

# International **Comparative** Legal Guides



## Product Liability **2021**

A practical cross-border insight into product liability work

**19<sup>th</sup> Edition**

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## Expert Analysis Chapters

- 1** **European Product Liability Update**  
Adela Williams & Tom Fox, Arnold & Porter
- 6** **U.S. Product Liability Law: Recent Developments, Trends, and Future Outlook**  
Julie M. Becker & Shalyn L. Caulley, Sidley Austin LLP
- 13** **Defective Products: Managing a Product Recall in the UK and Beyond**  
Howard Watson & David Bennett, Herbert Smith Freehills LLP
- 20** **COVID-19 and Vaccine Development: Navigating the UK Regulatory Landscape and Beyond**  
Louisa Caswell, Mark Chesher & Cécile Burgess, Addleshaw Goddard LLP

## Q&A Chapters

- 25** **Australia**  
Clayton Utz: Colin Loveday & Andrew Morrison
- 35** **Cyprus**  
Harris Kyriakides: Ioanna Leonidou & Charis Andreou
- 42** **England & Wales**  
Arnold & Porter: Adela Williams & Tom Fox
- 56** **France**  
Squire Patton Boggs: Carole Sportes & Valérie Ravit
- 64** **Germany**  
BLD Bach Langheid Dallmayr: Dr. Martin Alexander, LL.M. & Tamara Fabry
- 71** **Greece**  
Bahas, Gramatidis & Partners: Dimitris Emvalomenos
- 80** **Indonesia**  
Soemadipradja & Taher: Romi Emirat, Verry Iskandar, Oene Marseille & Aris Budi Prasetyo
- 87** **Italy**  
LEGALI RIUNITI LEX Avvocati Associati:  
Giuseppe Francesco Bonacci & Edoardo Tosetto
- 94** **Japan**  
Iwata Godo Law Offices: Shinya Tago,  
Landry Guesdon & Kohei Yamada
- 105** **Korea**  
Bae, Kim & Lee LLC: Tony Dongwook Kang &  
Yongman Bae
- 113** **Malaysia**  
Rahmat Lim & Partners: Karen Foong Yee Ling &  
Kwong Chiew Ee
- 122** **Myanmar**  
Allen & Gledhill (Myanmar) Co., Ltd.: Minn Naing Oo,  
Thaw Dar Sein & Myitzu Aung Thame
- 130** **Netherlands**  
Legaltree: Antoinette Collignon-Smit Sibinga &  
Carolien van Weering
- 138** **Norway**  
Kluge Advokatfirma AS: Ole André Oftebro,  
Hanne Olsen Kjellevoid & Matias Apelsest
- 145** **Portugal**  
Campos Ferreira, Sá Carneiro – CS Associados:  
João Maria Pimentel & Joana Arnaud
- 153** **Singapore**  
Allen & Gledhill LLP: Dr. Stanley Lai, SC &  
Amanda Soon
- 163** **Spain**  
Faus & Moliner Abogados: Xavier Moliner &  
Juan Martínez
- 173** **Switzerland**  
Kellerhals Carrard: Dr. Claudia Götz Staehelin,  
Laura Manz & Dr. Eliane Haas
- 182** **Taiwan**  
Lee and Li, Attorneys-at-Law: Patrick Marros Chu &  
David Tien
- 191** **USA**  
Faegre Drinker Biddle & Reath LLP: Teresa Griffin,  
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# Portugal



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## 1 Liability Systems

**1.1 What systems of product liability are available (i.e. liability in respect of damage to persons or property resulting from the supply of products found to be defective or faulty)? Is liability fault based, or strict, or both? Does contractual liability play any role? Can liability be imposed for breach of statutory obligations e.g. consumer fraud statutes?**

Product liability is governed by Decree-Law no. 383/89, of 6 November (as amended by Decree-Law no. 131/2001, of 24 April), which implemented Directive 85/374/EEC, of 25 July, on producer liability for defective products (“**Product Liability Regime**”).

According to the Product Liability Regime, the producer is liable for damages caused to consumers as a result of defects of products placed on the market independently of fault (known as strict product liability in foreign legal systems). The damages covered under this regime are specified in question 6.2 below.

Additionally, general regimes of liability – specifically tort and contractual liability – may apply.

Tort cases should typically be related to non-compliance with legal technical and consumer protection rules by the producer that caused damages to a specific consumer; whilst contractual liability cases refer to situations where a consumer goods sale agreement was entered into by the producer and the consumer and subsequently breached by the producer.

**1.2 Does the state operate any special liability regimes or compensation schemes for particular products e.g. medicinal products or vaccines?**

There are no special producer liability regimes or legal regimes related to specific products. On this matter, the only applicable regime is the Product Liability Regime and, for issues on which the former is silent, the Portuguese Civil Code.

**1.3 Who bears responsibility for the fault/defect? The manufacturer, the importer, the distributor, the “retail” supplier or all of these?**

As a general rule, the liable producer is the manufacturer of the finished product.

However, the liable producer can also be: (i) any commercial importer who acts in the European Union and imports and sells, leases or distributes goods from third countries outside of the European Union; and (ii) any product supplier whose producer

or importer is not identified, unless, if notified in writing, it communicates to the injured party within three months, also in writing, the identity of one or the other, or a previous supplier.

Additionally, if multiple people cause damages to a consumer, all of them are liable for the purposes of this regime. The defendant that eventually pays the indemnity to the consumer may be entitled to a right of recourse towards the other persons responsible for the damages caused.

**1.4 May a regulatory authority be found liable in respect of a defective/faulty product? If so, in what circumstances?**

Pursuant to Law no. 67/2007, of 31 December (“**State and Public Entities Tort Civil Liability Regime**”), the Portuguese State and any Portuguese public regulatory authorities can be held liable for damages caused to any persons, if such damages are caused by any public servant who is, at least, at minor fault, within the scope of their functions.

**1.5 In what circumstances is there an obligation to recall products, and in what way may a claim for failure to recall be brought?**

Public regulators may recall any products when deemed necessary to assure the defence of public interests, such as public health. The Consumer Goods and Services Security Commission may recall any product that is deemed dangerous to the public, according to Decree-Law no. 69/2005, of 17 March (“**Consumer Goods Safety Regime**”).

Additionally, Infarmed, I.P., the public health regulator, may order the recalling and apprehension of drugs or any health products that are considered dangerous to public health, as provided for in Decree-Law no. 46/2012, of 24 February (“**Infarmed Organic Law**”).

The court can also determine the obligation to recall products within legal proceedings aimed at such an outcome (e.g. class action).

A claim for failure to recall can be brought in Portuguese courts, whether to claim compensation for damages or to enforce the obligation to recall products.

**1.6 Do criminal sanctions apply to the supply of defective products?**

According to the Portuguese Criminal Code, any producer who falsifies or corrupts the contents of health and food goods, sells health and food goods after their expiry date or distributes

defective health and food goods, causing danger to public health, may be subject to a prison sentence of up to eight years or, if negligent, to a prison sentence of up to five years.

Additionally, producers who sell and distribute food products dangerous to public health can be subject to a prison sentence of up to three years or a criminal fine, under the terms of Decree-Law no. 28/84, of 20 January, as amended by Law no. 20/2008 (“**Economic and Anti-Health Criminal Regime**”).

Producers can also be subject to administrative fines and accessory sanctions if health and safety obligations are not complied with, under the terms of the Consumer Goods Safety Regime.

## 2 Causation

### 2.1 Who has the burden of proving fault/defect and damage?

Whilst the consumer is not required to prove the producer’s fault, since liability is independent of fault, the consumer bears the burden of proof in relation to other civil liability requirements, namely defect, damages and causation between the defect and damages.

**2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?**

The most relevant test applied to causation under Portuguese civil law is the adequate causation criterion. According to this criterion, the result can only be deemed to have been caused by a certain action if the result was objectively and reasonably foreseeable, under normal social conditions, by the agent at the time of the fact and considering the underlying circumstances.

Therefore, the defect must have been directly caused by an action (or inaction) of the producer and the defect must directly cause the damage to the consumer (double causation).

Considering the above, the consumer must prove that the defective product caused the injury. As such, it is not sufficient to claim that a type of injury is known to be associated with the product if there is no evidence confirming that the product caused the damage.

**2.3 What is the legal position if it cannot be established which of several possible producers manufactured the defective product? Does any form of market-share liability apply?**

According to the adequate causation test, there can be no indirect or unproven causation between an action and damages. Therefore, under Portuguese law, the American-Californian market-share liability test does not apply.

Likewise, various scholars have asserted that market-share liability is not valid under Portuguese law, since civil liability depends on absolute certainty that a specific agent took an action; mere probability will not suffice.

Nevertheless, according to the Product Liability Regime, any supplier whose producer or importer is not identified may itself

be considered a producer and consequently held liable for the damages caused, unless, if notified in writing, it communicates to the injured party within three months, also in writing, the identity of the producer/importer, or a previous supplier.

**2.4 Does a failure to warn give rise to liability and, if so, in what circumstances? What information, advice and warnings are taken into account: only information provided directly to the injured party, or also information supplied to an intermediary in the chain of supply between the manufacturer and consumer? Does it make any difference to the answer if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, e.g. a surgeon using a temporary or permanent medical device, a doctor prescribing a medicine or a pharmacist recommending a medicine? Is there any principle of “learned intermediary” under your law pursuant to which the supply of information to the learned intermediary discharges the duty owed by the manufacturer to the ultimate consumer to make available appropriate product information?**

Producers must inform consumers of all the relevant risks associated with the product, if such risks are not obvious without adequate warnings, as provided for in the Consumer Goods Safety Regime and in Law no. 24/96, of 31 July, as amended by Law no. 63/2019 (“**Consumer Protection Regime**”).

Producers and distributors must also inform the Consumers’ Institute if the product placed on the market presents unforeseen risks to consumers, according to the Consumer Goods Safety Regime.

Distributors are legally obliged to guarantee the safety of the distributed products, under the terms of the Consumer Goods Safety Regime, namely by:

- (i) refusing to distribute products considered dangerous;
- (ii) providing warnings to consumers and the competent authorities; and
- (iii) recalling the products if deemed dangerous.

Non-compliance with these technical obligations may be punished with administrative fines, up to EUR 44,890.

Producers and distributors may also be subject to civil liability if a consumer suffered damages as a consequence of the producer/distributor’s inaction and non-compliance with duties to inform.

Lastly, there is no specific “learned intermediary” liability regime in Portuguese law. However, “learned intermediaries” may be subject to civil liability under general tort and any contractual civil liability term.

## 3 Defences and Estoppel

### 3.1 What defences, if any, are available?

Under the Product Liability Regime, the producer is not held liable for any product defects if he proves that:

- (i) he did not put the product into circulation on the market;
- (ii) considering the circumstances, it can reasonably be admitted that the defect did not exist when the product entered into circulation;
- (iii) he did not manufacture the product for sale or any other form of distribution for an economic purpose, nor did he produce or distribute it within the scope of his professional activity;
- (iv) in the case of a component part, the defect is attributable to the design of the product in which it was incorporated or to the instructions given by its manufacturer.

Additionally, according to some Portuguese authors, *force majeure* events can exclude the liability of the producer, even if this is not expressly provided for in the Product Liability Regime.

**3.2 Is there a state of the art/development risk defence? Is there a defence if the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply? If there is such a defence, is it for the claimant to prove that the fault/defect was discoverable or is it for the manufacturer to prove that it was not?**

Yes; according to the Product Liability Regime, the producer is not held liable if it demonstrates that the state of scientific and technical knowledge, at the time when the product was put into circulation, did not allow for the existence of the defect to be detected.

However, the producer bears the burden of proof related to the scientific impossibility of the discovery of the defect.

**3.3 Is it a defence for the manufacturer to show that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product?**

Yes. The producer is not liable if the defect resulted from compliance with mandatory standards established by public authorities.

**3.4 Can claimants re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage, provided they arise in separate proceedings brought by a different claimant, or does some form of issue estoppel prevent this?**

Provided that the claimants and damages are different in each claim, there is no issue estoppel that prevents this.

However, under Portuguese civil procedure law, it is not admissible to have either:

- (i) two or more pending actions with the same claim, parties and object (*lis pendens* rule); or
- (ii) a subsequent identical claim with the same parties and object over a matter that has already been decided by a court (force of *res judicata* rule).

**3.5 Can defendants claim that the fault/defect was due to the actions of a third party and seek a contribution or indemnity towards any damages payable to the claimant, either in the same proceedings or in subsequent proceedings? If it is possible to bring subsequent proceedings, is there a time limit on commencing such proceedings?**

No, the civil liability of the producer is not excluded if a third party contributed to the defect. Therefore, the producer is held accountable for any actions of third parties over the products sold to consumers.

In addition, if multiple people (namely the producer and/or a third party) cause damages to a consumer, all of them are liable for the purposes of this regime. The defendant that eventually pays the indemnity to the consumer may be entitled to a right of recourse towards the other persons responsible for the damages caused.

This does not mean, however, that either the defendant or the claimant cannot hold the third party exclusively liable for the damages caused, under the general terms of the Portuguese Civil Code, within a three-year time limit.

**3.6 Can defendants allege that the claimant's actions caused or contributed towards the damage?**

According to the Product Liability Regime, defendants can claim that the consumer contributed, with fault, to the damage, in order to exclude civil liability or to reduce the indemnity. The court will decide whether this is admissible or not.

## 4 Procedure

**4.1 In the case of court proceedings, is the trial by a judge or a jury?**

Within civil and administrative court proceedings, the trial is by a judge.

**4.2 Does the court have power to appoint technical specialists to sit with the judge and assess the evidence presented by the parties (i.e. expert assessors)?**

Yes, the court may appoint a technical specialist to assist, namely during trial, or to produce a technical report. However, the appointment of technical specialists is still very rare.

**4.3 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Is the procedure 'opt-in' or 'opt-out'? Who can bring such claims e.g. individuals and/or groups? Are such claims commonly brought?**

Class actions are allowed under Portuguese law, there being a specific proceeding called *acção popular* to deal with a group of related claims, which is foreseen in Law no. 83/95, of 31 August. This procedure grants all citizens, individually or through organisations created for the defence of relevant interests, the right to initiate a class action, in the cases and within the terms established in the law. It includes the right of an injured party or parties to request compensation to:

- promote the prevention, termination or judicial prosecution of infringements against public health, consumer rights, quality of life and the preservation of the environment and cultural heritage; and
- guarantee the defence of state property and the property of the autonomous regions or of the local authorities (e.g. municipalities).

Generally, class actions are not restricted to a particular area of law or to a specific sector. Notwithstanding this, the law specifies certain areas to be specially protected by these actions such as public health, consumer rights, quality of life and the environment, cultural heritage and public dominium. It is important to note that collective action is available for product liability.

Class or group proceedings can be brought by individuals, associations and foundations created for the defence of relevant interests (regardless of their direct interest in the case), local authorities regarding the interests of their residents, within their respective area, the Public Prosecutor's Office regarding the defence of cultural heritage or consumer rights, and also the Directorate-General for Consumers for the defence of consumer rights.

Portuguese law establishes an "opt-out" scheme, as the interested parties can, after being served by the court, choose not to be represented by the claimant, in which case the judgment will not apply to such interested party.

In general, class actions are still not very common in Portugal, although their number has been increasing in recent years.

#### 4.4 Can claims be brought by a representative body on behalf of a number of claimants e.g. by a consumer association?

Claims can be brought by a representative body.

However, Portuguese law establishes certain compulsory features for associations and foundations that intend to bring a class action, such as:

- they must be a legal person;
- their purpose, established in their articles of association, must expressly comprise the defence of relevant interests in these types of action; and
- they must not carry out any kind of professional activity that may compete with companies or independent professions.

#### 4.5 May lawyers or representative bodies advertise for claims and, if so, does this occur frequently? Does advertising materially affect the number or type of claims brought in your jurisdiction?

Lawyers are not allowed to advertise for claims under Portuguese law.

As regards representative bodies, as mentioned in question 4.4 above, they have legal standing to bring claims to the court, in which the other interested parties will be identified. It will then be the court that will serve the interested parties, who then have the option to opt out.

#### 4.6 How long does it normally take to get to trial?

It normally takes from 10 to 18 months to get to trial.

#### 4.7 Can the court try preliminary issues, the result of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

The court can try preliminary issues before the proceedings move to trial. Indeed, after the written statements, the court can decide that the conditions for rendering the final judgment have already been met (e.g. when the time limit to file the claim had already expired or when there is a *lis pendens* or *res judicata* issue).

The court can also render an interim judgment but only in relation to some of the issues or claims under discussion.

In either case, the preliminary issues can relate to matters of law and also of fact.

#### 4.8 What appeal options are available?

There are three levels of jurisdiction in Portugal: lower courts; appeal courts; and the Supreme Court of Justice. As a last resort, a party may appeal to the Constitutional Court, insofar as it has maintained beforehand that a provision applied under the proceedings breaches the Portuguese Constitution.

#### 4.9 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

Under Portuguese law, expert evidence, which can be provided by one or three experts, may be requested by the parties and by the judge.

The expert evidence can only refer to the facts claimed by both or either party in their written statements.

The experts produce a written report that is submitted to the court and made available to both parties before the trial. Experts may also be summoned to clarify their statements, yet they are heard by the lawyers and the court as witnesses. When questioned, their input shall be limited to the report's scope.

In case of product liability, the experts' opinion has a relevant role. The judge is not bound to the experts' written report, but normally he or she follows it.

#### 4.10 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

Under Portuguese law, witnesses (factual or expert) present themselves during the trial, but before the final pleadings, for oral deposition concerning the facts or issues that are of their direct knowledge. Experts are also heard as witnesses, and can be summoned to clarify their written statements if expert evidence was presented during the hearing.

Except when the witness is absolutely unable to travel to court or be heard by videoconference, the judge may authorise, subject to agreement of all the parties, a written deposition.

If there is a risk that it will become very difficult or impossible to obtain the testimony of certain persons (for instance, because of illness or travel abroad) or the verification of certain facts by way of inspection, it is possible to obtain such testimony or inspection in advance. The applicant shall justify before the court why evidence must be produced in advance. In this context, any evidence obtained shall be tape-recorded or registered in a written document.

Expert reports are exchanged prior to trial.

#### 4.11 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

Under Portuguese law, there is no obligation to disclose documentary evidence either before court proceedings begin or as part of pre-trial procedures.

In any case, whenever a relevant document is in the counterparty's possession, the interested party can request the court to notify the counterparty to file such document within the proceedings.

#### 4.12 Are alternative methods of dispute resolution required to be pursued first or available as an alternative to litigation e.g. mediation, arbitration?

Alternative methods of dispute resolution are, as a general rule, optional and subject to agreement of the parties. An exception to this rule is arbitration, whenever it is imposed by the law, which is the case for consumer disputes under the amount of EUR 5,000 whenever such option is chosen by the consumer, as foreseen under the Consumer Protection Regime.

#### 4.13 In what factual circumstances can persons that are not domiciled in your jurisdiction be brought within the jurisdiction of your courts either as a defendant or as a claimant?

Portugal is subject to the jurisdiction rules foreseen in Regulation (EU) no. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The general rule foreseen in the said Regulation provides that persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

There are, however, exceptions:

- (i) in matters relating to a contract, a person domiciled in a different Member State may be sued in Portugal if this is the place of performance of the obligation in question; and
- (ii) in matters relating to tort, delict or quasi-delict, a person domiciled in a different Member State may be sued in Portugal if this is the place where the harmful event occurred or may occur.

Also in accordance with the said Regulation, a person domiciled in a different Member State may also be sued where he or she is one of a number of defendants, in the courts of the place where any one of them is domiciled, provided the claims are sufficiently closely connected.

Portuguese domestic law also foresees, as a general rule, that the defendant is sued in the courts of his or her domicile. In matters relating to a contract and where the defendant is a legal person, the claimant can choose between the domicile of the defendant or the place of performance of the obligation in question.

## 5 Time Limits

### 5.1 Are there any time limits on bringing or issuing proceedings?

There are time limits on bringing proceedings. See question 5.2 below.

However, the expiration of such time limits cannot be raised by the court at its own motion; it must be claimed by the parties within the proceedings.

### 5.2 If so, please explain what these are. Do they vary depending on whether the liability is fault based or strict? Does the age or condition of the claimant affect the calculation of any time limits and does the court have a discretion to disapply time limits?

The applicable limitation periods are as follows:

- tortious liability – three years from the date the claimant became aware of tort acts, even if he or she did not know the tort action or the extent of the injuries;
- contractual liability – 20 years after the occurrence of the harmful event; and
- liability under the Product Liability Statute – three years after the date on which the claimant became aware or should have become aware of the damage, the defect and the identity of the producer. However, the maximum time limit for a producer's strict liability is 10 years after the defective product was put into circulation.

The age or condition of the claimant does not affect the calculation of any time limits. The court has no discretion to disapply the time limits.

### 5.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

When the interested party cannot claim his or her right during the last three months of the term for fraud or *force majeure* reasons, limitation periods are suspended for as long as the party is prevented from performing his or her rights.

## 6 Remedies

### 6.1 What remedies are available e.g. monetary compensation, injunctive/declaratory relief?

The consumer is entitled to:

- (i) receive monetary compensation if the producer is deemed liable for the defect and for the respective damage caused;
- (ii) demand the substitution/repair of the product (*cf.* Decree-Law no. 67/2003, of 8 April, as amended by Decree-Law no. 84/2008 (“**Consumer Goods Sale and Guarantees Regime**”));
- (iii) the termination of the agreement entered into between the consumer and the seller of the consumer good with the return of the defective product (*cf.* Consumer Goods Sale and Guarantees Regime);
- (iv) the reduction of the purchase price (*cf.* Consumer Goods Sale and Guarantees Regime).

These last two remedies, *prima facie*, are only applicable to the seller of the consumer goods (since the producer does not necessarily enter into an agreement with the purchaser).

If the producer does not comply with the consumer's claims, the consumer may resort to the courts in order to be compensated for the damages suffered. Should there be a risk of serious loss, the claimant can file an injunction in order to prevent any further damages or the reduction or loss of any assets that may be adequate to pay the compensation that may be awarded by the court.

### 6.2 What types of damage are recoverable e.g. damage to the product itself, bodily injury, mental damage, damage to property?

Under Portuguese civil law, any patrimonial (e.g. damage to the product and to property) or moral damages (e.g. bodily injury or mental damages) may be recoverable.

In particular, according to the Product Liability Regime, consumers can receive an indemnity for any damages caused by a consumer good which lead to:

- (i) death;
- (ii) bodily injury; and
- (iii) damage to property other than the consumer good itself, if destined for personal use.

Although the consumer cannot receive an indemnity for damages caused to the defective product itself under the Product Liability Regime, it may receive compensation for damages caused to the aforementioned product under the general contractual/tort civil liability terms provided for in the Portuguese Civil Code, should those terms apply.

### 6.3 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where the product has not yet malfunctioned and caused injury, but it may do so in future?

Under Portuguese law, indemnities can only be attributed if there

was an effective and present damage, since the purpose of civil liability is to repair damages that were caused to individuals.

#### 6.4 Are punitive damages recoverable? If so, are there any restrictions?

Punitive damages are not provided for in Portuguese civil law, unless contractually agreed between the parties through the insertion of a penalty clause. Indeed, Portuguese civil liability is meant to repair damages, not punish individuals – that legal purpose is left to Portuguese criminal law.

According to some Portuguese scholars, the simultaneous application of civil and criminal liability would constitute a breach of the *non bis in idem* criminal constitutional principle: an individual cannot be punished twice in respect of one act.

However, there have been some recent developments in this matter. Some Portuguese scholars admit the validity of punitive damages in the Portuguese legal system in regard to their clear legal and economic advantages, defending the autonomy and distinctiveness of the punitive purpose of civil liability. Additionally, the Portuguese Supreme Court of Justice has recently recognised this position.

#### 6.5 Is there a maximum limit on the damages recoverable from one manufacturer e.g. for a series of claims arising from one incident or accident?

Under Portuguese law, the *quantum* of the indemnity is limited to the economic value of the damages that were effectively suffered by an individual.

However, there is not a strict, specific maximum limit related to damages recoverable from a manufacturer (although, under the Product Liability Regime, they must be over EUR 500).

It is important, nevertheless, to consider that moral damages will be quantified by the court using equity (justice in accordance with the circumstances of the case).

#### 6.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required for the settlement of group/class actions, or claims by infants, or otherwise?

Yes, court approval and validation are required for any settlement. The settlement agreement must be executed in writing, by means of a private document, public deed or procedural term.

The court will render a judgment which will not include any analysis of the merit of the settlement but only of its formal requirements. If approved, the settlement agreement can be enforced in court (enforcement proceeding) should any party fail to comply with its terms.

#### 6.7 Can Government authorities concerned with health and social security matters claim from any damages awarded or settlements paid to the claimant without admission of liability reimbursement of treatment costs, unemployment benefits or other costs paid by the authorities to the claimant in respect of the injury allegedly caused by the product? If so, who has responsibility for the repayment of such sums?

No; under Portuguese law, public authorities cannot claim any amount from damages awarded to the claimant by the court or through settlement.

However, Government authorities, independently of any settlement executed with the claimant, will be able to claim reimbursement of their own damages that were caused to them as a result of the use of a defective product.

Also, Government authorities or compensation funds that answer before the injured party have subrogation rights against the producer responsible for the damages.

## 7 Costs / Funding

#### 7.1 Can the successful party recover: (a) court fees or other incidental expenses; (b) their own legal costs of bringing the proceedings, from the losing party?

As regards court fees and other incidental expenses for bringing the action, the successful party may recover the amounts paid within the proceedings from the losing party.

As regards the successful party's own legal costs of bringing the proceedings, courts tend to limit the amount that can be recovered from the losing party to an insignificant figure.

#### 7.2 Is public funding, e.g. legal aid, available?

Legal aid is available and may include exemption from court fees and lawyers' fees.

#### 7.3 If so, are there any restrictions on the availability of public funding?

It is necessary to prove that one is in economic need in order to be entitled to legal aid.

#### 7.4 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

Funding through conditional and contingency fees is not allowed, as the Portuguese Bar Association Statute – in accordance with principles adopted in the majority of European countries – imposes a prohibition of *quota litis*. Success fees are admissible.

#### 7.5 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

Third party litigation funding is not prohibited, there not being any known limitations or restrictions.

#### 7.6 In advance of the case proceeding to trial, does the court exercise any control over the costs to be incurred by the parties so that they are proportionate to the value of the claim?

Court fees are foreseen in the law and vary according to the value of the claim. Therefore, and although the court does not exercise any control over the costs to be incurred by the parties in advance of the case proceeding to trial, it is possible to anticipate such costs based on the amounts provided in the law. However, the court can, at the end of the proceedings, decide to reduce or to increase (the latter being relatively rare) the costs depending on the complexity of the matter.



## 8 Updates

**8.1 Please provide a summary of any new cases, trends and developments in product liability law in your jurisdiction, including how the courts are approaching any issues arising in relation to new technologies and artificial intelligence.**

There is a considerable number of cases being discussed in Portuguese courts based on product liability, mostly concerning matters related to defective vehicles and industrial equipment or its components.

Resolution no. 2020/2014 issued by the European Parliament on 20 October 2020 contains recommendations to the European Commission about the civil liability regime applicable to artificial intelligence, including recommendation to review Directive 85/374/EEC, of 25 July, concerning liability for defective products, which is already 30 years old and should be adapted to the digital world and to address the challenges posed by emerging digital technologies, thereby ensuring a high level of effective consumer protection. A reaction from the European Commission to said recommendations is therefore expected – and, consequently, the necessary adjustment in Portuguese domestic law. In any case, to date, we are not aware of any case law in respect of new technologies and artificial intelligence.



**João Maria Pimentel** is a Partner in the Litigation & Arbitration and Restructuring & Insolvency practices. He has more than 20 years of experience in court and has a deep knowledge of the workings of the judicial and arbitration courts, where he represents clients' interests in civil, commercial and financial disputes. He also boasts vast experience in insolvency procedures, advising on both company recovery and liquidation, acting in the defence of creditors' and investors' interests, and assisting directors on compliance with their legal duties.

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In order to achieve its purpose, CS Associados assists its clients only in the legal areas where it possesses specialised competence and in which its distinctive quality is widely recognised in the market. The lawyers in the litigation and arbitration department have taken part in relevant legal proceedings in recent years, representing clients at all stages of the process and collaborating with reputable foreign law firms in international proceedings. The team's experience encompasses all areas of law (such as civil and

commercial litigation, enforcement proceedings and criminal law) and includes cases before civil and criminal courts. The firm's litigation and arbitration team has also acted in multijurisdictional proceedings and actions before the highest arbitration bodies.

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