

## Property/Casualty



By  
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It has been common practice in China and other Asian countries for local companies to forgo purchasing liability insurance unless they are required to by their U.S. or European business partners. Even when Asia-based firms do purchase liability insurance, they may buy a local policy that offers limited protection. This can create product and errors-and-omissions liability issues for U.S. and European companies at home and abroad.

With the implementation of China's new tort liability law last July, Chinese companies will be forced to take a closer look at liability

Chinese ingredient? Under U.S. law, the importer may find itself liable if the Chinese business partner:

- Refuses to acknowledge a previously signed hold-harmless agreement.
- Reconstitutes itself under a new name (a common tactic in China).
- Has purchased a local insurance policy that doesn't include product liability protection.

In addition, the U.S. firm may have little legal recourse if the Chinese company does not have assets in the United States. Even if a U.S. company does everything right, cultural issues may create or exacerbate legal problems. For instance, if a liability lawsuit is brought in the United States, the Chinese company may not understand what is expected under the U.S.

legal system and its domestic insurance company may not have experience managing U.S.-style litigation. As a result, litigation involving a Chinese business can turn into a time-consuming, expensive process for a U.S. company.

The legal and regulatory environment in China, and the rest of Asia, is rapidly evolving in unexpected ways. Proposed U.S. legislation—the Foreign Manufacturers Legal Accountability Act—could require foreign manufacturers to consent to be sued in U.S. courts as a condition for importing certain products and product components.

For now, U.S. and European companies that do business with Asian companies should consider requiring their counterparts to purchase products or errors-and-omissions liability policies from a global insurance provider. This and other such considerations should be part of a company's broader risk management review of its exposure to foreign operating environments and overseas business partners. **BR**

# China Tort Reforms Hike Western Risks

China's new tort law should prompt scrutiny of exposure levels.

insurance. China's tort law applies to a range of potential liabilities including product and automobile liability, environmental pollution, privacy, emotional injury and punitive damages. It mirrors Western tort law by allowing plaintiffs to seek damages from the producer or seller of a product containing a defect, regardless of whether either party is at fault. Third parties in the product distribution chain may also be held liable.

Thus, U.S. and European companies doing business in China may now face greater litigation risk along with their Chinese counterparts.

American companies face other liability issues. Suppose a U.S. company imports ingredients from a Chinese firm, markets a product using these ingredients, and a U.S. consumer is injured as a result of the

**U.S. and European companies, and their Chinese counterparts, may now face greater risk of litigation for product defects.**

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