

Developments in product Liability law: 2014 and Beyond

Andrea Tithecott - Partner, Head of Regulatory and Healthcare - Commercial / Regulatory / Legislative Drafting / Sustainability focused Corporate Governance / Sustainable Finance / Sustainable Business / Sustainable Sourcing / Climate Change & Energy Transition
a.tithecott@tamimi.com - Abu Dhabi

February 2014

Accordingly, it is important to understand and examine the legal framework which governs product liability within the region.

This is the first in a series of 3 articles which will consider current developments in the area of consumer protection and liability for manufacturers, sellers and resellers in the UAE. In this article, we focus on applicable laws and quality standards, product labeling and what steps duty holders should take to comply.

In 2006, specific protective laws were introduced (see further below) and the Federal Consumer Protection Department ("CPD") was established. This gave rise to promoted awareness of consumer protection issues and provided adversely affected consumers with greater access to support and remedies. Examples include access to special purpose consumer courts, the introduction of a consumer rights website (www.consumerrights.ae) by the Dubai Department of Economic Development, and the establishment the Abu Dhabi Quality and Conformity Council.

Consumer Protection Law

Federal Law No. (24) of 2006 regarding Consumer Protection, lays the groundwork for consumer protection in the UAE. Cabinet Resolution No. (12) of 2007, expands upon the consumer law provisions and further describes the obligations placed upon suppliers of goods (collectively, "Law" or "Laws").

The Law was originally developed to protect the interests of consumers and essentially imposes the following obligations relevant to:

- a supplier's liability to consumers as a result of defects in the nature of the products it sells; and
- a supplier's obligations in the context of the sale of goods and services which covers issues including, but not limited to, labeling requirements, warranties and after sales service obligations.

Product Quality and Standards

The Laws were originally developed to protect the consumer by providing a framework of remedies for defective goods, generally by way of ensuring honouring warranties and damages led remedies. However, the Laws do not adequately elaborate on the matter of quality standards and safety. Looking at developments in other jurisdictions, the European Union followed the establishment of consumer protection laws with a suite of legislation aimed at product safety. For example, the General Product Safety Directive (2001/95/EC) which set a minimum safety threshold for products, introduced the concept of harmonised standards and provided a legal framework for product recalls (and other remedies).

In the UAE, the supplier obligations set out in articles 10-34 of Cabinet Resolution 12 of 2007 only partly addresses such matters and could usefully be extended and augmented to provide a more solid foundation of duties for the improvement of quality standards. Until this is addressed, duty holders should routinely

monitor developments, including the issue of any announcements by the CPD and other authorities to ensure that they continuously assess product liability risks and remain compliant.

The safety and quality of products (whether produced in the UAE or imported) is regulated by the Emirates Authority for Standardisation and Metrology (“ESMA”), which regulates all matters relating to standards, measurements, quality, and standardisation of products. Certain ESMA standards are mandatory. Where this is so, the relevant standard will be found in a cabinet resolution. For example, Cabinet Resolution No. (31) of 2011, concerning the Adoption of Obligatory Standards in the UAE, imposes mandatory standards on many types of product. Products such as electrical and gas appliances and food and chemical products are often described as ‘regulated’.

In respect of non-regulated products, ESMA may issue standard specifications, for example, specifying standards of quality for baby feeding bottles, or for permissible types of plastic packaging, particularly the packaging of food products.

Notwithstanding the wide remit of ESMA, certain types of product are regulated by other authorities. Medical products, or products which are advertised as being good for your ‘health’ are regulated by the Ministry of Health and require specific ‘approval’ for use in the UAE.

With a view to improving quality standards, the Abu Dhabi Quality and Conformity Council was established to lead, facilitate and develop an efficient, effective and globally integrated quality infrastructure in Abu Dhabi that promotes a culture of quality, enhances industrial development and competitiveness as well as ensures consumer safety.

Origin, and the importance of clear labeling

Consumers are legally entitled to be provided with sufficient information about a product to be able to make informed purchasing decisions. In addition to the quality standards described above, information must be provided as to the origin of the product, contents, and any risks associated with it.

The UAE is a signatory to the Kyoto Convention on the Harmonisation and Standardisation of Customs Procedures (“Convention”), which aims to ensure that customs procedures are consistent with the practices of international trade. Accordingly, the UAE has adopted the requirement that imported products carry a certificate of origin (“Certificate of Origin”). The Convention prescribes that where two or more countries have participated in the production of goods, the origin of the goods should be determined according to the ‘substantial transformation criterion’, and generally requires that at least 40% of the product has to be made or assembled in the country of export to be able to use such phrases as ‘Made in UAE’ or ‘Assembled in KSA’. Customs laws are subject to variation in respect of products entering a free zone.

In addition to the specific labeling requirements laid down by Article 28 of Cabinet Resolution 12 of 2007, additional regulations govern the labeling of products, for example, Executive Resolution No. (4) of 1979 concerning fraud and deception in commercial transactions (“Commercial Transactions Law”). Together, these laws require that the product label contains the following minimum information:

- information regarding the type and nature of the goods and their ingredients, product name, date of production or packaging, net weight, country of manufacture and country of export (if any) operating instructions and expiry date;
- an insert, detailing the ingredients, specifications, and directions for use, risks and other information in Arabic, together with an additional conspicuous warning regarding any particular risks associated with the product; and
- that any commercial statement relevant to the product must be accurate, should not be misleading, or confuse the product with that of a competitor or another product which is protected by a trade mark.

Special product types require that additional information is placed on the label or insert. Such examples

are beyond the scope of this article, but typically apply to foods, chemicals, medical products and electrical goods. Clearly, where the product already complies with international or recognised safety or quality accreditations, this fact could usefully be stated on the label.

Products and waste: duties on producers and suppliers

Duty holders who supply products into mature international markets, such as the European Union, are accustomed to complying with obligations which facilitate the safe disposal of their products at the end of life stage. For example, the Waste Electrical and Electronic Equipment Directive (2002/96/EC) (“WEEE”) places onerous duties on companies supplying products into Member States to ensure that consumers are supplied with information and the means with which to dispose of their product (including batteries) in an environmentally safe way.

In the UAE, the importance of producers and suppliers taking responsibility for products from cradle to grave is a concept which has only more recently taken root. There are currently no equivalent WEEE regulations in the UAE governing the safe disposal of used electrical goods. Given that the UAE is now doing so much more to ensure that products meet internationally recognised safety and quality standards, it is likely that the regulatory framework will be extended in the near future to regulate this area, consistent with other jurisdictions. We suggest that producers and suppliers of electrical goods consider what additional measures would need to be taken, specific to the UAE market, to assist consumers in the disposal of used products in a safe way, and to have draft contingency plans in place in order to be able to react quickly to any regulatory change.

Since March 2013 manufacturers and suppliers of certain types of plastic products have been required to register their products in accordance with the Emirates Conformity Assessment Scheme specification standards. On 1 January 2014, the marketing, trading or circulation of non-biodegradable plastic products was prohibited. As the registration and prohibition requirements apply to a wide class of ‘suppliers’, those who import or distribute pre-packed products will also be caught by the new rules and should take steps to check what type of packaging is being used and satisfy themselves that they are compliant.

The food industry (including transport and logistics) are fixed with obligations to ensure that perishable food products are stored in accordance with public health regulations, and products which are rotten or past their sell-by date are removed from shelves and destroyed. A new draft Federal food law, expected to be brought into force in Q1 of 2014, is likely to reinforce and extend upon existing obligations. Duty holders in the food and food packaging industry are currently in a vulnerable position, as the draft terms of the new duties are currently unavailable. Food producers and distributors must be equipped to react quickly to the new requirements, as the food control authorities and the CPD are empowered to impose sanctions and penalties upon non-compliance with food storage arrangements and the sale of products which are inappropriately labeled or past their sell-by date.

In our next edition, we will examine the consequences of non-compliant products, penalties and sanctions, together with the particular issues arising from the flood of fake goods into the UAE market place.