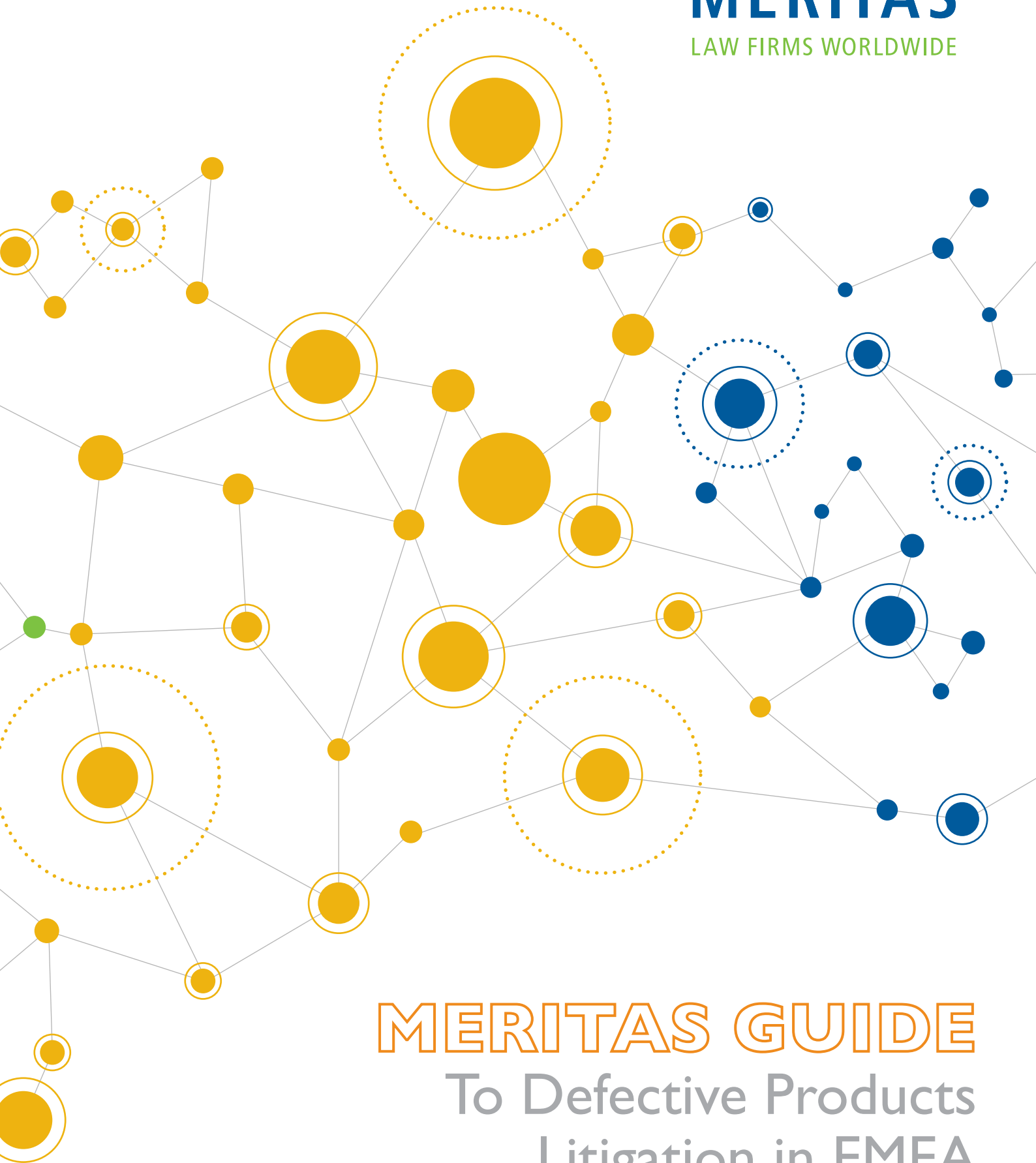




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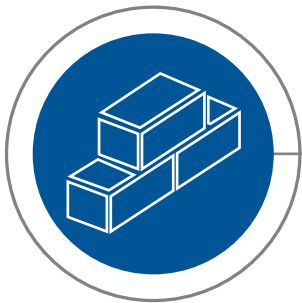
MERITAS GUIDE

To Defective Products
Litigation in EMEA

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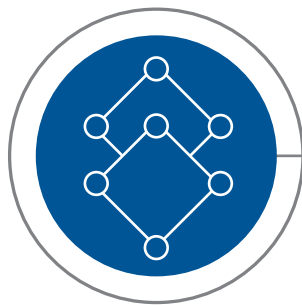
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INTRODUCTION

Key Issues



What claims may be brought for liability for defective products?

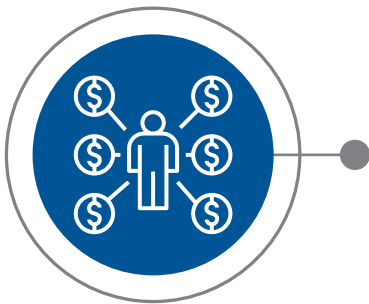


Who is liable to compensate a claimant for a claim?

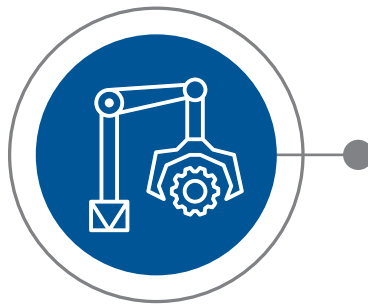
If you manufacture, produce, distribute or sell products **you are responsible** for ensuring they are safe and free from defects that may cause damage or injury. Failure to meet your responsibilities, resulting in damage, injury or death caused by a defect in your product, could have serious consequences 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.



TUNISIA



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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?

It is a strict liability.

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

According to article 10 law n°92-117 dated on December 7th, 1992, the final supplier is responsible for the damage caused by the product not offering the safety and the health measures legally required for the consumer; unless he gives the proof of his non-responsibility for the caused damage. It is the same for an imported product, when the identity of the importer is not indicated, even if the name of the producer is known.

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

No, there is no difference.

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

The principle is that in every case, the responsibility of the supplier, cannot be excluded or limited by a contractual clause especially in case that the defect product is not offering the safety and the health measures.

Nevertheless, the Contract and Obligations Code provides that it is possible to exclude the seller's liability if he proves that the purchaser is aware about the default and accepted it when he received the products.

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

Imported products are subjected to a technical control before importation according to law dated on March 7th, 1994.

Nevertheless, and as indicated previously (point 2 above), the importer is responsible for the damage if he is known but in case the identity of the importer is not indicated, the final supplier will be liable even if the name of the producer is known.

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

A retailer who omitted or delayed a recall campaign will be liable either on civil or penal grounds.

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?

There are no specific procedures or rules of evidences for defective products.

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

The action may be introduced directly by the buyer. It may be a penal and/ or a civil action. There is no obligation to send a prior warning letter but it's advised to proceed at first with a warning letter in order to be able after to prove the sellers bad faith.

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)?

According to article 18 law n°92-117 dated on December 7th, 1992, in cases of a defective product, the seller should, according to the buyer's choice, proceed with the replacement of the product, its reparation or the repayment of the purchase price without prejudice to the damages' repair.

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

The costs of defective products litigation depends upon the case in question.

The legal costs and the experts' fees, if any, shall always be borne by the applicant.

Nevertheless, in the event that the court rules in favor of the plaintiff, the latter has the right to request compensation for the costs borne by him from the losing party.

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

Generally it's always the buyer.

12. Is the state of the art defence available?

N/A

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

The claimant must notify defects within 7 days at the latest except hidden defect.

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

In order to bring a claim in a collective action, the claimant may involve the public authorities. It's generally the Trade Ministry or the public health ministry.

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

It takes approximately about 12-18 months.