



Product liability: recalls and business impact

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A number of well-known companies have recently recalled their products to fix problems or defects. Whenever a recall occurs, business suffers, both from the cost of the recall and damage to the company's reputation.



To successfully navigate these pitfalls, companies should be aware of their legal rights and obligations. Thailand's main laws governing recalls are the Consumer Protection Act, the Consumer Case Procedure Act, and the Product Liability Act (officially known as the Liability for Damages Arising from Unsafe Products Act).

Recalls can be broadly grouped into two categories: voluntary and compulsory. Voluntary recalls involve a seller or manufacturer willingly taking products back. Compulsory recalls involve government entities forcing the seller or manufacturer to recall a product.

Voluntary recalls: If a manufacturer or seller finds that its products have a problem or defect, it may initiate a recall to resolve the issue. It can issue a general announcement to the public and customers advising of the recall, or issue a letter directly to customers asking them to bring the product in to be fixed.

If the defect is minor, and not too many products were sold, the seller can usually ask its customers to bring the product to be fixed during a stated period. The manufacturer or seller will absorb the repair costs if the defect resulted from a production or design flaw. In some circumstances, the product may have deteriorated faster than the warranty period because of customer use. In this case, customers might be asked to pay some of the repair costs, such as labour.

Whether to voluntarily recall products also depends on company policies and other factors such as market conditions, budget, the image of the product and the potential business impact. In general, a voluntary recall shows good faith and paints the seller in a more positive light than those who are forced to recall goods.

Compulsory recalls: Under the Consumer Protection Act, Consumer Case Procedure Act and Product Liability Act, if consumers find the products they have purchased are unsafe, they can lodge a complaint with the Consumer Protection Bureau (CPB). They can also file a court case. A potentially liable party can be any individual or entity that manufactures (or authorises the manufacturing of), assembles, imports (including any seller of goods where the manufacturer, hirer or importer cannot be identified); uses the name, trade name, trademark or statements; or acts in any manner that can cause them to be seen as a manufacturer, hirer or importer; and who sold goods after Feb 20, 2009 (the effective date of the Product Liability Act).

The Product Liability Act defines a "product" as any kind of tangible good that has been manufactured or imported for sale, including agricultural products and electricity, but excluding those ruled out by the ministerial regulations. Real estate and services are excluded. Real estate buyers are protected by the Civil and Commercial Code or the Consumer Protection Act.

The Act defines "unsafe products" as any product that actually causes or may cause damage or injury due to a manufacturing or design defect, lack of clear warning, instruction or other information about usage and/or maintenance or preservation.

Consequently, if any unsafe product causes damage or injury, regardless of whether the damage was caused intentionally or negligently, every potentially liable party will be jointly liable for the damages sustained by the consumer, with few exceptions.

Under the law, plaintiffs only need to prove that they were damaged or injured by the product, and that they had used and maintained it properly. The plaintiff does not need to prove which potentially liable party caused the damage.

If a consumer lodges a complaint to the CPB, it will investigate and give both parties the chance to present evidence. If the alleged defect is related to a technical problem, it will appoint an expert to consider the evidence and conduct tests. The manufacturer or seller must pay for these tests.

If, after an investigation, the CPB finds the product is unsafe, it will order the manufacturer or seller to stop selling the product within a specific time until they can prove that the product is not unsafe. The CPB has a policy to encourage parties to negotiate and settle if it considers the problem minor. It may also state some additional conditions to the manufacturer or seller, such as proving that the minor defect is not dangerous to consumers, etc.

If a consumer party files a lawsuit, the court fees are waived, and the court can award damages that are not restricted to those stated in the Civil and Commercial Code. The court is entitled to consider other forms of compensation that are unusual in Thai law, such as damages for mental pain and suffering.

In addition, the courts can order business operators to recall, destroy or cease selling any unsafe product if they fail to proceed with requirements under the law. It may also impose conditions such as a specific time period, or a specific product model to recall.

Given the potentially huge negative business impact associated with recalls, business operators should ensure that they have in place robust quality-control measures for their production processes and products.

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