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CHINA

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New Tort Liability Law in China

As of July 1, 2010, China will have a specific law to govern tort liability. The Tort Liability Law ("Tort Law") provides a general outline on the tort liability over wide-ranging matters, including data and environmental protections and product liability.

The Tort Law reiterates subscribers' freedom to legally use telecommunications and confidentiality of their communication afforded under the PRC Telecommunications Regulations. Article 36 provides that network users and network service providers are liable for tortious acts they commit when utilizing networks. A network user whose right is infringed may demand the service provider to make necessary deletion, screening and disconnection to stop the infringement. A network service provider who is aware of an infringement but fails to take any necessary corrective measure shall bear joint and several liability with the infringer.

The Tort Law officially uses the term "punitive damages" in Chinese law. Prior to the promulgation of the Tort Law, manufacturers of defective products are under consumer rights protection and product quality laws to pay compensation or be fined at amounts equal to specified multiples of the products' values. Article 47 provides that manufacturers and sellers who knowingly produced or sold defective products that cause death or serious health hazard are liable to pay punitive damages, without a specific limit. Articles 45 to 46 also give an additional protection to consumers with a right to request manufacturers and sellers to eliminate and remove danger of unsafe products. If defects are found in products already in circulation, manufacturers and sellers shall issue

product warnings or, in severe cases, recall their products.

Article 65 of the Tort Law introduces a no-fault based liability and stipulates that any person who pollutes the environment and causes damage is subject to tort liability, without specifically being found in violation of any specific environmental regulation. The burden of proof is also switched to the defendants in these environmental cases. They have the burden to prove they should not be liable for the pollution, or certain mitigating factors should apply or that there is no causation between their acts and the pollution.

While the Tort Law has made an attempt to address many tort liability matters, the general nature of the law has left many questions unanswered. For example, how an aggrieved party could pursue remedies and the standard of calculating remedies are not spelt out in the law. The issuance of further judicial interpretations and guidance are anticipated to fill the gaps and give teeth to the legislation.

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