



ICLG

The International Comparative Legal Guide to:

Product Liability 2018

16th Edition

A practical cross-border insight into product liability work

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EDITORIAL

Welcome to the sixteenth edition of *The International Comparative Legal Guide to: Product Liability*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of product liability.

It is divided into two main sections:

Seven general chapters. These chapters are designed to provide readers with an overview of key issues affecting product liability law, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in product liability laws and regulations in 23 jurisdictions.

All chapters are written by leading product liability lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Adela Williams and Tom Fox of Arnold & Porter for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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PREFACE

I'm delighted to have been asked to introduce the sixteenth edition of *The International Comparative Legal Guide to: Product Liability*.

The guide continues to be an ideal reference point with seven excellent general chapters covering significant developments in European, Asian and US law. This edition also has a special focus on product recalls, a practical guide around costs issues and considerations in the context of group actions in England & Wales and finally commentary on liability and insurance matters in the context of driverless cars.

As always, the bulk of the edition remains the enormously helpful country question and answer section, covering 23 jurisdictions, new to the guide this year being Albania and Kosovo.

I frequently have cause to make reference to the guide for matters concerning product liability all over the world and will continue to do so as the guide remains a thoroughly informative and comprehensive publication.

Tom Spencer
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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?**

Hong Kong does not yet have a specific legal regime relating to product liability, particularly in relation to civil proceedings, nor does it have a statutory regime of “lemon law” or strict liability regime as in some other countries, such as the United States.

A product liability claim is found within the existing laws of contract and tort. Civil liability arises under the tort of negligence for a breach of a duty of care, breach of contract or failure to comply with the terms of the contracts, or breach of statutory duty (such as under the Sales of Goods Ordinance (Chapter 26 of the Laws of Hong Kong)) for supplying a product that does not meet specific requirements imposed by statutes.

The main legislations regarding product liability include the Consumer Goods Safety Ordinance (Chapter 456 of the Laws of Hong Kong), Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong), Sale of Goods Ordinance, Toys and Children’s Products safety Ordinance (Chapter 424 of the Laws of Hong Kong), Pharmacy and Poisons Ordinance (Chapter 138 of the Laws of Hong Kong), and Dangerous Goods Ordinance (Chapter 295 of the Laws of Hong Kong), which considerably improve the position of consumers.

As Hong Kong adopts a common law system, product liability is also governed by case laws, both in the civil and criminal aspects.

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

No, there is no scheme of compensation for particular products.

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

Under the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong), the contracting party, usually the retail supplier, is liable to the buyer for the defective products. However, the manufacturer, the importer and/or the distributor could also be liable in tort.

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

No. Although there are regulatory bodies for different types of products, there is no provisions in the laws which make the authorities liable for a defective/faulty product. For example, the Pharmacy and Poisons Board serves the function of upholding the Pharmacy and Poison Ordinance (Chapter 138 of the Laws of Hong Kong), but there is no such law that the Board will be held liable for any product liability. Take also the Commissioner of Customs and Excise as an example, the Commissioner has the power to give orders under the Consumer Goods Safety Ordinance (Chapter 456 of the laws of Hong Kong). However, the Commission bears no liability for any defective/faulty products.

- 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?**

Section 9 of the Consumer Goods Safety Ordinance (Chapter 456 of the Laws of Hong Kong), for instance, states that the Commissioner may serve on a person a notice requiring the immediate recall of consumer goods that do not comply with the approved safety standard. Section 22 of the same ordinance provides that non-compliance with such notice would constitute an offence. The penalties are set out in Section 28.

Similarly, for safety reasons, recalls of electrical products and food may be required under the Electricity Ordinance (Chapter 406 of the Laws of Hong Kong) and the Public Health and Municipal Services Ordinance (Chapter 132 of the Laws of Hong Kong), respectively.

As for voluntary recalls, there are guidelines issued by the Government for those who wish to carry out a voluntary recall of certain products, e.g. consumer goods, toys and children’s products.

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

Yes. Criminal liability for defective products in Hong Kong is established by statutory provisions. For example, section 6 of the Consumer Goods Safety Ordinance (Chapter 456 of the Laws of Hong Kong) provides that a person shall not supply, manufacture, or import into Hong Kong consumer goods unless the goods comply with the general safety requirement or the applicable approved standard for those particular consumer goods. Punishment for an offence may be by way of a fine, imprisonment, or both. A person who is found

guilty under the provisions of the Consumer Goods Safety Ordinance is liable for a fine at level 6 (i.e. HK\$100,000) and for imprisonment for one year upon the first conviction, and a fine of HK\$500,000 and imprisonment for two years upon any subsequent conviction.

2 Causation

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

The onus of proving fault/defect and damage lies on the claimant. In a civil case, a party must prove a fact in issue on a “balance of probabilitis”, which means that the claimant’s evidence must prove that it is more probable than not that the fault/defect occurred and damage suffered is due to the fault/defect.

However, it is open to the claimant to invoke the doctrine of *res ipsa loquitur*, which is a doctrine in common law of torts that infers negligence from the nature of the accident/injury when there is no direct evidence of fault/defect. The claimant has to prove: (1) the injury would not have occurred without negligence; (2) the injury is caused by an agency or instrumentality within the exclusive control of the defendant; (3) the injury-causing accident is not due to any voluntary action or contribution on the part of the plaintiff; or (4) the defendant’s non-negligent explanation does not completely explain the plaintiff’s injury. Once the court accepts that this doctrine applies, the onus of proof is shifted to the defendant to rebut the inference of negligence. However, in practice, the application of this doctrine is very narrow.

2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongfully 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?

To claim under the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong), the claimant must prove a causal link between the defect and breach of implied terms. The factual causation “but-for” test is applied. The claimant has to prove that “but for” the defect, he/she would not have sustained the injury or damage.

As for the causation in law, it has to be proved that the injury or damage incurred is not too remote a consequence of the defect.

It is necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury or loss to the claimant. It is insufficient, as it will only be one of the factors that courts use to determine if the defendant’s act materially caused the damage/injury, to show that the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction.

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?

The claimant is required to identify the manufacturer and prove

that it was responsible for the defect. The failure of proving such allegation will result in the claim being dismissed. The concept of “market-share” does not exist in Hong Kong.

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?

Manufacturers and suppliers owe a duty of care to consumers to adequately warn and advise the use of products manufactured and supplied. It is largely a question of fact if adequate warning has been given to an intermediary or a consumer. However, certain laws impose an obligation on the requirement of warning; for example, Section 7 of the Consumer Goods Safety Ordinance (Chapter 456 of the Laws of Hong Kong) gives power to the commissioner to serve a notice to require a person, at his own expense and by his own arrangement, to publish a warning that the consumer goods may be unsafe unless the steps specified in the notice are taken, in the form and manner and on such occasions as may be specified in the notice. Failure to comply is an offence.

There is no principle of “learned intermediary” under Hong Kong law.

3 Defences and Estoppel

3.1 What defences, if any, are available?

Apart from the defences that are available under the usual principles of contract and tort law, a manufacturer or supplier may avoid liability by establishing that: (1) the manufacturer or supplier was not negligent or the damage was one that is foreseeable, and that even if it had taken all reasonable care, the defect would not have been prevented; (2) the claimant was, at all material times, aware of the risks associated with the product and chose to accept those risks (the defence of *volenti non fit injuria*); (3) there was contributory negligence or fault on the part of the claimant; or (4) the causal link was broken by a supervening act, and that act is the sole effective cause of the damage. The manufacturer can also rely on the state of the art defence (see below).

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?

Yes, there is a state of the art/development risk defence. The manufacturer can rely on the defence to establish, on the balance

of probabilities, that it exercised all reasonable care and precautions in light of the state of scientific and technical knowledge at the time of distribution generally, it is for the claimant to prove that fault/defect was discoverable once the manufacturer successfully raises the defence.

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?

Compliance with mandatory standards or requirements with respect to the alleged defect is a viable defence. However, when taking into account that the intention of the legislation is to protect personal safety or property, the court may still be persuaded to judge that a product is defective even if it complies with the national standard.

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?

There is no issue of estoppel preventing a different claimant from bringing an action against a defendant in separate proceedings. However, if a separate court has considered the same issue of fault and/or defect, such judgment would be persuasive and may provide an indication on the chances of success in similar claims, provided they share the similar facts.

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?

Yes, according to Section 3 of the Civil Liability (Contribution) Ordinance (Chapter 377 of the Laws of Hong Kong), the defendant can seek a contribution from another party in respect of any damage that party is held liable to pay to the claimant.

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

Yes. Defendants may allege that the claimant's actions or negligence have caused or contributed towards the damage.

4 Procedure

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

All civil trials in Hong Kong are heard by a judge without a jury.

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)?

The courts in Hong Kong have the power to appoint court experts

under Order 40, Rule 1(1) of the Rules of the High Court (Chapter 4A of the Laws of Hong Kong), upon the application of a party to the action. However, there have been few applications under this order. In practice, it is up to the parties to come forward with their own proposed appointments, and the parties are usually given the opportunity to oppose the appointment of expert candidates or to make recommendations to the court on the experts they wish to appoint, based on the knowledge or experience of the experts.

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?

The sole machinery for dealing with multi-party proceedings in Hong Kong is a rule on representative proceedings, whereby a claimant may bring a representative action on behalf of a group of claimants where those claimants have the same interest in the proceedings. A judgment of order given in representative proceedings will be binding on all persons so represented. However, claims cannot be brought by a representative body (e.g. a consumer association) on behalf of claimants. Parties may also choose to have their cases consolidated or heard together. The court may also order that cases be consolidated and tried at the same time if it appears to the court that the matters have some common question of law or facts, the rights to relief claimed therein arise out of the same transaction or series of transactions, or for some other reasons it is desirable to do so. Nevertheless, all claims even after consolidation remain individual actions in their own right.

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

No, claims cannot be brought by a representative body on behalf of a number of claimants.

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

The time to take a case from commencement of proceedings to judgment varies greatly depending on the nature, size and complexity of the proceedings. However, a relatively straightforward civil litigation action, involving witnesses of fact and expert witnesses, may take approximately one to two years from commencement of proceedings to judgment at first instance.

4.6 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, the court can try preliminary issues that relate to both facts and law.

4.7 What appeal options are available?

Generally, an appeal lies as of right from a decision on a final matter from a Court of First Instance judge to the Court of Appeal. However, no appeal against the following decisions in a civil case can be made: (1) a decision of a judge in the District Court; (2) a decision of a judge of the Court of First Instance in an interlocutory matter; and (3) an

appeal against the decision of a Court of First Instance judge solely on the question of costs, unless leave to appeal has been granted.

An application for leave to appeal should be made to the judge or master of the respective court who gave that decision. If the judge refuses to grant leave, the party may further apply to the Court of Appeal for leave to appeal within 14 days from the date of such refusal. The Court of Appeal may give leave on such terms as to costs, security, etc. as it deems fit. The decision of the Court of Appeal on whether to grant or refuse leave is final and not appealable.

If the party is not satisfied with the decision of the Court of Appeal, he or she may lodge an application for leave to appeal to Court of Final Appeal. The type of cases that can be heard by the Court of Final Appeal for civil matters is appeal at the discretion of the Court of Appeal or the Court of Final Appeal if, in the opinion of either court, the question involved in the appeal is one which, because of its great general or public importance, or otherwise, ought to be submitted to the Court of Final Appeal for its decision.

4.8 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, the court can appoint experts to assist it in considering technical issues, but usually the court prefers parties coming forward with their own proposed expert appointments, and the parties can each appoint their experts. Each expert called by a party is subject to cross-examination by the other parties if the opinions of the experts diverge. Each expert should only address the specific issue of which they are asked to give their expert opinion. The court will not accept evidence provided by the expert of matters in which he/she is not an expert.

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

Under Order 39, rule 1 of the Rules of the High Court (Chapter 4A of the Laws of Hong Kong), the counsel for the claimant can order the Defendant's witness be examined before the Trial by the examiner of the court.

Witness statements and expert reports are generally exchanged prior to trial. Factual expert witnesses may be required to present themselves at the hearing or trial if any parties cross-examine them on their statements or report.

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

The parties can seek discovery of all relevant documents and facts relating to the matters in questions in the action. It is possible to apply for discovery before commencement of proceedings, but usually discovery is not done after the pleadings have closed. Discovery may continue up to trial.

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

Since the Civil Justice Reform came into force on 2 April 2009, under Practice Direction 31, parties are required to go through mediation

in the litigation proceedings right after filing the statement of claim. Parties may also agree to use mediation to resolve a dispute. Similarly, parties may arbitrate a dispute if they agree to do so.

4.12 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?

A claimant can generally issue a claim in the Hong Kong courts unless the jurisdiction is challenged by the defendant. Where a defendant, whether a real person or a legal entity (such as company), is domiciled overseas and has no real presence in Hong Kong, upon application of the claimant, the court may grant leave for a defendant to be served with proceedings. The kind of matters the court can handle is very broad – see Order 11, Rule 1 of the Rules of the High Court (Chapter 4A of the Laws of Hong Kong). There are similar provisions the Rules of the District Court (Chapter 336H of the Laws of Hong Kong). In particular, this includes matters involving breach of a contract made in Hong Kong or a claim for damages in Hong Kong for breach of Hong Kong law and for a claim in tort, where the damage was sustained or resulted from an act committed in Hong Kong.

5 Time Limits

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

Yes, and the time limit depends on the cause of action. A civil action for breach of a commercial contract must be instituted within six years from the date on which the breach of contract happened ([Section 4\(1\)\(a\)](#) of the [Limitation Ordinance, Cap. 347](#) of the Laws of Hong Kong). In respect of a claim which causes personal injuries, the time limit is three years ([Section 27\(4\)](#) of the [Limitation Ordinance](#)). Action for employees' compensation/work-related injuries must be brought within two years from the date of the accident that causes the injury ([Section 14\(1\)](#) of the [Employees' Compensation Ordinance, Cap. 282](#)).

The time limits set out in the [Limitation Ordinance](#) can only be extended in exceptional circumstances, such as where the plaintiff was mentally incapacitated for a certain period or the action is based upon the fraud of the defendant.

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 Limitation Ordinance (Chapter 347 of the Laws of Hong Kong) provides that no action in contract or tort may be brought after the expiration of six years from the date on which the cause of action accrued.

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

The time limits for limitation purposes do not start to run until the claimant has discovered the fraud, concealment or mistake, or should have, with reasonable diligence, discovered it.

6 Remedies

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

Monetary compensation, injunctive and declaratory relief are all available remedies.

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

In an action in contract, damages are intended to place the claimant in the position he or she would have been had the contract been properly performed. This entitles the claimant to compensation for loss that arises as a natural result of breach of contract. In addition, such damages must have been contemplated at the time the contract was formed by the parties to be likely to result from a breach.

To claim under tort, the underlying principle of an award of damages is the same as in the contract law. In tort claims, losses arising from personal injury (including mental injury), death or damage to property other than the product itself are recoverable. As for pure economic loss (financial loss suffered by a claimant that does not flow from any damage to his own person or property), the courts have taken a conservative approach in determining the scope of liability of a wrongdoer and such loss is normally irrecoverable unless it is fair to do so.

Punitive damages, also referred to as exemplary damages, are designed to punish and deter the wrongdoer. Unlike the United States, punitive damages are available only in very limited circumstances. The three key considerations for which punitive damages may be awarded are: (1) oppressive or arbitrary or unconstitutional acts by government servants; (2) the defendant's conduct has been calculated to make a profit for himself which might well exceed compensation payable to claimants; and (3) an express statutory provision. In practice, the Hong Kong courts hardly, if ever, award exemplary damages.

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?

To succeed in a claim, the cause of action and damage must be proved. In circumstances where the product has not yet malfunctioned and caused injury, it is an uphill task to convince the court to award damages. The court may find that the medical monitoring costs are too remote and refuse to make such an award.

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

Punitive damages, also referred to as exemplary damages, are designed to punish and deter the wrongdoer. Unlike the United States, punitive damages are available only in very limited circumstances. The three key considerations for which punitive damages may be awarded are: (1) oppressive or arbitrary or unconstitutional acts by government servants; (2) the defendant's conduct has been calculated to make a profit for himself which might well exceed compensation payable to claimants; and (3) an express statutory provision. In practice, the Hong Kong courts hardly, if ever, award exemplary damages.

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?

No, there is no maximum limit.

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?

Generally, as long as parties are agreeable to settlement, court approval is not necessary. However, for claims by infants, the approval of the court is required and there is a specific procedure governing this.

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?

No such claim by the Government authorities is contemplated under the laws of Hong Kong.

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?

The payment of costs in Hong Kong is a matter at the discretion of the court. The practice is generally in line with the "loser pays rule" under the common law system. That is, an unsuccessful party is liable to pay the successful party's reasonable legal fees and expenses incurred during litigation.

Under the Rules of the District Court (Chapter 336H of the Laws of Hong Kong) or the Rules of the High Court (Chapter 4A of the Laws of Hong Kong), where a sanctioned offer/payment is accepted, that party accepting the sanctioned offer/payment is entitled to costs of action up to the date of serving the notice of acceptance.

However, if a party refuses a sanctioned offer/payment and at trial fails to do better than the sanctioned offer/payment, the court may: (a) disallow all or part of the interest otherwise payable in respect of the period after the latest date on which the sanction offer/payment could have been accepted; (b) order the refusing party to pay the other party's costs, on an indemnity basis, from latest date on which the sanctioned offer/payment could have been accepted; and (c) order interest on those costs at a rate not exceeding 10% above the judgment rate.

In the event of a dispute as to the amount of legal costs, parties may apply for taxation during which a judicial officer reviews the costs accrued by the successful party and assesses the costs to be reimbursed by the unsuccessful party.

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

Yes, legal aid is available to any person in Hong Kong except for proceedings expressly excluded under the Legal Aid Ordinance

(Chapter 91 of the Laws of Hong Kong) (such as defamation proceedings, relator actions, election petitions and proceedings where the only question before the court is the time and method of payment for debt and costs). Legal aid covers civil proceedings in the District Court, High Court, Court of Final Appeal and Lands Tribunal. It also covers costs of representation by a solicitor and counsel (if necessary).

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

Generally legal aid is available to any person in Hong Kong, regardless of whether that person is a resident or non-resident of Hong Kong.

To be eligible for legal aid, the applicant must satisfy the Director of Legal Aid of his or her financial eligibility and the merits of the case. Depending on the amount of damages successfully recovered, an aided person may be required to reimburse all or part of the legal costs incurred or expenses paid by the Legal Aid Department on his or her behalf.

Potential defendants may submit an application to contest the grant of such aid, either to the Director of the Legal Aid at any time or to the court at any time during the proceedings. In such an event, the person receiving legal aid has to be given an opportunity to provide reasons why the certificate should not be revoked, or, as the case may be, discharged.

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

In Hong Kong, contingency or conditional fee arrangements with lawyers are not permissible.

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

For public policy reasons, third party litigation funding is not allowed. However, a fairly recent court case that highlighted two

categories excluding the application of public policy – “common interest category” and “access to justice consideration” – seems to suggest that the court may choose to adopt a more liberal attitude towards the support of litigation by third parties in the future.

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?

The assessment of costs is at the courts' discretion. The court does exercise control over the costs to be incurred by the parties so that it is fair and proportionate to the value of claim. Increasingly, courts are taking the initiative to ensure costs are reasonable and appropriate through pre-trial hearings and other occasions when parties are before the court.

8 Updates

8.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Product Liability Law in your jurisdiction.

In Hong Kong, there is no explicit law governing product liability. There have been no prominent changes as to the relevant statutes in Hong Kong that are relevant to consumer protection.

There have been cases concerning beauty products or administration of beauty products, e.g., In *HKSAR v Chow Heung Wing Stephen* [2018] HKCFI 60, which involved a cytokine-induced killer (“CIK”) blood product being administered to a patient, which caused the death of the patient. Although the case concerns more gross negligence than product liability (para. 49 of the judgment), there is indeed a need for advancement of the regulations on beauty products and the administration of beauty products.

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David Goh mainly handles large, complex and international commercial disputes and product liability. He also advises clients on regulatory matters, compliance and anti-bribery/corruption cases, including the Foreign Corrupt Practices Act and the UK Bribery Act. His experience includes leading or coordinating investigations on behalf of both corporations and regulators, as well as advising or acting in the defence of any prosecutions. In his more recent roles in senior management at various multinational corporations, David developed significant experience in handling corporate and commercial matters, in particular, M&A transactions across the Asia Pacific region.

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Bindu Janardhanan's main area of practice is dispute resolution and arbitration. In her more recent roles, she has focused on the defence and coordination of complex product liability cases, especially for a large German automobile manufacturer. Bindu has also defended clients in commercial and other legal disputes. In addition, Bindu has significant experience in banking, finance and intellectual property matters in Hong Kong and India. She has advised financial institutions and other companies on their documentation in various sectors in Hong Kong and India. She has extensive knowledge of the Indian markets and has built up an excellent network with many Indian and overseas leading law firms, banks and investment houses.



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