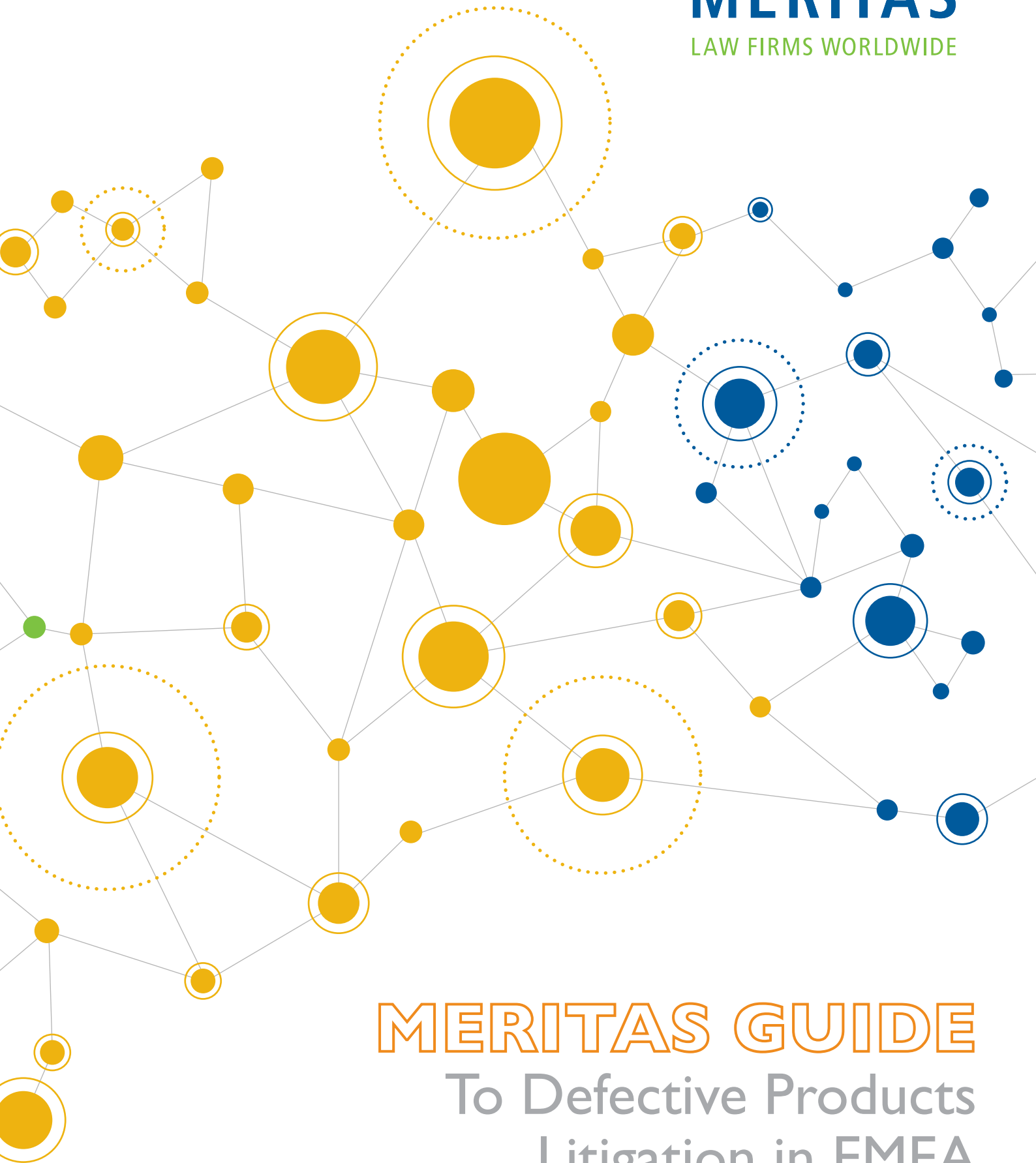




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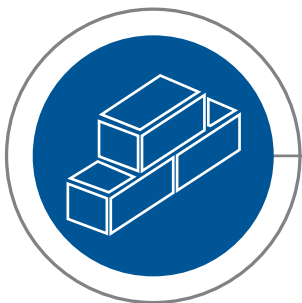
MERITAS GUIDE

To Defective Products Litigation in EMEA

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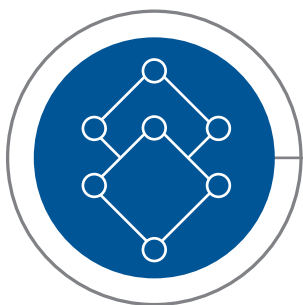
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INTRODUCTION

Key Issues



What claims may be brought for liability for defective products?



Who is liable to compensate a claimant for a claim?

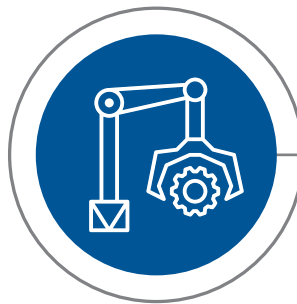
If you manufacture, produce, distribute or sell products **you are responsible** for ensuring they are safe and free from defects that may cause damage or injury. Failure to meet your responsibilities, resulting in damage, injury or death caused by a defect in your product, could have serious consequences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



CYPRUS



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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?

Defective product claims may be brought in contract, the tort of negligence and/or under the Defective Products (Civil Liability) Act of 1995 (“**the Act**”), which implements the EU Directive on the liability of defective products (85/374/EEC). The Act provides a strict liability claim to the person who has suffered damage due to the defective product, without affecting any contractual right that the said person may have or any right arising from any rule of law. Claims in contract and negligence are frequently found in combination with a claim under the Act.

Producers, manufacturers and suppliers may also face criminal liability for defective products, under the General Product Safety Act of 2004 which implements the EU General Product Directive (2001/95/EEC).

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

Under the Act, the producer, the importer into Cyprus (provided he imported the goods in the course of business), and the supplier (provided he failed to disclose the manufacturer's identity upon request), may be held potentially liable. It is noted that the supplier's and the importer's liability may be held to be the same as the producer's liability.

In respect of a contract claim, this can only be brought by one party to a contract against another party.

A claim in negligence can be brought against a party who owes a duty of care to another party due to the proximity of their relationship. When the person that owes the duty falls below the reasonable standard of care required by him/her and breach of that duty can be established, a claim in negligence can be brought provided that the injured party has suffered damage because of that breach.

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

Although the Act does not provide a clear distinction between the consumer and the professional buyer, in order to have a claim under the Act, a person must have suffered damage - death, personal injury, loss or damage to any property (including any immovable property) which constituted at the time in question, property that was intended for private use or consumption.

Claimants do not have to be consumers to bring a claim for damage to property in contract or negligence.

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

According to the Act, no person's liability can be limited even if the damage is caused partly because of the defective product and partly because the act or omission of a third party. It must be noted that this does not affect the liable person's right of contribution against the third party. The third party's liability is determined by the law of torts and the general principles of contributory negligence.

A defendant's liability may be limited or eliminated where the damage is caused partly by the defective product and partly by the claimant's fault or any other person's fault who had acted upon the claimant's instructions.

Lastly, the defendant's liability cannot be limited and/or eliminated by any contractual clause and any such clause will not be legally enforceable.

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

In order to define the consumer's rights it is more important to consider where the contract for the sale of the product or where the injury/death by the defective product took place.

The Courts of Cyprus have jurisdiction (and therefore the rights of the consumer are determined by Cyprus law) in circumstances where the cause of action took place wholly or partly in the Republic of Cyprus, or in circumstances where the defendant is domiciled or carries out his/her activities within the Republic of Cyprus.

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

According to the General Product Safety Act of 2004 a person who is found to be liable for his/her failure to recall a campaign is subject to imprisonment for a period of two years maximum or is subject to a fine not exceeding EUR 8,543.01 or both.



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?

General litigation and evidence rules 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?

There are no requirements for pre-action conduct and neither does there exist any pre-action protocol that the Cypriot Courts would expect the parties to follow. The process starts with the commencement and service of proceedings. Therefore, litigation is the most common method of dispute resolution in Cyprus.

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)?

The buyer has the right to demand for the product to be repaired and/or replaced without paying any further costs and where this is not possible, the buyer may ask for the price of the product to be reduced and/or for the full amount of the money paid to be returned.

In a contractual claim, the remedies available depend on the classification of the term breached. Remedies include the right to repudiate the contract and/or claim damages.

In a negligence claim, damages are available to compensate a claimant for losses which were a direct and reasonably foreseeable consequence of the negligent act.

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 depend on the particular case in question. The general rule is that the winning party is awarded their costs payable by the losing party. The Court will control recoverable costs, including the fees of expert witnesses.

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

The burden of proof is on the claimant to establish that the product was defective and that it caused the loss. The standard of proof is the same for all civil claims and it imposes that the claimant must prove the case against the defendant on the balance of probabilities in order to win.

12. Is the state of the art defence available?

Yes, according to the Act, it is a defence to show that the state of scientific and technical knowledge at the relevant time was such that the existence of a defect could not have been ascertained by the defendant.

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

According to the Act, no claim can be brought after the expiry of a period of three years commencing from the date of knowledge of the damage, defect or from the date that the claimant was informed about the producer's identity. The time can alternatively start to run from the date from which the claimant could have reasonably been aware of all the above information.

In any case, a claim cannot be brought after the expiry of a period of ten years from the date from which the defective product was supplied. This time limit does not apply in cases where:

- i. the producer or importer of the product has given written guarantee that the product may be used for a period which is longer than ten years.
- ii. the damage was caused within a period of ten years but could not have been discovered until after a while.

According to the Cypriot Limitation Act, no claim for tortious liability can be brought after the expiry of a period of six years commencing from the date of completion of the cause of action. The limitation period for a negligence claim is three years from the date of the accrual of the cause of action. However, where the injured party becomes aware of the damage at a later stage, time starts to run from the point of awareness. It must be noted that in relation to claims for personal injury and/or death, the Court may extend the said limitation period.

The limitation period for a claim in contract is six years from the date of the breach.

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

Class actions are not available in Cyprus. However, where there are numerous persons having the same interest in one cause or matter, one or more of such persons may be authorised by the Court to sue or defend on behalf, or for the benefit of all persons so interested.

Also, multiple actions pending before the same court may be consolidated if they involve a common question of law or fact bearing sufficient importance in proportion to the rest of the matters involved in the actions to render consolidation desirable.

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

Approximately 3-4 years depending on the particular case.