

# Auto industry product liability and recall

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India's automobile sector has recently witnessed a stream of incentives to attract investment, capital expenditure, and domestic value addition in auto manufacturing. Such policies – including tariff reductions, duty waivers and concessions, production-linked incentives and consumer subsidies – however, come with statutory liabilities, increased regulation and oversight against a backdrop of increased incidences of reported manufacturing defects. Between 2012 and 2023, India recorded more than 5 million “moderate to serious” incidents involving mostly fossil fuel-dependent vehicles. More recently, electric vehicles (EV) saw incidents of motors catching fire, leading to questions about safety, suitability and the adequacy of stress testing new technologies for Indian climatic and driving conditions.



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Key regulatory interventions include a new product liability regime with far-reaching consequences not only for original equipment manufacturers (OEM), but also for other stakeholders in the value chain such as component suppliers, dealers, distributors and service providers. Other noteworthy developments are the inclusion of revised technical standards in manufacturing, safety norms for vehicles and power to governmental authorities to initiate investigations and order penalties and product recalls.

The Motor Vehicles (Amendment) Act, 2019 (MVA), enables a designated authority to recall vehicles. This applies when a particular defect impacts the product safety of a stated

number or percentage of the vehicle's annual sales. The MVA allows designated officers to enter a manufacturer's premises and inspect records and procedures. Any failure to conform with manufacturing specifications, technical standards and safety norms may lead to vehicle recalls and penalties. Crucially, the MVA provides that directors and officers are vicariously liable for the company's actions. "Officers in default" include non-executive directors who agree to a contravening act through board approval.

While the MVA improves manufacturing safety, the Consumer Protection Act, 2019 is consumer-centric legislation for product liability. It shifts the onus of proof from the customer to the manufacturer and seller to rebut the presumption of liability for specified defaults.

The cumulative effect of the aforesaid acts is OEMs are now required to certify that new vehicles comply with improved technical standards and safety norms, including undertaking additional testing, mandatory anti-hazard safeguards, smart management systems to prevent overcharging and short circuits, and comprehensive warranty support.

Such changes are relevant to Japanese companies because OEMs and component manufacturers are subject to presumptive liability. The aforesaid regulatory amendments would require OEMs to review and update product testing and commissioning, and improve compliance, audits and vehicle risk assessments. Manufacturing processes would have to be supported by comprehensive documentation. OEMs must ensure safety norms, pre-certification and warranty coverage, and ensure carefully worded liability management provisions in supply contracts allowing OEMs to apportion statutory liability and costs to component manufacturers and others. To mitigate product liability, OEMs should ensure they have comprehensive and robust quality controls and testing measures throughout the manufacturing life cycle. Third parties should test and validate, and OEMs must maintain detailed records to prove due diligence and transparency. With statutory investigations and power to search premises, review documents and software and record procedures, OEMs need to prepare both for business disruption risks and potential breaches of confidentiality.

OEMs should conduct regular audits of suppliers. Parts must be tracked to identify defective vehicles. This helps to fix liability and costs. Board procedures must be robust, with nominees fulfilling their fiduciary duties. Insurance must not exclude product liability and recall.

OEMs must develop clear escalation procedures and crisis management plans. They must have robust contracts with suppliers and partners that include warranties and indemnities and allocate responsibilities.

In the near term, the aforesaid measures above may increase manufacturing costs in India which, given India's ultra-competitive and price-sensitive market, OEMs may not be able to pass on such costs to consumers.

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