





## Product Recalls

### Pre 2016

No specific recall laws. Penalties levied in respect of defective, hazardous and unfit goods and services but (with the exception of unsafe food products):

- » no law required mandatory recall of such goods
- » no regulatory authority exercised oversight over recall of retail products

### Post 2016

Shift towards regulating product recalls under both general retail and sector-specific laws.

#### Laws Implemented

- » **BIS License Terms (2016):** BIS agency empowered to require recall of goods bearing BIS certification mark but found not to conform to prescribed standards.
- » **Guidelines for Food Recall (2017):** Pre-existing recall obligations supplemented with specific recall procedures including notification requirements, timelines, information dissemination, destruction of recalled products etc.
- » **Medical Devices Rules (2017):** Recall of medical devices not conforming to prescribed standards. Recall may be mandated by the licensing authority or voluntarily undertaken by the manufacturer/agent with notification to the competent authority.

#### Laws Proposed

- » **Motor Vehicles:** Central Government can order the mandatory recall of vehicles with defects that may damage the environment, driver, occupants or other road users. On recall, manufacturer must (i) reimburse the full cost of the vehicle or replace it with another vehicle with similar or better specifications; and (ii) pay prescribed fines. Also contemplates voluntary recalls with no fines payable.
- » **Consumer Protection:** Proposes a new consumer regulatory authority with the power to recall unsafe consumer products or withdraw unsafe/hazardous services.

## Consumer Protection Regulation

The Consumer Protection Bill, 2018 is currently being discussed in the Indian Parliament.

- » Envisages a Central Consumer Protection Authority ("CCPA") with oversight over consumer rights, misleading advertisements and unfair trade practices, and with the mandate to promote, protect and enforce consumer rights.
- » CCPA empowered to recall hazardous goods/services, require reimbursement of purchase price and discontinue unfair trade practices.
- » Provides for compensation for product liability, including injury relating to manufacturing defect, deviation from manufacturing specifications, insufficient instructions for use etc.
- » Specific inclusion of e-commerce platforms as "electronic service providers", opening up such platforms to product liability claims for unfair trade practices, sales of fake products etc. So far, platforms are protected from liability as "intermediaries".
- » Unfair trade practices identified in detail, including illegal disclosure of consumer data.

## False and Misleading Advertisements

- » Currently, advertisements are governed by a non-binding self-regulating code issued by the Advertising Standards Council of India. No central authority enforces veracity in advertising.
- » Sector-specific laws punish false advertising in food items and drug retail, among others.
- » Consumer Protection Bill, 2018 empowers CCPA to penalise false or misleading advertising with fines upto INR 5 million and imprisonment.
- » Draft Food Safety and Standards (Advertisements and Claims) Regulations, 2017 also regulate false and misleading food advertisements.

