

China's New 3Rs-Warranty Policy for Domestic-Use Automobiles: An Overview

January 2014

The "Provisions on the Liability for the Repair, Replacement and Return of Domestic-Use Automobile Products" (the "Provisions") issued by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) took effect on October 1, 2013. The Provisions set forth the legal basis and implementation guidance for new mandatory "repair, replacement and return warranties" ("3Rs-Warranty") applicable to passenger vehicles purchased and used for domestic-use purposes. The Provisions and 3Rs-Warranty impose significant new warranty responsibilities on manufacturers and sellers of domestic-use automobile products.

This Overview addresses some frequently asked questions as to the scope of, and responsibilities and procedures under, the Provisions and 3Rs-Warranty.

1. What is a "domestic-use automobile product"? What if the automobile is used for other purposes?

The Provisions and 3Rs-Warranty apply only to domestic-use automobile products which are both manufactured and sold within the territory of the People's Republic of China ("China"). "Domestic-use automobile products" are defined by the Provisions to include only passenger vehicles which are purchased and used by consumers for domestic-use purposes. Automobiles used for official, business, rental, military, agricultural or any other purpose are not covered by the 3Rs-Warranty or the Provisions. Although not specifically addressed by the Provisions, it appears likely that a passenger vehicle that is used both for domestic-use and non-domestic-use purposes would not be covered by the 3Rs-Warranty.

The 3Rs-Warranty applies to all new domestic-use automobile products sold on and after October 1, 2013. Should the owner sell the vehicle, the 3Rs-Warranty Certificate transfers with it if the vehicle continues to be used for domestic-use purposes.

2. Who has the 3Rs-Warranty responsibilities?

The Provisions provide the obligations that must be taken by the manufacturer, seller and repairer, respectively. The manufacturer issues the 3Rs Warranty certificate in its name. The repairer must keep a reasonable stock of parts which are necessary for the repairs to ensure the normal operation of repairs and avoid any delay in the repairs due to shortages of parts; and the repairer must keep the records of repairs for consumers to review and copy upon request. The seller of the vehicle has the full responsibility directly to the purchaser for the repair, return or replacement of the vehicle in accordance with the 3Rs-Warranty. The seller in appropriate cases will be able to recover its warranty costs from the manufacturer or repairer, as the case may be. Imposing 3Rs-Warranty responsibility directly upon the seller is intended to facilitate timely and efficient warranty performance and recovery of costs by consumers.

For purposes of the Provisions and the 3Rs-Warranty, the "seller" is the person or entity who sells and delivers the vehicle directly to the consumer, receives the purchase price and issues the taxable invoice ("*fapiao*") to the consumer – in most cases the retail automobile dealer. The "manufacturer" is the Chinese company (domestic Chinese company or Sino-foreign joint venture) which manufactures or assembles the domestic-use automobile product and issues the quality certificate.

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3. What is the “repair” warranty and repair warranty period? What costs are covered?

The “repair” warranty applies when quality issues arise during the repair warranty period. The repair warranty covers all labor costs and costs of materials for the repairs. If the time of a repair (including the time waiting for repair parts) exceeds five days, the seller is also required to provide the consumer free use of a backup automobile while the automobile is being repaired or provide reasonable compensation for the consumer’s transportation costs during the repair period.

The warranty period of repair is required by the Provisions to be not less than three years or 60,000 kilometers in mileage (whichever occurs first). The warranty period begins on the issuance date of the *fapiao* by the seller. The actual warranty period is required to be set forth on the 3Rs-Warranty Certificate delivered by the seller at the time the automobile is purchased.

The repair warranty has some exclusions. For instance, it does not apply to breakdowns caused by the quality issues of major parts such as the engine or gearbox (these are covered by the return and replacement warranties). Nor does it allow for the return or replacement of the vehicle. Finally, the repair warranty does not apply to “easy to wear and tear parts”. The replacement warranty may instead be applicable.

4. What are the “replacement” and “return” warranties and warranty periods? When can a consumer request a replacement or return of a domestic-use automobile?

In addition to the repair warranty, the Provisions contain two other warranties: the “replacement” and “return” warranties. Each of these warranties allow a consumer to return a domestic-use automobile to the seller for a new one (replacement) or a refund of the invoice price (return) under the circumstances specified in the warranties.

The warranty period for both the replacement warranty and the return warranty is required to be not less than two years or 50,000 kilometers in mileage (whichever occurs first) with a few exceptions. The warranty period begins on the issuance date of the *fapiao* issued by the seller.

The repair warranty is not applicable to engine and gearbox defects. Under the replacement warranty, a consumer may choose to replace the engine or gearbox under the warranty if major parts of the engine or gearbox have quality issues within 60 days from the date of the *fapiao* issued by the seller, or within 3,000 kilometers in mileage, whichever occurs first. A consumer may also choose to replace the “easy to tear and wear parts” under the warranty if the parts have quality issues within their “guaranteed quality” periods. Examples of the “easy to tear and wear parts” include air filter, air conditioning filter, oil filter, fuel filter, spark plug, brake lining, clutch disc, tires, battery, battery for remote controller, bulb, doctor blade of wiper, fuse and the ordinary relay (excluding integrated control unit). Finally, a consumer may return a domestic-use automobile and request a replacement when the accumulative repair time during the warranty period exceeds 35 days or the accumulative repairs due to the same product quality issue have been performed more than five times within the warranty period.

Under the return warranty, a seller will be required to accept a return of the automobile and refund the purchase price or to replace a domestic-use automobile at the request of a consumer if the vehicle has any of the following:

- A faulty steering or braking system, cracks on the automobile body, or fuel leakages within 60 days from the date of the purchase invoice issued by the seller, or within 3,000 kilometers in mileage, whichever occurs first;

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- A “serious safety performance malfunction” continues to exist or a new serious safety performance malfunction arises after two repairs during the warranty period. For the purpose of the Provisions, a “serious safety performance malfunction” refers to product quality issues which endanger personal and property safety and lead to inability to use the automobile safely, including malfunction of safety devices or risk of fire;
- The engine or gearbox continues to malfunction after it has been replaced twice or after the same major engine or gear box part has been replaced twice within the warranty period;
- The same major part of the steering system, braking system, suspension system, front and rear axle, or vehicle body continues to malfunction after it has been replaced twice.

A consumer may also choose to return the domestic-use automobile if the seller does not have a replacement domestic-use automobile of the same brand and model or if the seller does not have other different types of vehicles with specifications that equal or exceeds the consumer’s vehicle.

5. What procedures must be followed for a replacement or return of a domestic-use automobile product?

To request a replacement or return a domestic-use automobile, a consumer must submit the request in writing within the warranty period. The seller must respond to the consumer’s request in writing within 10 working days of receipt of the request to inform the consumer whether seller will replace the vehicle or allow the consumer to return it.

The seller must also issue a product replacement certificate or a return certificate to the consumer within 15 working days of receipt of the consumer’s replacement or return notice, provided that the product meets the criteria for replacement or return. For the refund, the full amount of the refund must be paid by one time.

6. What charges must be paid by consumers for repair, replacement or return of their domestic-use automobiles?

The Provisions require that repairs made within the scope of the repair warranty are to be made without charge to the consumer. The same is true for the replacement of the domestic-use automobile when the criterion for a “free” replacement is satisfied. Please refer to the attached chart setting forth the circumstances under which the free replacement is warranted.

In other cases, the consumer must pay reasonable usage charges to the seller. The formula for calculating the reasonable usage charges is $[(\text{automobile price (RMB)} \times \text{mileage (km)}) / 1000] \times n$. The compensation coefficient “n” is determined by the manufacturer of a domestic-use automobile in question and must be between 0.5 percent - 0.8 percent based on the usage time and condition of the automobile. The compensation coefficient will be indicated on the 3Rs-Warranty Certificate. In addition, taxes incurred by replacing or returning the automobile must be paid by the consumer in accordance with the related tax law.

7. Under what circumstances are sellers exempted from 3Rs-Warranty responsibilities?

The Provisions provide nine circumstances under which sellers are exempted from the 3Rs-Warranty responsibilities. They are:

1. Automobiles are purchased by enterprises, public institutions or governmental organs for purposes of production or public affairs;

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2. Quality issues arising from the “easy to wear and tear parts” after the expiration of the warranty period expressly indicated by the manufacturer of the parts and components in question;
3. Consumers have been informed in writing of the defects of the domestic-use automobile products when the products are purchased;
4. Domestic-use automobile products are used for rental or other business purposes;
5. Domestic-use automobile products are damaged due to refit, adjustment or disassembly of the products by the consumers themselves while such refit, adjustment or disassembly are expressly prohibited in the users manuals of the products;
6. Domestic-use automobile products are damaged due to improper handling by consumers when product quality issues arise;
7. Damage is caused due to consumers’ failure to correctly use, maintain or repair their products in accordance with the requirements of operation manuals;
8. Damage is caused due to *force majeure*; and
9. No valid invoices and 3Rs-Warranty certificates are available.

8. How are disputes related to the 3Rs- Warranty to be resolved?

The Provisions provide four ways for a consumer to resolve 3Rs-Warranty related disputes: (1) **mediation** with a third-party social intermediary agency such as a consumer rights protection organization; (2) **complaint** with a relevant administrative department such as quality and technology supervisory department; (3) **arbitration** in accordance with vehicle purchase agreements or other agreements relating to the domestic-use automobile; or (4) **lawsuit** filed with a competent People’s Court.

AQSIQ realizes that a 3Rs-Warranty dispute requires sophisticated and technical experts to opine on the issue, therefore, the Provisions provide that if the consumers choose arbitration, upon agreement by the seller and the consumer, a technical consultant can be selected to participate in dispute resolution. The Provisions also authorize quality and technology supervisory departments above the provincial level to establish pools of technical consultants who are specialized to provide technical advice on 3Rs-Warranty disputes. When 3Rs-Warranty-related disputes arise, sellers or consumers may seek advice from these technical consultants, who will help to clarify the rights and obligations of consumers and sellers, helping to resolve their disputes relating to the 3Rs-Warranty.

9. What is the legal liability of manufacturers, repairers and sellers if they violate the Provisions?

The Provisions specify the respective obligations of manufacturers, sellers and repairers to enforce 3Rs-Warranties. Failure to meet the obligations set forth in the Provisions will result in penalties of no more than RMB30,000.

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