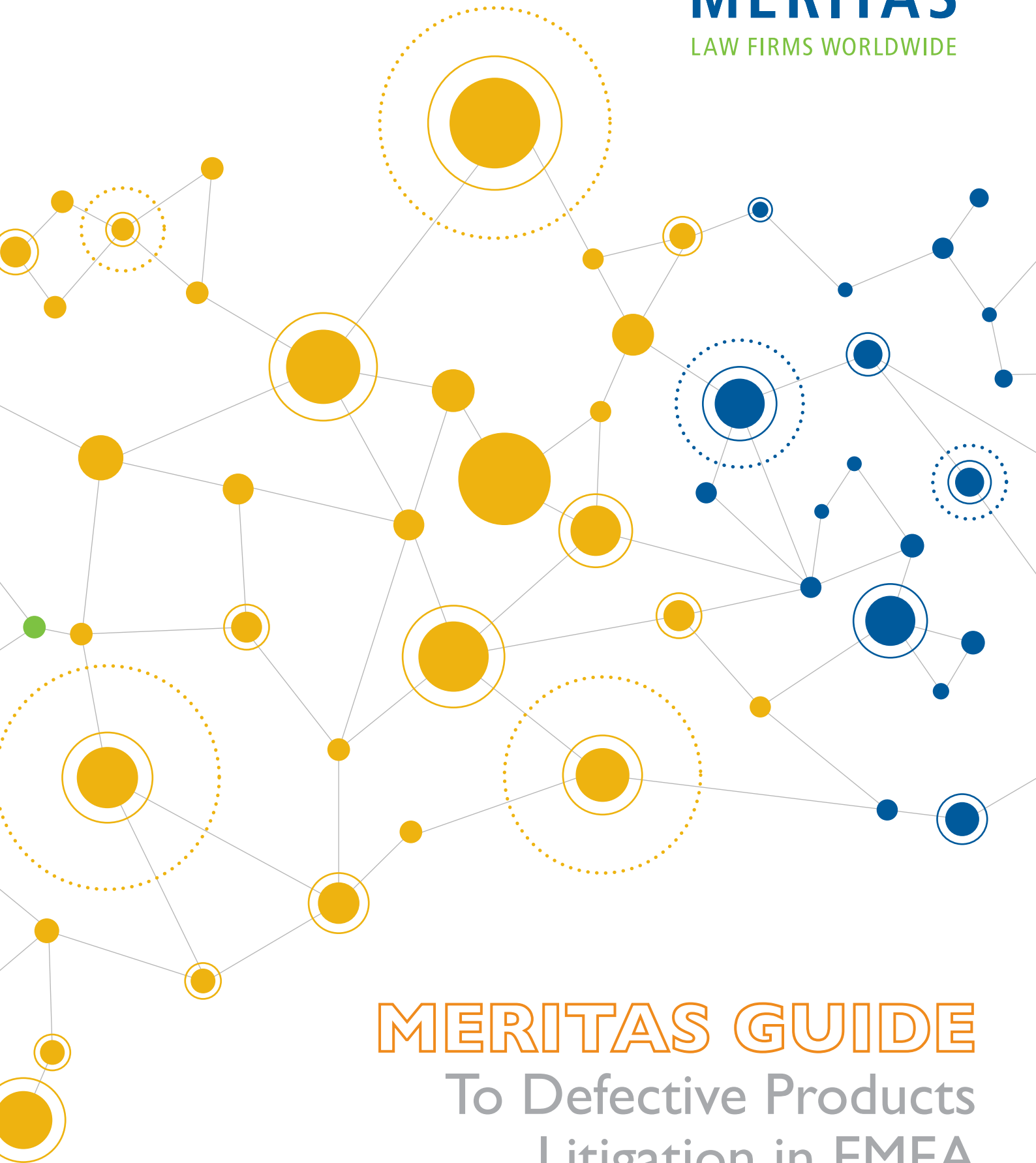




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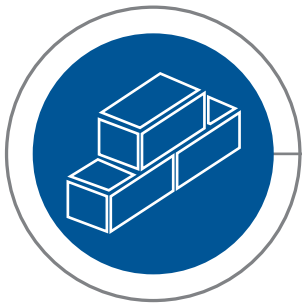
# MERITAS GUIDE

To Defective Products  
Litigation in EMEA

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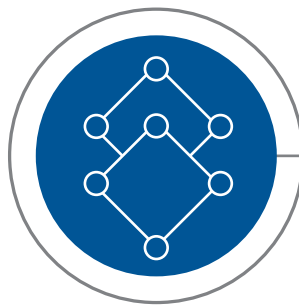
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# INTRODUCTION

## Key Issues



What claims may be brought for liability for defective products?



Who is liable to compensate a claimant for a claim?

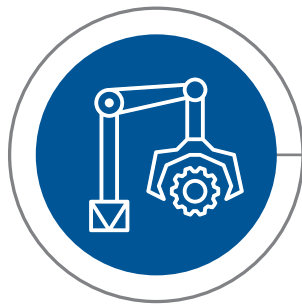
If you manufacture, produce, distribute or sell products **you are responsible** for ensuring they are safe and free from defects that may cause damage or injury. Failure to meet your responsibilities, resulting in damage, injury or death caused by a defect in your product, could have serious consequences including heavy fines and imprisonment, not to mention the loss of business revenue.

**Understanding the laws and regulations** that concern defective products and the liabilities that may result is therefore vital for any company doing business across Europe, Middle East and Africa.

The trend in many countries has been to **strengthen consumers' levels of protection** in respect of defective products, particularly within the EU.



Is there a difference if you are a consumer or professional buyer of the product?



Can a manufacturer of a defective product limit their liability?

Whilst a consumer may recover damages for losses caused by negligent acts or omissions, there are **important differences** between jurisdictions as to how principles of fault liability are applied. For example, in civil law jurisdictions, the burden of proof is often reversed once a defect and damage is proved and a defendant must prove that it was not negligent. In contrast, in common law jurisdictions, the burden generally rests on the claimant to prove all aspects of the claim.

The following Meritas guide asks these are other **key questions** related to defective products litigation and provides answers as they relate to **30 countries across EMEA**.

Please note: this guide is for general information purposes only and is not intended to provide comprehensive legal advice. For more information, or for detailed legal advice, please contact any of the lawyers listed at the end of each chapter.

The information contained in this guide is accurate as at 1 August 2018. Any legal, regulatory or tax changes made after this date are not included.



# EGYPT



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**1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?**

Consumers may bring claims for liability for defective products and tortious liability in Egypt under Commercial Code No. 17 of 1999 (“Commercial Code”), Civil Code No. 131 of 1948 (“Civil Code”) and the Consumers’ Protection Law No. 67 of 2006 (“CPL”). The Commercial Code recognise the notion of product liability of both manufacturers and sellers/ distributors. Any person suffering from direct material or physical damage resulting from a defective product, has the right to claim damages by filing a product liability claim against the manufacturer, distributor or both severally.

The manufacturer and/or seller of a defective product is liable in tort if a defective product causes any personal damage, injury or death. The manufacturer and/or seller shall be liable for damages and faults causing harm to other(s), and shall be responsible for any committed torts.

**2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?**

The manufacturer, seller, importer and/or distributor of a commodity may be held accountable if a consumer incurs bodily or physical harm caused by a faulty product. The law grants consumers the right to file claims against any of the parties separately or jointly. However, this does not necessitate the liability of all parties if one party is found to be liable.

**3. Are there differences if the buyer is a consumer or a professional buyer?**

Egyptian law does not provide any differentiations between consumers and professional buyers; professional buyers are not defined in Egyptian law. As such, both consumers and professional buyers are granted the same rights with regards to claims arising out of harm caused by faulty products.

**4. Can the seller or other potentially liable party exclude or limit its liability?**

The law promulgates that any provision in a contract, memorandum or any document concluded with a consumer cannot indemnify a seller or any other potentially liable party from penalties they may face under the law if a consumer incurs bodily or physical harm. Further, the Commercial Code explicitly provides that the manufacturer and the distributor of a product cannot limit or exclude their liability. The Egyptian Commercial Code defines the term “Manufacturer” as the producer of the product, while the term “Distributor” is defined as the importer of the product, seller, trader, and the retailer in case he is or should be aware of any defects at the time of selling the product.

**5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?**

Laws regarding consumer protection apply to products manufactured inside and outside of Egypt. The law states that in cases where the business centre of a manufacturer or distributor is based outside of Egypt, such manufacturers and distributors may be sued before the competent Egyptian courts with jurisdiction and in the circuit(s) in which a branch, factory, agency or office thereof is located.

**6. What are a manufacturer’s and a retailer’s liabilities for omitted or delayed recall campaigns?**

Failure by manufacturers and distributors to notify the Egyptian Consumer’s Protection Agency (CPA) of a defective product will lead to fine of at least EGP 5000, and not exceeding EGP 100,000. The value of said fine shall be multiplied by the amount of times it is repeated.

**7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?**

The CPA investigates complaints that are submitted by consumers or any consumer’s protection organisations regarding an allegedly defected product. Such investigations occur in a manner set out by the law. If the CPA finds that the product is defective, the manufacturer or distributor is informed and is demanded to remedy the situation. If the manufacturer or distributor fails to remedy the situation, litigation takes place whereby normal procedures and rules of evidence apply.

**8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?**

Upon concluding an investigation that exposes that a product is defective, the CPA’s Board of Directors (the “Board”) informs the manufacturer or distributor of the product whom is then demanded to immediately – or within a time frame set by the Board – remedy the situation. The manufacturer



or distributor is informed by virtue of registered mail with acknowledgement of receipt sent by the CPA's Chief Executive Officer on behalf of the Board.

If the CPA were to find that the defects in such products may cause bodily or physical harm to consumers, a decree is issued suspending the distribution or manufacture of such product or confiscating such product until the situation is remedied or until a court order is issued stating otherwise.

**9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?**

Generally, the consumer of a defective product is remedied through the replacement of the product, free repairing of the product or repayment of the purchase price without any additional expenses to be paid by the consumer.

**10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?**

Costs of litigation are calculated upon the conclusion of the claim and are incurred by the party against which the judgment is rendered.

**11. Who has the burden to prove that a product is defective? Is it always the buyer?**

No. In cases where a complaint is filed alleging that a product is defective, the CPA conducts an investigation in order to conclude whether or not the product is, in fact, defective.

**12. Is the state of the art defence available?**

State of the art defence is not available under Egyptian law. However, manufacturers or distributors are given a period during which they must recall defective products or repair them if they had not known that they were defective.

**13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?**

The statute of limitations for claiming that a product is faulty is three years from the date of discovering such fault or experiencing harm. There is a further statute of limitations of 15 years from the date of purchase of the product after which no claims may be filed.

**14. What are the rules for bringing a claim in a class/collective action?**

The relevant laws do not set out separate procedures to be undertaken in cases of class or collective action.

**15. What is the average duration of defective products litigation?**

The average duration of defective products litigation is three to five years depending on the complexity of the claim. However, products' distribution and/or manufacture in Egypt is suspended until proof that the product is not defective is provided.