

INSIGHTS

The United Arab Emirates' New Product Safety Law

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The United Arab Emirates ("UAE") has recently released a draft of its highly anticipated product safety law (the "Law"), set to come into force in July 2019. This is the first time the UAE has enacted bespoke legislation specifically addressing product safety for consumers.

Given this commentary is based on a draft of the Law, it is possible that provisions will be amended, removed or added to. Once the Law is in force, we will prepare a further note on the same.

The overriding object of the Law is to protect consumers and ensure that all consumer products, both locally manufactured and imported are safe. The Law (whilst bespoke) fits within part of a wider legal framework including but not limited to the UAE's Food Safety Law and Consumer Protection Law.

With the above in mind, the Emirates Authority for Standardisation and Metrology ("ESMA") will be principally responsible for the supervision of the implementation of the Law and will work with other UAE regulatory entities including but not limited to UAE customs authorities to ensure compliance with the Law is upheld.

In anticipation of the Law coming into force later this year, we outline below certain of the key issues contained in the Law, which all product manufacturers, agents, distributors, and importers doing business in the UAE (whether from an economic free zone or otherwise) need to be aware of.

Does the Law apply to you?

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 (collectively referred to as the "Products"). Consequently, the definition of Products is very broad in its scope and only excludes:

1. human and veterinary medicines;
2. antiques; and
3. used products which need to be repaired before being sold for commercial purposes.

The Law will apply to any commercial participant in the supply chain of a Product whose activities relate to, or affect, the safety of Products manufactured within, or imported into the UAE, including manufacturers, agents, distributors, and importers (collectively referred to as "Suppliers"). This means that even if a manufacturer is based out of the UAE, a local agent/distributor can be held liable for any breaches of the Law.

What are the key obligations established under the Law?

In accordance with the Law, a Supplier must:

1. not offer unsafe Products or introduce unsafe Products into the UAE;
2. ensure that their Products remain safe whilst being used by a consumer; and
3. should a Product become unsafe, take the necessary remedial measures such as withdrawing or recalling such Products from the marketplace.

In order for a Product to be considered "safe", Suppliers must ensure that their Products comply with any applicable standards issued by ESMA, or by a foreign regulator duly approved by ESMA. If no such standards are in place for a particular Product, a risk assessment in relation to the Product must be filed with ESMA to determine if it is safe to be sold in the UAE. A Supplier whose Product has been deemed unsafe by ESMA may file a grievance with ESMA, albeit ESMA is the ultimate decision maker on this matter.

What are the penalties for breach of the Law?

Suppliers found to be in breach of the Product Safety Law are liable to a fine of at least one million dirhams (AED 1,000,000) but no more than three million dirhams (AED 3,000,000)

and/or prison sentences of at least six (6) months.

Furthermore the Law also permits the UAE courts to order the seizure or destruction of defective Products (at a Supplier's cost), closure of the business of the Supplier for up to six (6) months or the revocation of the Supplier's trading licence, all significant "teeth" against non-compliance.

Impact

The Law (particularly given its sanctions for non-compliance and breadth of scope) is a firm demonstration of the UAE's commitment to consumer protection. It is clear that once the Law is enacted, Suppliers will need to study its final form and ensure that their Products are in full compliance, and also ensure that where defects are discovered in their Products that swift action is taken with the necessary regulatory bodies to ensure that such Products are quickly removed from the market or recalled. In addition, where the Supplier falls into the category of an agent or distributor for a Product that is manufactured outside of the UAE, consideration will need to be given regarding the interface between a manufacturer and its supply chain for ensuring that responsibility and liability for conformance with the Law is properly managed and that where Products are defective, prompt action is taken to comply with the Law and ensure that reputational damage to a brand is minimised.

As noted above as soon as the Law comes into full force and effect, together with its executive regulations we will prepare a further note and welcome any questions on the foregoing.