

LAWS AND REGULATIONS IN HONG KONG

Product liability

In Hong Kong, there is no specific legal regime regulating product liability. The law in these areas, both civil and criminal, can be found in legislations as well as in common law.

Civil liability

Civil liability in relation to product liability claims arises under the law of contract and/or the law of negligence.

Contracts for the sale of goods in Hong Kong are mainly governed by the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong). For consumer transactions, certain terms are implied into sale contracts to strengthen protection to consumers. Examples include the implied undertaking that the goods are of merchantable quality, requiring that the goods should be fit for the purpose(s) for which goods of that kind are commonly bought, of such standard of appearance and finish, free from defects (including minor defects), safe, and durable as reasonably expected having regard to the relevant circumstances. Similarly, there are also implied terms governing the supply of services and the governing legislation is the Supply of Services (Implied Terms) Ordinance (Chapter 457 of the Laws of Hong Kong).

Apart from the contractual aspect of liability, distributors and retailers in Hong Kong may also owe a duty of care to consumers and be liable for damage resulting from defects developed in the goods caused by their negligent acts or for any fraudulent misrepresentation made in the distributing and selling of the goods. Liability may arise if a distributor or retailer disregards the instructions of the manufacturers or suppliers in handling the relevant goods or fails to pass on to the buyers instructions for use and warnings received from such manufacturers or suppliers. If a distributor or retailer knows or reasonably believes that the goods may be defective or dangerous, it may have to cease to supply such goods and take basic precautions such as warning the buyers and informing the relevant manufacturers or suppliers.

The extent to which liability for breach of contract, or for negligence or other breach of duty, can be avoided through contractual terms is limited by the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong). The Unconscionable Contracts Ordinance (Chapter 458 of the Laws of Hong Kong) further empowers the court to refuse to enforce any consumer contracts, enforce the remainder of a contract without the unconscionable part, or limit the application of, revise or alter any part which is found to be unconscionable.

Criminal Liability

The Consumer Goods Safety Ordinance (Chapter 456 of the Laws of Hong Kong) imposes certain obligations on manufacturers, importers and suppliers of general consumer goods. It stipulates that a person shall not supply, manufacture or import into Hong Kong consumer goods unless the consumer goods comply with the general safety

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requirement or the applicable approved standard for the particular consumer goods. The general safety requirement is an objective test which requires the consumer goods supplied to be reasonably safe having regard to all of the circumstances, including the manner in which the goods are presented and promoted, the instructions or warnings given, reasonable safety standards published by a standards institute, and the existence of any reasonable means to make the goods safer taking into account the cost, likelihood and extent of any improvement. Criminal sanctions are imposed for violations unless a due diligence defence can be successfully established. For safety reasons, the Commissioner of Customs and Excise has the power under the Consumer Goods Safety Ordinance to serve on a person a recall notice requiring the immediate withdrawal and retrieval of consumer goods which he reasonably believes to be unsafe or do not comply with approved safety standards, and that there is a significant risk that the consumer goods will cause a serious injury.

Advertising and promotion practices

Hong Kong does not have a single generic legislation to regulate advertising practice. There are however a number of legislations regulating advertising and promotion practices and one of the key legislations is the Trade Descriptions Ordinance (Chapter 362 of the Laws of Hong Kong). A trade description includes an indication of quantity, composition, and fitness for purpose, performance, physical characteristics and place of origin with respect to any goods. It is an offence under the Trade Descriptions Ordinance for any person to apply a false or misleading trade description to goods or to supply goods to which false trade descriptions have been applied. False and misleading trade descriptions of goods used in advertisements are also prohibited. The Customs and Excise Department is responsible for enforcing the Trade Descriptions Ordinance and its subsidiary legislations.

Enhanced consumer protection

In view of the lack of consumer protection against certain unfair trade practices such as false descriptions of services and aggressive commercial practices, the Hong Kong Government has completed a review of the existing consumer protection legislation and proposed improvements through amendments to the Trade Description Ordinance. The Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 will come into operation on 19 July 2013. The key changes include:

- the expansion of the definition of “trade description” in respect of goods to mean any indication, direct or indirect, and by whatever means given, with respect to any goods or parts of goods such as price indication;
- the extension of the prohibition on false trade descriptions to services made in consumer transactions, and to define “services” under any consumer contract;
- the creation of new offences on practices such as misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment; and

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- an introduction of a mechanism enabling aggrieved consumers to commence civil actions to recover any loss or damage suffered in addition to criminal sanctions.

LAWS AND REGULATIONS IN TAIWAN

Product Liability

In Taiwan, the sale of products is generally governed by the contract agreed by the parties involved, the Civil Act and the Consumer Protection Act. Absent of the contract agreed by the parties, the regulations under the Consumer Protection Act shall apply. Please note that the Consumer Protection Act only deals with the civil liability, and there is no specific legal regime in Taiwan to regulate the criminal product liability.

Under Article 7 and Article 9 of the Consumer Protection Act, business operators engaging in the design, production, manufacture or importation of products shall ensure that products provided by them meet and comply with the contemporary technical and professional standards of the reasonably expected safety when such products launch into the market. If the business operators violate the foregoing safety obligation and thus cause injury to consumers or third parties, they shall be jointly and severally liable therefore, provided that if they can prove that they are not of any negligence, the court may reduce their liability for damages.

Pursuant to Article 8 of the Consumer Protection Act, business operators engaging in the distribution or sale of products shall be jointly and severally liable for damages with those business operators engaging in the design, production, manufacture or importation of products with respect to injury caused by such products. However, such joint and several liability shall not be applicable in the event that they have exercised due care to prevent such injury, or even if they had exercised due care, injury would still have occurred.

Please be noted that the liability for damages of business operators to consumers set forth above shall not be limited or exempted in advance.

Advertising and promotion practices

In Taiwan, the regulations regarding advertisement and promotion practice of products are specified in the Consumer Protection Act and Fair Trade Act. Under Article 22 of the Consumer Protection Act, business operators engaging in the design, production, manufacture, importation, distribution or sale of products shall ensure the accuracy of the contents of advertisements and their obligations to consumers shall not be inferior to the contents stated in the advertisements.

According to Article 21 of the Fair Trade Act, no enterprise shall make or use false or misleading representations or symbol as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making known to the public. The Fair Trade

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Commission (“**FTC**”) may request the violating enterprise to cease, rectify its conduct or take necessary corrective action within the specified period, and it may impose upon such enterprise an administrative fine of not less than NT\$50,000 no more than NT\$25,000,000. If the violator fails to correct the misconduct after the expiry of the prescribed period, the FTC may continue to order such enterprise to correct its misconduct within the prescribed period, and each time may successively impose an administrative fine of not less than NT\$100,000 nor more than NT\$50,000,000 until it ceases, rectifies its conduct or takes the necessary corrective action.

Foreign Exchange Control

Foreign exchange issues are governed by the Foreign Exchange Control Act. Pursuant to Article 6-1 of the Foreign Exchange Control Act, foreign exchange receipts and disbursements or transactions involving foreign exchange equivalent to NT\$500,000 or more shall be declared as required. In accordance with the authorisation required as aforesaid, the Central Bank of Taiwan also stipulates the Regulations Governing the Declaration of Foreign Exchange Receipts and Disbursements or Transactions to deal with issues related to foreign exchange declaration.

The foreign exchange requirements imposed on a Taiwanese company’s behaviors are summarised as follows:

- A. For foreign exchange receipts and disbursements or transactions involving foreign exchange equivalent to less than NT\$500,000 (approximately US\$17,241):

No need to declare.

- B. For the amount of a single transaction of more than NT\$500,000 but less than US\$1 million with an accumulated amount of foreign exchange purchased or sold of that year not more than US\$50 million:

Upon the completion of the declaration statement, foreign exchange settlement in NT\$ shall be processed immediately without testimonials required.

- C. For the amount of a single transaction of more than US\$1 million with an accumulated amount of foreign exchange purchased or sold of that year not more than US\$50 million:

The foreign exchange settlement in NT\$ can only be processed upon the testimonials having been submitted and confirmed by the banking enterprise.

- D. Necessary remittance made by a company with an accumulated amount of foreign exchange purchased or sold each year of more than US\$50 million:

The foreign exchange settlement in NT\$ can only be proceeded upon the testimonials having been submitted and the banking enterprise has applied for the approval of the Central Bank of Taiwan.

LAWS AND REGULATIONS IN MACAU

Product Liability

In Macau, the sale of goods is generally governed by the law of contract under the Civil Code (Código Civil — Livro III Direito das Obrigações) and specific provisions in respect of product liability can be found in the Commercial Code.

Under the Commercial Code a manufacturer is liable, regardless of malpractice, for any and all damages caused to any third party by the defects of products it supplies. For liability purposes, importers are equated to manufacturers and so are the distributors and retailers of products of which the Macau manufacturer or importer is not identified (unless, when informed of the damages caused by a product it supplies, the distributor or retailer discloses the identity of the products' manufacturer, importer or of a previous distributor). Product liability is based on the concept of defective product. A product is qualified as being defective if, at the moment its put into the market, it does not offer the safety that is legitimately expected from it; having regard to the relevant circumstances, amongst which its appearance, specifications, and the use that can reasonably be made of it.

Distributors and retailers in Macau also owe a duty of care to consumers and may be liable for damage resulting from defects developed in the goods caused by their negligent acts or any fraudulent misrepresentation made in the distribution and sale of the goods. If a distributor or retailer knows or reasonably believes that the goods they are selling may be defective or dangerous they are obliged to cease to supply such goods. Product safety regulations and consumer protection provisions can be found in law 12/88/M and in the administrative regulation 17/2008.

Product liability cannot be excluded or limited by contract and any contractual provisions to the contrary are considered not written.

Advertising and Promotion Practices

Advertising and promotion practices in Macau are governed under the provisions of law 7/89/M (the “**Advertising Law**”). An advertisement shall be lawful, identifiable and accurate in its representations and shall comply with the principles of consumer protection and fair competition. It is an offence under the Advertising Law for any person or entity to advertise in a way that may mislead the consumer as to the conditions of acquisition of a product or service; namely as to its price, payment methods, credit facilities offered, delivery and replacement conditions. The relevant industry's regulator (if any) or the Macau Economy Services are responsible for enforcing the provisions of the Advertising Law.