



LEGAL UPDATE

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Impact on Companies of the PRC Tort Liability Law

The PRC Tort Liability Law (the “Tort Law”) finally came into effect on 1st July 2010, following several years of debate. It is considered to have a significant role in developing the legal framework for the protection of civil rights in China and is designed to consolidate the existing rules and regulations.

Areas covered by the Tort Law include liability for environmental pollution, collapsed buildings, defective products, harm caused during “performance of work duties” as well as the requirements and rules governing causation and liability. Those held to be liable under the law, may be required to, inter alia, compensate their victim for damage incurred or restore them to their pre-injury position, if possible stop the infringement of another’s rights or take steps to remove the danger, eliminate negative effects of their infringing act or make formal apologies to the victim concerned.

This update will highlight certain areas from the Tort Law which are likely to impact on companies doing business in China.

Protection of Privacy:-

The Tort Law details, in Article 2, a list of civil rights and interests which the law aims to protect, and introduces into PRC law for the first time, the principle of the right to privacy. In the event of a person infringing another person’s right to privacy, they will be liable in tort under the Tort Law. The term “privacy” is however not defined and companies are advised to take precautions to protect any personal or private data which they receive during the course of their business, to avoid any potential claims.

Article 36 refers to internet infringements and places joint and several liability on “web service providers” (interpreted in conjunction with the context, this term shall largely refer to internet content providers, i.e. ICPs only, as opposed to also including internet service providers, ISPs, who provide public internet access) who either fail, after being notified of a tort being committed via the

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websites operated by them, to take timely and necessary steps to block or delete the relevant content or links, or otherwise stop the tort from continuing, or who are aware that their websites are being used to commit a tort in the first place but fail to take necessary steps to stop it. It is likely that tort claims under this Article will include breach of privacy if a website is used to leak or post people's personal information and the website operator fails to remove such posts within a reasonable period of time after being asked.

Employer's Liability:-

Where damage is caused as a consequence of, or due to the performance of an employee's tasks, Article 34 states that the employer shall be liable. If the employee is under a secondment arrangement at the time of the damage, the employer to whom the employee has been seconded shall be held to undertake primary liability.

Defective Products:-

The PRC General Principles for the Civil Law and the PRC Product Quality Law previously addressed product liability, and the Tort Law seeks to reaffirm and summarize some of those existing provisions. However, in addition, the Tort Law introduces two new rules:-

1. Article 46 of the Tort Law states that, in the event that a product is found to be defective, after it has been put into circulation, the manufacturers and sellers are obliged to take remedial action such as issuing warnings or instructing a recall. Failure to do so will expose the manufacturer and seller to liability for any resulting damage. Rules regulating or providing guidance for product recall have yet to be formally promulgated.
2. For the first time in Chinese law, the term "punitive damages" is used. Article 47 of the Tort Law states that if products are produced and sold with known defects resulting in death or serious injury to health, the victim has the right to claim punitive damages. Disappointingly, the Tort Law fails to

provide details on how the punitive damages shall be calculated or to give indications of the likely level to be imposed and further guidance, is therefore expected. Companies are advised to monitor developments in this regard.

Environmental Pollution:-

Under Article 66 of the Tort Law, the burden of proof falls on the alleged polluter to show that it is not liable under the law for any harm caused. It should be noted that companies who fully comply with the relevant environmental laws and regulations could still be exposed to liability if a claimant suffers damage due to the company's emissions.

Article 68 of the Tort Law further provides that where a third party is also liable for damages caused, the victim may claim compensation from either the polluter or the third party and in such an event, where the polluter pays the compensation, it will have a right of recourse against the third party.

Damage Caused by Collapsing Buildings:-

Article 86 of the Tort Law provides that where a building or other structure collapses and causes damage, the owner and the construction company will be jointly and severally liable. Where third parties are also found to be liable, the owner and the construction company will have a right of recourse against them and this could therefore impact upon site managers, safety inspectors or other construction personnel involved in the build.

Conclusion:-

Whilst the Tort Law can be perceived to be taking great steps towards the recognition and protection of civil rights, in terms of the introduction of both the principle of the right to privacy and punitive damages, much of the law merely consolidates the existing statutory rules. In addition, and as is common with PRC regulations, much of the law is vague and will require supporting measures to be issued to provide further guidance of how the law will be implemented and interpreted by the courts.

This publication is intended to keep our clients and friends apprised of industry, regulatory and legislative changes that may have an impact on the way business is conducted and operated in China. It is for general information only, and is not a substitute for legal consultation.