

Product liability: Sanctions and recalls in the UAE

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Article one in the series (published in February 2014) summarised the legal framework governing consumer protection and products, and article two (published in March 2014) examined the issues arising from 'fake' goods on the market.

This article will examine the consequences of non-compliance with safety standards, penalties and sanctions, and the current regulatory approach to enforcement.

The Regulators

Consumer protection is regulated by the Ministry of Economy ("MOE"), which has delegated certain functions to the Consumer Protection Department. The safety and quality of products (whether produced in the UAE or imported) is regulated by the Emirates Authority for Standardisation and Metrology ("ESMA"). The MOE and ESMA are assisted at local level in each Emirate by other bodies afforded a coordinating role in ensuring that safety standards are met. In Abu Dhabi, that role is performed by the Abu Dhabi Quality and Conformity Council ("ADQCC"), and in Dubai is performed by the consumer department of the Dubai Municipality.

Sanctions: penalties and recalls - the Law

UAE consumer law prescribes penalties for breach. The primary sanction is a fine of between AED 10,000 and AED 1,000,000 for a wide range of offences, including:

- Displaying, offering, promoting or advertising any goods or services which may inflict damage on the consumer in the course of ordinary usage;
- Labeling the product other than in compliance with legal requirements,
- Failing to provide appropriate warnings to consumers as to the risks associated with the product;
- Failing to comply with approved standard specifications; and
- Artificially creating market conditions which control market price and forces an increase in the price of products.

In circumstances where a product is proven to be defective and could harm a consumer, the product may be recalled from the market. UAE consumer law specifies that in the majority of cases the recall will be led by the supplier, who is under a duty upon discovering the defect to inform the Consumer Protection Department.

The definition of 'supplier' under the Consumer Protection Regulations No. 12 of 2007 is wide and includes "a natural or legal person that provides the service or information or manufactures, distributes, trades, sells, imports or exports the commodity or interferes in the manufacturing or trading thereof".

The definition of "defect" is also wide, and includes faults in the "designing, processing or manufacturing

of any goods, its non-suitability, deformation or damage before, during or as a result of use, or due to the non-conformity or non-compliance sufficiently with the Approved Standards Specifications, the warranty, or specifications declared or to be declared by the provider; or any acknowledgement or advertisement relating to or posted on the goods”.

- The supplier must recall a defective product from the market in the following circumstances:
- The discovery of a defect in the product;
- The existence of reports or studies proving the existence of a defect in the product;
- The receipt of complaints sent by consumers regarding the existence of a defect in the product;
- The issue of a recall notice from the regulator;
- The existence of recovery operations of the same product abroad; and
- The proof of the noncompliance of the product with adopted standards.
- The intent behind the law is to require a recall in a situation where there is a fault that affects the safety of those using the product, and where it is reasonably likely to affect all or a material proportion of the products available on the market.

Where the defect in a product is such that the health and safety of consumers is not a material concern, it would be appropriate and reasonable to consider the nature and extent of the defect. A defect which would not affect the safety or performance of a product and which is unnoticeable may not justify a recall procedure. Each case should be considered on its facts.

In circumstances where a defect is proven to be isolated, and can be reasonably expected to be a result of chance, it would arguably be unreasonable for the entire product line to be recalled even though this type of fault would be classified as a “defect”.

The regulator may institute recall procedures immediately where the safety of the consumer is compromised. However, such powers will only be exercised in circumstances where the supplier has failed (or refused) to recall the product themselves.

Breach of compliance: law - v - practice

UAE consumer law specifies that it is the MOE which has the power to recall a product. In practice, it is the local coordinating bodies, such as ADQCC or Dubai Municipality (with assistance from ESMA) which investigates compliance breaches and coordinates between suppliers and the MOH to organise a product recall.

ADQCC and Dubai Municipality have the power to take samples of products and arrange for them to be tested against the applicable standards set by ESMA. When a breach is discovered, the supplier is notified and given an opportunity to undertake their own investigations, and where agreed, may obtain their own test report. Depending on the outcome of further testing, additional reports may be commissioned by the regulator and a decision is then made as to whether the defect merits a recall. If that is the case, as neither ADQCC nor Dubai Municipality have the necessary enforcement powers, the MOE is asked to authorise the recall based upon the available evidence. The MOE usually accepts the recommendations of ADQCC or Dubai Municipality that a product should be recalled, unless the supplier successfully negotiates an alternative solution.

The incidence of product recalls in the UAE is on the increase. As ESMA continues to set applicable standards for a wider range of products, the opportunity for investigation and testing increases, and once a prima facie case of non-compliance is established, the regulators are under a duty to act in the interests of consumer safety. Both Dubai Municipality and ADQCC have been active in recalling products from the market, and of course, once one Emirate has ordered a recall, it is almost inevitable that the supplier will be required to recall the product in neighboring Emirates. ADQCC have recalled thousands of products since its establishment in 2009, primarily following testing which proved that the product did not comply with standards set by ESMA. Recently recalled items include an array of electrical appliances (where there are obvious safety concerns), including juicers, blenders, rice cookers and deep-fat fryers.

Advice for suppliers

A supplier should always cooperate with a regulatory investigation. ADQCC, for example, has power to fine a supplier a sum of at least AED 7,000 for failure to cooperate, and can request that the court imposes a sentence of imprisonment of not less than three months. The regulatory investigation stage is the period in which the supplier has an opportunity to make its own case, and defend any assertion that their product is defective and merits a recall. Negotiations entered into at this stage must be handled carefully if the supplier is to avoid a significant penalty or any damage to brand caused by a recall. A supplier under investigation should instruct their lawyer at the earliest opportunity for advice as to how they should proceed.

The Regulatory Practice Group is experienced in advising on product compliance and negotiating with regulators with regard to breach of compliance. For any enquiries, please contact Andrea Tithecott, Senior Associate, and lead regulatory lawyer.