

18<sup>th</sup> June 2019

## The New UAE Product Safety Law

A new Federal Law on product safety has been published in the UAE Official Gazette and will come into force in July 2019. This new law aims to ensure the safety of products supplied in the UAE and to facilitate trade between the UAE and international markets and is part of the UAE's wider legal framework including the Food Safety Law and the Consumer Protection Law.

### Which products are affected and where?

The Law defines a "product" as any product in final form that will be used by or made available to consumers in the UAE, in the context of a business transaction, with or without consideration, including new, used or reconditioned products (except of antiques or used products that need to be repaired or modified prior to their entry into the country), even in the context of providing a service. The following products are exempted from the applicability: medicines, vaccines and food; indeed, the safety of those products is already regulated under separate specific regulations.

The law will apply to all products in the country, including in free zones.

### When is a product safe?

A Product is considered 'safe' under the draft of the implementing regulations if it:

- conforms to the relevant legislation or technical regulations issued by ESMA; or
- conforms to the approved standards which cover the safety aspects of the particular product, or any other standards set by a recognised agency outside of the UAE (and approved by Emirates Authority for Standardisation and Metrology ESMA).
- If neither a) nor b) applies to the Product, a report on the risk assessment of the Product must be submitted by a recognised agency to ESMA for approval.

### Who is liable for the safety of the product?

Providers, meaning manufactures and suppliers are potentially liable for unsafe products under the new Product Safety Law. Providers are defined in a broad sense as including local agents, distributor, manufacturer and anyone involved in in the circulation of the product or service.

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### **Who is the responsible authority in execution of the law?**

ESMA is to supervise implementation of the Product Safety Law, in coordination with UAE customs authorities and other relevant local authorities and issued the Emirates Quality mark (EQM) for verified products.

ESMA is a Federal UAE Authority, established by UAE Federal Law (28), 2001 that provides safety and quality measures for products, whether made in the UAE or brought in from abroad and contributes to developing uniform safety standards for consumer products.

ESMA is at large responsible for imposing mandatory standards on special products related to chemicals, gas and electrical devices directly or through their accredited notified bodies. Its measures comply with common international standards adopted in the field of protection of consumers, markets and environment.

ESMA is a member of the International Organization for Standardization (ISO).

ESMA has established Technical Committees in the fields of food products, construction and building materials products, electrical and electronic products, chemical and plastic products, mechanical products, petroleum products and lubricants, and metrology and information technology.

ESMA operates in several occasions through accredited notified external subject matter experts to process the certification activities and testing of products (e.g. Intertek, a foreign multinational assurance, inspection, product testing and certification company accredited by ESMA to conduct the certification process and set compliance guidelines for the import of electrical products into the U.A.E.).

### **How does the Product safety conformity process work?**

The Cabinet is to issue Executive Regulations by July 2019, setting out further details in relation to the applicable procedures related to the conformity assessment process outlined above.

However, it is certain, that all suppliers will be required to register all their products with ESMA for the issuance of the EQM on verified products.

### **What are the penalties for misconduct?**

The Product Safety Law stipulates that in case of breach the supplier will be subject to fines of up to AED 3 million and potentially imprisonment. The court may also order the seizure or destruction of products (at the supplier's cost), closure of the business for up to six months, and revocation of the supplier's trading licence.

Even if a customer or consumer is aware of the product being unsafe, the Provider would still remain liable and subject to penalties.

Without prejudice to the penalties stipulated in the Product Safety Law, since ESMA is involved in this process UAE Federal Law (28), 2001 also applies. This Federal Law regulates in Chapter 5 additional penalties (fines starting from AED 25,000 and / or imprisonment) for certain misconducts related to violating or circumventing approved standards issued by ESMA.

### **What does this mean for companies?**

#### **a) Conduct Conformity process**

Suppliers must ensure that their products comply with any applicable standards issued by ESMA, or by a foreign regulator that has been approved by ESMA.

Suppliers are obliged to file a risk assessment case through accredited assessment bodies with ESMA in case there are no standards yet issued for the specific product.

If possible, request up-to-date relevant test certificates for the product.

A supplier whose product has been deemed unsafe may file a grievance with ESMA. Since the ESMA's ultimate decision on the matter is final, it is rather advisable - when possible - to rectify the observed defect instead of filing a grievance.

#### **b) Limitation of liability through contractual agreements within the supplier chain**

Due to the broader definition of the term "Provider" the liability is extended to a greater scope of stakeholders involved in the product circulation. Meaning thereby, that this law also adds responsibility on the entities procuring products from Providers, Manufacturer and Suppliers. Hence it is essential to re-asses and re-draft existing service agreements with distributor accordingly to ensure non-liability clauses; however, UAE courts are usually pro-consumer and will make use of all legal provisions to ensure that such clauses are disregarded.

Still, it is of the utmost importance that the parties involved in the supply chain agree upon recourse clauses between each other

It is also essential to have a contractual clarification on who will be considered responsible within the supply chain for registration and / or certification of the product if many suppliers are involved.

#### **c) Stay knowledgeable and monitor your product market**

Suppliers will also need to remain attentive and monitor the market after circulation of the product to conduct remedial measures in case a product becomes unsafe during normal use. This is particularly relevant for rental of products that are normally damaged throughout the years and re-enter the market until they become unfit for use. The lessee must be careful when signing clauses that request its diligence and make it liable regarding the conduct of safety check; on the opposite, lessor must ensure that the re-

sponsibility of safety check throughout the rental period is under the responsibility of the lessee and should only be under the one of the lessor against a certain remuneration.

Moreover, a supplier must stay informed and educate its responsible staff members on the latest safety requirements concerning its product.

## **Conclusion**

Although the purpose of the new Law is to ensure consumer protection and safety within the UAE market, it clearly adds an additional burden on manufacturers. The fact that the liability expands to a broader group of stakeholders within the supply chain and covers a broader scale of products, makes it even more difficult for manufacturer and supplier to identify the limitation of their responsibility.

It remains to be seen whether the Executive regulation will provide more detailed and practicable guideline for suppliers.

MENA LEGAL will remain attentive to the evolution of the process and keep you informed.

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