criminal penalties for a breach of safety requirements. Besides the imposition of criminal liability for unsafe products, statutes also deal with their recall. For example, under the CGS Ordinance, the Commissioner of Customs and Excise has the power to serve a recall notice requiring the immediate withdrawal of any consumer goods or products which he believes to be unsafe and may cause serious injury.

In Hong Kong, contracts for the sale of goods are mainly governed by the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong). The safety and suitability requirements of the goods supplied are often treated as an implied condition of the sale contract and that ordinance governs the scope of certain implied terms or conditions and warranties. The Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong) regulates civil liability and has an impact on the effectiveness of any terms in the contract which seeks to avoid liability for breaches of contract, negligence or other types of breaches of duty. Both of these statutes seek to supplement the common law position and provide further protection to consumers or users as contracting parties.

Besides contractual duties, there may also be duties of care owed by suppliers of goods under the common law and in particular, under the law of negligence. For example, there is a duty of care owed by the manufacturer, importer and supplier of products and that duty is owed to consumers of such products. If a manufacturer, importer or supplier discovers or has reasons to believe that his product may be unsafe, he may have to cease to supply the product in its unsafe form, and to give proper warning and instructions to persons to whom the product is supplied. Any person who undertakes to design, import or supply a product, and who negligently performs his work and causes damage to other person or property, will be liable as a result.

### **Laws and regulations in relation to advertising and promotion**

Hong Kong does not have a piece of comprehensive legislation to regulate advertising practice. There are a number of ordinances and regulations regulating the advertising and promotion of products and services, the breach of some of which may result in criminal offences. The relevant legislations include the Trade Description Ordinance (Chapter 362 of the Laws of Hong Kong). Under the Trade Description Ordinance, it is a criminal offence to apply a false trade description to any goods or supply goods with false trade descriptions. False and misleading trade descriptions of products used in advertisements are also prohibited.

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One of the Consumer Council's functions is to protect and promote good practices in the dissemination of consumer information, which include protecting consumers from untruthful claims in advertisements. The Consumer Council published various guidelines, the underlying principle for which serves to remind enterprises of the need to ensure that their promotional materials and advertisements are truthful, unbiased and sensible, without any misleading elements, and in compliance with the requirements stipulated in the related legislations or rules, allowing consumers to make informed decisions when making purchases.