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Producers and vendors liabilities under PRC laws – the legal framework

**Rainer Burkardt
Squire, Sanders & Dempsey L.L.P.
Shanghai Office
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Agenda

- **Product Quality and Product Liability**
- **Product Certification and Industry Standards**
- **Consumer Protection**

Product Quality and Product Liability – Introduction

- During 1980's: primary legislative was Article 122 of the **General Principles of the PRC Civil Law** which permitted a consumer to initiate an action against the manufacturer or vendor of goods for damage caused by a “**substandard**” product
- In 1993, the government followed through with **PRC Product Quality Law** (“PQL”, February 1993, revised 2000) and the **PRC Consumer Protection Law** (“CPL”, October 1993) both of which provide for the initiation of actions for personal injury or property damage caused by a **defective** product.
- PQL designed to broadly apply to **all products and important industrial products** that are manufactured or imported and sold in the PRC and covers both product **quality and product liability** issues. Excluded are Military and nuclear products, most agricultural goods, and housing construction.
- Fundamental rights of Chinese consumers in the PQL, include (i) the consumer's right to **safety**, (ii) the right to **be informed**, and (iii) the right to be **treated fairly**

Product Quality and Product Liability – Introduction

- Compliance with the law is required when engaging in the **production, sale and distribution** of products within China
- “Products” mean products that are sold following **processing or manufacture**
- Through PQL, PRC government places an emphasis on creating an **awareness of, and enforcing, product liability nationwide**
- As part of this development, the State Quality and Technical Supervision Administration has been engaged in a process of issuing **new standards** – where none existed before – and **enhancing existing standards**, particularly with respect to health and safety related standards
- Provisions of PQL and CPL on the quality of products and compensation for damage are **mandatory and may NOT be waived**
- Any contractual terms, including **warranty exclusions**, limiting liability of the vendor are **null and void**.

Product Quality and Product Liability – Introduction

- PQL refines various provisions, including
 - liability for producers and vendors of **products of unmerchantable quality**
 - provisions designed to counter the **smuggling of counterfeit and substandard goods**
 - provisions designed to eliminate handing **corruption and graft**
 - provisions for improved accountability to both **consumers and the authorities.**
- PQL seeks to reflect the need to provide
 - **enhanced protection** of rights in accordance with the CPL
 - **improve accountability** by defining the scope of supervisory measures and powers available to the authorities
 - **increasing the scope of offenders** punishable pursuant to this law
 - **redefining penalty thresholds** to allow fairer punishment.

Product Quality and Product Liability

- Mandatory Management System
- Producers and Manufacturers
- Defective Product
- Burden of Proof and Strict Liability
- Product Quality Liability and Obligations of Producers
- Vendors Liability
- Compensation Obligations of Manufacturers and Vendors
- Forms of Liability
- Defenses to Liability for Producers
- Claim Filing Limitation Period
- Applicable Law and Forum for Dispute Resolution

Product Quality and Product Liability - Mandatory Management System

- Article 3 PQL: producers and vendors need to establish “**sound internal management systems**, strictly implement **job quality specifications** and **quality responsibilities** and **corresponding evaluation methods**”
- A management system must be one that is **capable of implementing and assessing product quality**
- Where such management system is non-existent or inadequate, the manufacturer and/or vendor whose defective goods caused loss or damage can be held to be **contributory negligent**
- Provided the damage was (a) **foreseeable, preventable or rectifiable** if a quality management system would have been in operation; or (b) was not foreseen and prevented despite a quality management system was in operation

Product Quality and Product Liability - Mandatory Management System

- Implementation of PQL undertaken by product quality supervisory personnel with **considerable powers** including
 - inspecting and spot-checks premises and taking reasonable samples
 - investigating the details of the suspected engagement in illegal production or sales with the co-operation of the relevant personnel
 - accessing all company accounts and books
 - impounding all goods believed to violate this law and all raw and auxiliary materials, packaging and production tools directly used in their production or sale
- A breach of the PQL could lead to the **closure of the factory** and seizure or confiscation of product, tooling and equipment
- Decisions of the product quality supervisory departments may be appealed

Product Quality and Product Liability - Mandatory Management System

In summary, the following apply

- each enterprise must assume responsibility for ensuring product quality
- each enterprise must implement a quality control management system
- product quality certification or endorsement must be verified
- mandatory spot-checks on product quality
- more administrative powers and accountability
- heavier and stricter penalties on manufacturers

Product Quality and Product Liability - Producers and Manufacturers

- While 'manufacturer' is not defined in the PQL or the CPL, it can be inferred to include
 - an assembler or processor of end products
 - manufacturers of spare parts or of raw materials
 - any legal entity that claims to be a manufacturer or an importer.
- While, the term 'vendor' is also not defined in either law, it is given a broad interpretation and includes
 - all persons and entities
 - throughout the supply chain and distribution process

Product Quality and Product Liability - Defective Product

- "defect" in PQL refers to the unreasonable danger in the products where such danger threatens personal safety or the safety of third party property.
- Where a product is governed by national or industry standards for protection of health or personal safety or the safety of property, the term "defect" shall refer to non-compliance of the product with the standards."
- "national or industry standards" refers to standards issued by national, provincial, autonomous or municipal authorities, or by authorized industry regulators under the National Standards Law and the Implementing Regulations for the National Standards Law
- CPL does not contain any definition of 'defect' or 'defective product'
- However, CPL refers to commodities and services that have ".....a serious defect that may cause harm to the personal safety or property of the consumer, even where such a commodity or a service is used correctly...", and obliges business operators "....to immediately make a report to the relevant authorities, inform consumers and adopt preventative measures against such occurrence."

Product Quality and Product Liability - Strict Liability

- Under PRC law, regardless of privity of contract, where, as a result of a defective product, a person suffers personal injury or damage to property such person is entitled to compensation on the basis of the **strict liability** of, ultimately, the manufacturer
- Strict liability means that there is **no requirement** on the part of the injured party **to prove that the manufacturer was negligent** in the design or manufacture of the product.
- It is sufficient to prove that the **product was**
 - **defective**, i.e. not reasonably safe, at the time of sale, and
 - **responsible for causing the relevant injury or damage** to the litigant
- After a vendor has taken responsibility for the repair, replacement or return of a defective product, or has borne liability for compensation for losses incurred as a result of the defective product, if the producer is liable, or if another seller who provided the product is liable in its capacity as supplier, the **seller will have the right of recovery as against the producer or supplier**, as the case may be.

Product Quality and Product Liability - Burden of Proof

- If purchase or sale contracts stipulate otherwise, then the parties to such contracts shall proceed pursuant to the terms of such contracts => purchaser should not agree to a contract term to transfer liability for any defects in the products to the purchaser
- Article 64 of the Civil Procedure Law provides that “*it is the duty of a party to an action to give evidence of his allegations*” to the court
- However, if the product is a high-tech or a complex product, the plaintiff is not required to establish a casual relationship between his injury and the product
- Instead, the burden of proof will pass to the defendant manufacturer who will be required to present evidence showing that the product was not defective
- In that regard, the opinion of the product quality supervision office will be determined as evidence with respect to compliance with required quality standards

Product Quality and Product Liability - Product Quality Liability and Obligations of Producers

- PQL sets forth **product standards** for both manufacturers and vendors of products.
- PQL provides that *manufacturers* are responsible for producing goods that meet the following standards
 - Products that have “no unreasonable danger” to individuals or property and meet all applicable national and industry standards
 - Products that are fit for their intended purpose except in situations where the defects are clearly indicated otherwise
 - Products that are in conformity with the standards on the packaging and labeling of the goods and samples

Product Quality and Product Liability - Product Quality Liability and Obligations of Producers

- Product marks need not be affixed to unpackaged foodstuffs and other unpackaged products to which it is difficult to affix marks due to the special characteristics of such products.
- Products which are highly toxic, hazardous, or fragile, the packaging is required to include appropriate warnings indicating proper handling during transportation and storage including details of required compliance with government regulations

Product Quality and Product Liability - Product Quality Liability and Obligations of Producers

- Products or the marks on their packaging must be genuine, and must satisfy the following **Product Packaging** requirements:
 - product quality inspection certificate
 - name and the manufacturing factory's name and address displayed in Chinese
 - Where the product's characteristics and usage requirements necessitate the display of the product's specifications, grade and the names and contents of its main constituents, such information shall be displayed in Chinese
 - where it is necessary that the consumer knows in advance, the information should be displayed on the outside packaging, or the relevant information should be supplied to the consumer in advance;
 - Products to be used within a prescribed time must indicate in a prominent place their production date, period of safe use or date of expiry
 - Products likely to cause the products themselves to be damaged or to endanger personal safety or the safety of property if used improperly should carry a warning mark or warning explanation in Chinese

Product Quality and Product Liability - Product Quality Liability and Obligations of Producers

- PQL further provides that *manufacturers* are **prohibited** from engaging in the following **activities**
 - Falsely designating the place of origin of the goods on the product packaging
 - Falsely stating the origin of the goods as originating from a facility of another party
 - Falsely using the quality certification marks or famous brand marks of another party
 - Counterfeiting or imitating quality marks such as certification marks;
 - Selling substandard products which are claimed to meet particular standards
 - Selling products that have been declared by the State to be obsolete
 - In producing products, a producer shall not adulterate or mix improper elements with its products, and shall not use fake products as genuine products or products of poor quality as high quality products, and shall not use substandard products as products which are up to standard
 - Selling counterfeit products as genuine merchandise

Product Quality and Product Liability - Vendors Liability

- Prior to revised PQL, vendor of non-compliant product (failing to satisfy state or industry standards on safeguarding health, personal safety or property) was **exempt** from prosecution provided he was **unaware** that the product was non-compliant
- Revised PQL places the onus on the vendor to be more prudent as they will be held **responsible for the source and quality of goods** sold to consumers
- Extremely important in light of the proliferation of counterfeit products, especially counterfeit components and spare parts in light industry
- While PQL does not define “**vendor**” from the context of PQL, it is understood to refer to **persons or entities selling directly to consumers or end-users**

Product Quality and Product Liability - Vendors Liability

- In addition to manufacturers, the PQL sets forth a number of obligations for *Vendors* of products
- *Vendors* are required to:
 - Adopt measures to maintain the quality of products that they sell;
 - Implement an examination and acceptance system for the purchase of inventory to ensure that purchased goods include the required product quality certificates;
 - Examine the packaging of merchandise sold to ensure that the information concerning product specifications, warnings, and facility location are included on the printed packaging,
 - Ensure that the marks on products sold by vendors comply with the provisions of article 27 PQL.

Product Quality and Product Liability - Vendors Liability

- Vendors are prohibited from engaging in the following activities
 - Selling expired or damaged goods;
 - Falsely designating the place of origin of the goods on the product packaging;
 - Falsely stating the origin of the goods as originating from a facility of another party; or
 - Falsely using the quality certification marks, famous brand marks, and marks of excellence of another party.
 - In selling products, a vendor may not adulterate or mix improper elements with the products; may not use counterfeit products as genuine products or products of poor quality as high quality products and shall not substitute substandard products for products that are up-to-standard;
 - Using fake products as genuine products, or using products of poor quality as high quality products.

Product Quality and Product Liability - Compensation Obligations of Manufacturers and Vendors

- Vendors are responsible for
 - repair,
 - Replacement
 - return of the product soldif any of the following circumstances apply: The product sold does not
 - possess the properties for use that it should possess, and no prior and clear indication is given of such a situation;
 - conform to the applied product standard as carried on the product or its packaging;
 - conform to the quality indicated by such means as a product description or physical sample
- If a consumer who purchased the product incurs losses as a result of the above, the vendor shall compensate for such losses
- If the vendor has compensated such losses and if the producer is liable or another vendor who provided the product to the vendor (hereinafter referred to as the supplier) is liable, the vendor shall have the right to recovery from the producer or the supplier

Product Quality and Product Liability - Compensation Obligations of Manufacturers and Vendors

- The PQL provides that manufacturers, vendors and secondary parties in violation of the law may be subject to
 - **administrative penalties** including orders to cease and desist manufacturing and sales, monetary penalties, and closure orders and confiscation of an enterprise's business license
 - **criminal prosecution** for willful violations of the law or in situations where persons have sustained injuries as a result of the product quality problems
- The SBTS and the SAIC have the power to investigate and impose penalties pursuant to the PQL
- In case of an administrative penalty, an interested party has fifteen (15) days to either administratively appeal a penalty decision or file a suit in the people's court for judicial review.

Product Quality and Product Liability - Compensation Obligations of Manufacturers and Vendors

- Vendors may plead for leniency or **reduced punishment** provided they submit sufficient evidence of ignorance and provide assistance to the authorities in locating the manufacturer of counterfeit or offending products that:
 - Do not comply with state or industry standards for the safeguarding of health, personal safety or the safety of property
 - Are adulterated, have improper elements mixed in them, or where spurious products are passed off as genuine and poor quality or substandard products are passed off as good quality or up to standard
 - Have been pronounced obsolete by the State
 - Have expired or where the quality has deteriorated
 - Have a falsified place of origin, falsified name and/or address of the producing factory, or have forged certification or quality marks

Product Quality and Product Liability - Compensation Obligations of Manufacturers and Vendors

- In addition to fines, manufacturers and vendors of the following of counterfeit product or non-conforming product are liable to have such product and the manufacturing tooling, machinery, equipment, packaging and raw materials used in their manufacture, confiscated:
 - products that do not conform to state or national standards
 - adulterated products
 - obsolete products
 - spurious products that are passed-off as genuine products
- Moreover, the person that **provides the technology used in the manufacture of counterfeit product** that is passed-off as genuine is liable to pay a fine amounting to between half and three times the illegal revenue generated. Such persons may also incur criminal liability
- Where a product is defective due to a mistake made by the vendor and such defect causes physical injury or damage to third party property, the vendor shall bear liability for compensation
- If a vendor is unable to identify the producer of a defective product and is also unable to identify the supplier thereof, the vendor will bear liability for compensation

Product Quality and Product Liability - Forms of Liability

Liability for Injury or Damage to Third Party Property

- If a defect in a product causes physical injury or damage to third party property, the party which was injured or incurred damage may claim compensation against the producer or may claim compensation against the vendor
- If the producer of the product is liable and compensation is made by the vendor of the product, the vendor of the product will have a right of recovery against the producer
- Similarly, if the vendor of the product is liable and compensation is made by the producer of the product, the producer of the product has a right of recovery against the product vendor

Product Quality and Product Liability - Forms of Liability

Liability for Physical Injury

- If a defect in a product causes physical injury to the injured party, the injuring party shall compensate for expenses such as medical expenses, nursing costs for the period of treatment and loss of income due to absence from work
- Where a defect causes physical disability, the injuring party shall pay the disabled person's self-help supplement and living allowance, compensation for the disability and living expenses required by the disabled person's dependants
- Where a defect causes the death of the injured party, the injuring party shall additionally pay such expenses as the funeral expenses, compensation for death and living expenses required by the dependants of the deceased

Product Quality and Product Liability - Forms of Liability

Liability for Property Damage

- If a defect in a product causes damage to the property of the injured party, the injuring party shall restore the property to its original state or pay compensation at the depreciated price
- If the injured party suffers other major losses as a result thereof, the injuring party is required to fully compensate for such losses

Product Quality and Product Liability - Forms of Liability

Liability under the PRC Tort Law

- The PRC Tort Liability Law contains a dedicated section treating Product Liability, and imposes **strict liability** by providing that a producer or manufacturer is subject to tort liability for damage to persons or property arising from defects in his products
- The producer or manufacturer will not be liable where
 - the products have not been put into circulation
 - the defects did not exist when the products were put into circulation
 - the defects could not be discovered at the time of circulation due to scientific or technological reasons
- The PRC Tort Liability Law emphasizes that vendors of defective products will be liable in tort for damage occasioned to persons or property arising from defects **resulting from the fault of the vendor**
- Vendors that are unable to identify the producers or suppliers of the defective products will be subject to tort liability

Product Quality and Product Liability - Defenses to Liability for Producers

- The PQL provides that a producer will not bear liability for compensation if any of the following circumstances is proven
 - The product has not been put into circulation
 - The defect causing the damage did not exist when the product was put into circulation
 - When the product was put into circulation, the level of science and technology at the time was not sufficient to detect the defect
- While there are no specific defenses detailed in the CPL, that law does refer to the right to invoke defenses under relevant laws and regulations.

Product Quality and Product Liability - Claim Filing Limitation Period

- **Damage caused by Defective Product**
- The statutory limitation for legal actions involving claims for compensation for damage caused by a defect in a product is **two (2) years**, calculated from the date on which the party became aware or ought to be aware that his rights and interests had been infringed
- **Claims for Bodily Injury**
- The *PRC Civil Procedure Law* provides a **one (1) year** limitation period
- **Claims for Breach of Contracts**
- The *PRC Contract Law* provides a **four (4) year** time limit for filing a lawsuit or applying for arbitration in relation to a dispute arising from an **international contract for the sale of goods**, calculated from the date on which the party knows or ought to know that there has been an infringement of its rights
- The time limit for filing a lawsuit or arbitration concerning a dispute arising from **other types of contracts** must comply with the provisions of relevant laws
- The right to claim compensation for damage caused by a defect in a product will be extinguished after **ten (10) years** from the delivery of the defective product to the first consumer, unless the clearly indicated period of safe use has not yet expired

Product Quality and Product Liability - Applicable Law and Forum for Dispute Resolution

- **Applicable Law**
- The General Principles of Civil Law provide that with regard to compensation for damages resulting from an infringement of rights, the law of the **place in which the infringement occurred** must be applied.
- If both parties are nationals of the same country or domiciled in the same country, the **law of their own country or of their place of domicile** may also be applied, in the majority of cases, China.
- **Forum for Dispute Resolution**
- The **PQL** provides that disputes involving defective products may be resolved by **mediation** between the parties. If the parties are unwilling to settle a dispute informally, the injured party may file a **complaint with the people's court**, or **arbitration** if agreed to by contract
- The **PQL** provides that an arbitration panel or the people's court has the right to **delegate to the SBTS the obligation to inspect a product and render an opinion** concerning the product's alleged defectiveness
- A dispute under the **CPL** may be resolved through **conciliation, administrative complaint procedures, arbitration, or litigation**
- A business operator has the right to file an administrative appeal to a penalty decision or to seek judicial review of a penalty decision with the people's court. An administrative appeal or request for judicial review must be made within fifteen (15) days of receipt of the decision

Product Certification and Industry Standards

- The PQL requires that manufacturers produce products under conditions which entitle them to display a **certificate of product quality**
- The **State Bureau of Technical Supervision** (SBTS) and its local branches are responsible for **issuing** quality certificates
- After China unified its two different certification systems for foreign and domestic products (in 2002 the “CCIB” mark for imported goods and the “CEEE” or “Great Wall” mark have been replaced by the “CCC” or “China Compulsory Certification” mark) the certification process is consistent with internationally-recognized quality control standards
- The **China Quality Certification Center** (CQC) and eight other authorized organizations by the China National Certification and Accreditation Administration (CNCA) are **responsible for CCC applications**

Product Certification and Industry Standards

- CNCA has also approved 68 laboratories throughout China to test and inspect products that are subject to CCC inspection and issue CCC marks
- Goods that do not include the CCC mark may not be distributed in China, unless the goods bear one of the old marks and were imported before August 1, 2003
- The certification process required to be accomplished in ninety (90) days from the date of the initial inspection of the overseas manufacturing facility
- The rules allow for exemption from the CCC requirements in a number of circumstances including
 - products imported for a research purpose
 - products imported as parts for assembly and re-export
 - products imported where the end products are exclusively for export
 - products imported to develop new product lines
 - products imported for equipment maintenance, and obsolete products

Product Certification and Industry Standards

- The validity period for most exemption certificates is thirty (30) days and are, in general, for a single use
- CCC certificates may be valid for up to one (1) year
- The Chinese government has developed **uniform quality control standards** that are categorized as **compulsory** or **recommended standards**
- The State Bureau of Technical Supervision (SBTS) is responsible for **developing and regulating** national standards
- **Compulsory** standards are usually established to address **products** which have a **potential impact on the health and safety of individuals and the safety of property**, or which are mandatory by law
- Products that fail to meet compulsory standards are **prohibited from being manufactured, sold, or imported**
- A party that manufactures, sells, or imports products that fail to meet compulsory standards is **liable for penalties**, confiscation of goods, and, in serious cases, criminal prosecution
- A party that misuses quality certificates is **liable for penalties** and criminal prosecution

Product Certification and Industry Standards

- In addition to administrative penalties, an injured party has the right to **file an action against an enterprise** that violates that standardization laws and regulations
- Standards which are not compulsory are considered **recommended** standards and the State encourages producers to voluntarily comply with such standards
- In general, **national** standards take **priority** over **industry, local and enterprise** standards
- An enterprise that develops its own **internal** standards is required to **report** the application of its standards to the SBTS
- Parties to an **export** contract are required to agree to the technical standards for an export product
- When export products are sold on the **domestic** market, products that are subject to compulsory standards must comply with such standards
- All **foreign** produced goods are subject to inspection by both China Customs and the import-export commodity inspection agency

Consumer Protection

- Required Standards under the Consumer Protection Law
- Handling Infringements of Consumer Interests
- Liability and the 2/15 Rule

Consumer Protection - Standards under the Consumer Protection Law

- Under the CPL, business operators are required to engage in consumer transactions in a **fair and honest manner**
- The **key principle** under the CPL is the requirement that business enterprises **guarantee that their goods and services conform to applicable health and safety standards**
- Potentially **hazardous goods must provide clear and unambiguous warnings** to users, as well as specific instructions for proper use and handling
- CPL also provides that business operators have an **affirmative duty to advise the government and consumers that a product is defective** which may cause harm to the safety of individuals or property
- The Shanghai municipal government has adopted its own stringent set of consumer protection regulations
- The Consumer Protection Provisions list the **basic responsibilities** of companies that offer products and services
- The Provisions provide that **defective products must be removed from circulation** when serious defects are reported and that companies will be liable for injuries and other harm caused by defective products
- The Consumer Protection Provisions **fail to provide information** on the methods to report violations and punish violators

Consumer Protection - Standards under the Consumer Protection Law

- The CPL further mandates that consumers are entitled to the following protection:
- Right to obtain **compensation for personal injuries or property damage** as a result of the purchase or use of a product or service
- Right to **report or complain** of acts infringing upon the rights and interests of consumers
- Right to fair terms of trade and conditions such as **quality guarantee**, reasonable price, and accurate measurements when purchasing goods or services
- Right to establish consumer interest groups and associations to **assist** with their legal rights
- A consumer protection association may
 - make suggestions to the government concerning consumer rights and interests
 - accept complaints by consumers and conduct investigations
 - attempt to mediate consumer disputes
 - assist injured consumers in instituting litigation against business operators
 - issue press releases to the media concerning consumer affairs issues

Consumer Protection - Standards under the Consumer Protection Law

- A business operator has a statutory obligation to **provide true and unambiguous answers** to questions raised by consumers concerning the quality and use of products or services including
 - the country of origin
 - the manufacturer
 - date of production
 - product expiration dates
 - applicable product grade or level of quality
 - certificate of inspection and quality
 - operation manual and after-sale service
- The CPL also provides that consumers have an obligation to “master” the ability to operate a product in order to ensure safe operation
- Under the CPL, false or misleading advertising is strictly prohibited, and prices are required to be clearly marked on the products by retailers
- A business operator is prohibited from setting unreasonable or unfair terms in consumer transactions, for example, by introducing standard contracts, circulars, announcements or shop notices that purport to limit the business operator from its civil liability

Consumer Protection - Infringements of Consumer Interests

- In 2004 SAIC introduced the Circular on the Handling of Infringements of the Rights and Interests of Consumers (Circular) designed to enhance the practicality of the CPL
- The Circular requires that business operators who discover a “serious defect” (undefined) in the goods or services that they offer, that may cause harm to the safety of persons or property even if such goods or services are use correctly, are required to
 - **immediately cease sales** of such goods and services
 - **report the matter** to the local SAIC
- Thereafter, in respect of goods that have already been sold, business operators must **notify consumers** in a timely manner by “effective means” including by
 - Telephone
 - SMS messaging
 - public announcements
 - via the media
- Such **goods must be recalled** and appropriate remedies introduced in respect of services already provided

Consumer Protection – Recall Provisions

- The government has issued special regulations that govern product recalls for:
 - Children Toys (August 2007)
 - Food (August 2007)
 - Drugs
 - Auto-Products providing that recalls are mandatory
 - if testing and inspection prove that the product does not comply with technical safety regulations
 - if design or manufacturing defects have caused damage to persons or property, and
 - if tests prove that defects may cause such damage under certain given circumstances

Consumer Protection – Recall Provisions

- Product recalls are issued by the China Consumer Association (CCA) - a government-sponsored consumer advocacy organization - that investigates product quality complaints and issues warnings to the public, and supports consumers in filing administrative complaints with the SAIC and litigation in a People's Court for damages against enterprises

Consumer Protection - Liability and the 2/15 Rule

- If a consumer can present evidence that
 - he has on at least **two occasions** requested a business operator to comply with its civil liability obligations
 - **within 15 days** from the date on which the consumer presented his lawful request
 - and the business operator has **failed to do so without legitimate excuse**,
 - “it shall be deemed to be an **intentional delay** or **unreasonable refusal**,
 - unless the business operator is able to prove that it has exceeded the time limit due to the occurrence of an event of force majeure.”

In such case, the SAIC is required to impose penalty

Contact Information

Squire, Sanders & Dempsey L.L.P.

Shanghai Office

Suite 1207, 12th Floor, Shanghai Kerry Center

1515 Nanjing Road West, Shanghai, China

Tel: +86-21-61036300

Fax: +86-21-61036363



Rainer Burkardt

Partner

German lawyer

Direct: +86.21.6288.3676

rburkardt@ssd.com