

## RECALL IN BRAZIL: HOW COMPANIES USUALLY DEAL WITH THE NEED TO IMMEDIATELY INITIATE A RECALL CAMPAIGN

The recall in Brazil is the process by which the manufacturer or service provider has the obligation to recall any product or service which may pose any risk to the safety or health.

The recall process is broadly governed by Federal Law n. 8.078/90, the so-called Brazilian Consumer Defense Statute and, more precisely, by Resolution ("Portaria") n. 487/12, issued by the Ministry of Justice.

The Federal Agency in charge of coordinating and monitoring recalls is the *Departamento de Proteção e Defesa do Consumidor* ("DPDC"), subordinated to the Ministry of Justice.

The DPDC is well known for being very strict when assessing whether a case should be subject to a recall. In other words, if there is a grey zone on whether a certain situation has any impact on safety or health of consumers, the DPDC is likely to understand that a recall has to be launched.

Despite such a position, it is worth mentioning that the DPDC is commonly very opened to hear the particularities of each case, as well as the hurdles faced by the companies, particularly when they affect specific fields of business and are common to most of the companies within such field.

One of the main questions companies usually face is about the meaning of the word "immediately", included in sections 2 and 5 of Resolution n. 487/12.

According to such sections, if the manufacturer or service provider learns that a product or a service should be subject to a recall, such information has to be immediately informed to the DPDC and other consumer protection agencies, and a recall has to be immediately initiated in accordance with the guidelines set forth by the aforementioned Resolution.

Unfortunately, the DPDC has never expressly stated its understanding about the word "immediately" mentioned above. Nevertheless, the unspoken understanding is that the manufacturer or service provider has to start the recall as quick as possible, so that it could avoid any accident derived from the defective product or service or at least lower such a risk.

In some cases, however, the replacement of the defective products is not that simple. For example, vehicle manufacturers have to provide the recall information to a whole chain of dealers, as well as provide specific trainings, tools etc.

In other cases, the parts to be replaced have to be imported, since the inventory available in Brazil would not be sufficient.

Taking such circumstances into consideration, it could be said that the word "immediately" should and will not always be interpreted in the same way, since each case has its own particularities.

Actually, it may be useless to initiate a recall few days after the company has learned about the defect, if it has no adequate structure to replace the recalled products. Because of that, in some occasions companies decide not to immediately launch a full recall, meeting all the requirements of Resolution n. 487/12.

For example, if an adequate recall depends on importation of parts, training etc., companies usually send a letter to DPDC informing that a recall will be launched soon, providing an accurate timeframe for that and the reasons why the recall is not launched at that point.

In some other cases, however, if the time required for the actual implementation of the recall is too long, companies decide to publish an information only advising customers about the risk, and once it is ready to launch the full recall campaign other publications are made, these ones with all the information required by Resolution n. 487/12.

In all such examples it is worth mentioning that the DPDC should be informed about everything, and it is extremely recommendable that a hearing is scheduled to keep DPDC informed about all the specifics of the recall and next steps.

Unfortunately, the DPDC does not publish its decisions or provide any other means by which its interpretation of the most relevant topics on recall issues could be learned.

As a consequence, choosing the right course of action will depend on the factual circumstances and experience of the company and its advisors on recalls.

In any event, as said above, the course of action will likely be the adequate one if the remedy chosen effectively decreases the risks derived from the defective product or service. We believe this should be the threshold that should guide the company whenever there is any doubt in the interpretation of Resolution n. 487/12.

**Celso Caldas Martins Xavier**  
**Partner**