Linklaters

# Global Guide: Collective Redress

2026



# Introduction

Collective redress procedures which allow claimants to bring combined actions in court proceedings have become increasingly popular across the globe and we expect that trend to continue in the years to come. Whilst these procedures share the common purpose of bundling claims that would individually be practically and economically unviable, they vary significantly in their structure and operation across different legal systems. Businesses with cross-border operations therefore need to be able to understand the differences between jurisdictions so that they can navigate legal and procedural complexities, optimise litigation strategy and manage business risks.

Key differences between jurisdictions include the types of mechanisms available – such as class actions, representative actions, multi-party claims, and collective actions – as well as their structural features. Some jurisdictions permit opt out class actions, others require claimants to proactively opt in. Several jurisdictions have procedures allowing litigants to obtain binding rulings on issues which are common to a group whilst leaving individual matters to be dealt with in follow-on proceedings. There are often limitations on who may bring collective actions, for example the representative may have to be a designated consumer association. Available procedures are also often limited to particular legal subject matters (for example, consumer, environmental or antitrust laws), whilst other jurisdictions allow claims to be brought on a broader basis.

The availability and structure of litigation funding, which is often crucial to the viability of collective actions, is another aspect of collective redress which differs from country to country. These variations relate to the legal requirements for funding arrangements and the commercial availability of different types of funding. For instance, funding may be available from public bodies, lawyers acting on contingency fee arrangements or third-party finance providers.

This guide is designed to equip businesses with the practical knowledge necessary to navigate these complexities. Through a structured analysis of key jurisdictions across the globe, we address ten critical questions in each country, providing clarity on the procedural nuances and risk factors that define collective redress in different legal systems. Whether you are assessing exposure to potential claims, developing a defence strategy or evaluating settlement options, this guide highlights the issues that have to be taken into account to make informed decisions in an increasingly interconnected litigation landscape. If you require assistance with a particular case, please do get in touch with the Linklaters lawyers with whom you work.

*Law stated as at December 2025*

**Questions:**

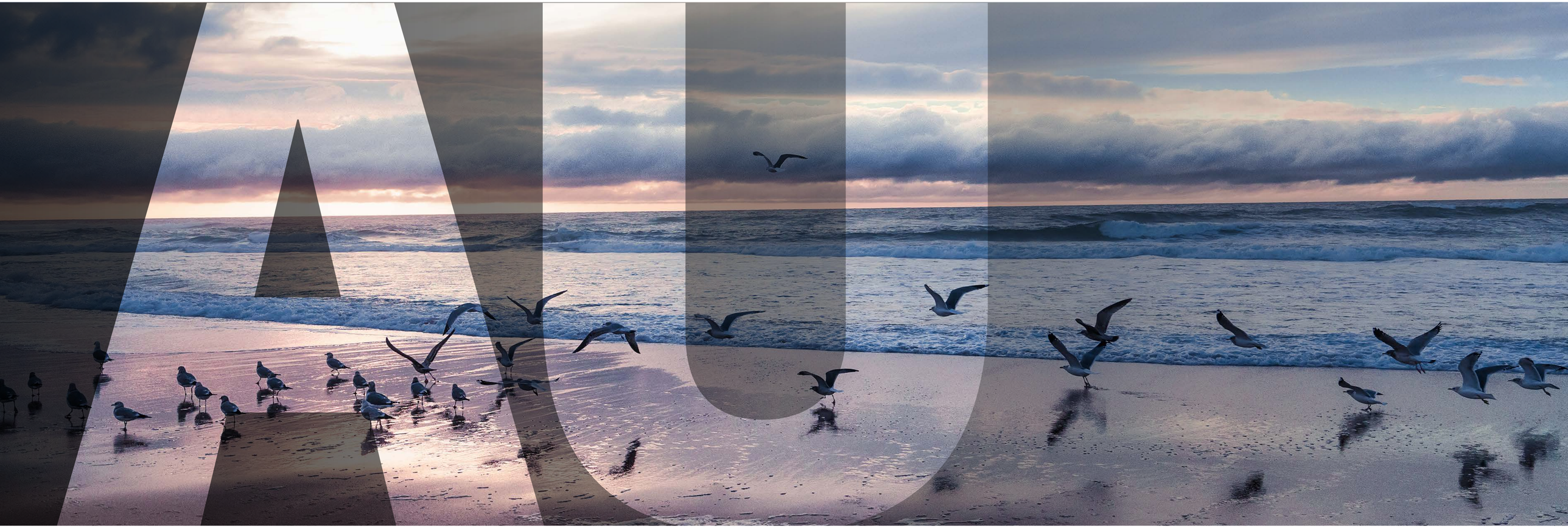
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# Australia



# Australia

Class actions are an established and important part of the Australian legal landscape. They are conducted as representative proceedings and there are no restrictions on the persons or entities who may bring them. There is no class certification process and it is not necessary for common issues to predominate. It is an opt out regime, but classes may be defined in a way that is limited to persons who have opted in. Class actions are most frequently brought in the context of mass consumer claims, with securities and employee claims also common.

## Q1 What forms of collective actions are permitted?

Australian class actions are representative proceedings – that is, claims brought by representative plaintiff(s) on behalf of a broader class.

The Federal Court of Australia and Supreme Courts of New South Wales, Victoria, Queensland, Tasmania and Western Australia each have regimes for the bringing of representative proceedings. Those regimes are almost identical in all material respects.

For more details on class actions in Australia, see Allens' publication: Class actions in Australia.

## Q2 Who may bring them?

There are no restrictions on the persons or entities who may bring representative proceedings but any claim must satisfy the following threshold requirements:

- there must be seven or more persons with claims against the same defendant;
- the claims must be in respect of, or arise out of, the same, similar or related circumstances;
- and the claims must give rise to at least one substantial common issue of law or fact.

The representative plaintiff(s) are the only class members who are parties to the proceedings. There is an implied requirement that the representative(s) adequately represent the class members' interests and a court may permit the substitution of a representative who is unable to do so (although this has never been properly tested).

Unlike class actions in the United States, there is no class certification process and it is not necessary for common issues to predominate. A defendant may, however, challenge the constitution of the proceedings as representative proceedings on the basis that the threshold requirements have not been satisfied and/or it would not be effective, efficient or otherwise appropriate for the claims to be dealt with by representative proceedings.

Some regulators are empowered under legislation to bring representative proceedings. For example, the Australian Competition and Consumer Commission is entitled to act as a representative party on behalf of claimants that are consumers; and the Australian Securities and Investments Commission is able to commence representative proceedings in the name of a company or a natural person. However, it is exceptionally rare for regulators to exercise these powers.

## Q3 Opt in or opt out?

All Australian class action regimes operate on an opt out basis. As a result, every potential claimant who falls within the class definition is a member of the class (and will have their rights determined by the proceedings) unless they opt out.

The class definition may, however, be formulated in a way that limits the class members to persons who have registered to participate in a claim. Proceedings of this kind are essentially opt in proceedings within the opt out regime. This approach was developed in claims supported by third party funders who wish to limit the class to those persons who have entered into funding agreements.

## Q4 Limitations?

The action must satisfy the threshold requirements set out above.

## Q5 Judge or jury?

Judge.

# Australia

## Q6 What relief can be obtained?

Courts have the power to award a broad range of remedies. This includes the power to make declarations of liability, grant equitable relief, make an award of damages, or make any other order that the court thinks is 'just'.

In relation to damages awards, the court may make an award for group members, sub-group members or individual group members consisting of specified amounts or amounts worked in a manner specified by the court. There is also provision for the Court to make awards of aggregate damages. However, the court cannot make an award of aggregate damages unless a reasonably accurate assessment can be made of the total amount to which group members will be entitled under the judgment.

## Q7 How are collective actions funded?

Australian class actions are commonly funded by third party funders. Class actions may also be funded by the representative plaintiff and/or class members themselves, or by lawyers acting on a conditional fee (ie 'no win, no fee') basis. Generally, Australian lawyers are not permitted to charge contingency fees. That is, law practices cannot enter into cost arrangements for their fees to be calculated by reference to the amount of an award or settlement. However, since 2020, in class actions in the Supreme Court of Victoria a plaintiff may apply for a 'group costs order' to permit the plaintiff's solicitors to receive a percentage share of any damages award or settlement. Since the introduction of group costs orders there has been an increase in class action filings in the Victorian Supreme Court.

Third party funders can secure their right to a funding commission by either: signing-up class members to funding agreements which gives them a contractual right to a commission; or by seeking a 'common fund' order which entitles them to a commission from any proceeds of the litigation by order of the court. In 2019, the High Court of Australia ruled that courts did not have the power to make 'common fund' orders during the interlocutory stages of a class action. However, the High Court has recently confirmed that the court is able to make 'common fund' orders upon settlement or judgment of a representative proceeding, provided that such orders are 'just'.

## Q8 Is pre-trial discovery/ disclosure available?

In the ordinary course, the parties will be required to give pre-trial 'discovery' (akin to disclosure). In some limited circumstances, the class members (ie non-parties) have also been ordered to give pre-trial discovery.

Discovery can be a substantial undertaking for class action defendants, who may be required to disclose many thousands of documents. Having regard to the costs of this burden, there has been increasing judicial attention in recent years on attempting to limit the nature and scope of discovery required in large civil proceedings (including class actions), including through the use of technology assisted review.

## Q9 Are collective actions widely used in practice?

Australia has an active class action environment. The level of class action activity in Australia is driven by the entrepreneurial pursuits of both plaintiff law firms and third party funders. Over the years the number of class action filings has steadily increased and the subject matter of claims has evolved and expanded. Over recent years, the number of unique subject-matter filings has stabilised at around 45 to 50 new claims per year.

## Q10 Likely future scope and development?

Originally, product liability claims were the most likely subject of an Australian class action. However, securities and mass consumer claims have emerged to become the most common types of class action proceedings. In recent years, consumer claims have dominated, with the number of employee claims growing and securities class actions being a constant feature. These well trodden types of class actions are likely to remain a consistent feature of the class action landscape.

However, with a mature and entrepreneurial class action environment, it is expected that class action proponents will continue to adapt to changing conditions and developments. It is possible that future areas of class action risk will arise in connection with the ongoing regulatory focus on environmental and ESG issues more broadly, the prevalence and increased sophistication of cyber breaches and alleged anti-competitive conduct.

Despite the so-called 'perfect storm' conditions for class actions in Australia, the 'floodgates' have not burst open. Class actions will continue to play an increasingly significant role in the determination of disputes across the Australian legal landscape.

# Australia

AU

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# Belgium



# Belgium

Belgium first introduced a collective redress regime in 2014. Previously, all collective claims had to be brought by way of joined actions, ie actions in which multiple plaintiffs with closely connected claims, each acting in their own name and on their own behalf, can have their claims decided in one set of proceedings. The legislator has cautiously opened pathways for collective redress. Under the initial 2014 regime, collective redress actions could only be brought on behalf of a group of consumers and only if they related to a breach of a limited number of rules of consumer law. Since then, the legislator has steadily expanded the regime, allowing collective redress actions to be brought on behalf of groups of SMEs and adding to the list of rules on which an action can be based. Most recently, Belgium transposed the EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers (the "**Collective Redress Directive**"). Whilst the Belgian regime was already largely aligned with the directive, several amendments were necessary, including expanding its scope in terms of causes of action, allowing cross-border representative actions, and introducing rules on litigation financing.

## Q1 What forms of collective actions are permitted?

### Actions for collective redress

Chapter 2 of Book XVII of the Code of Economic Law provides for collective redress actions under Belgian law, albeit in limited circumstances:

- A collective redress action is only permitted where the claim is based on a breach by an undertaking of a contract or of one of the acts or EU rules specifically listed in Article XVII.37 of the Code of Economic Law, or a decision implementing them. These include consumer rights and protection rules such as product safety and liability, insurance regulation, protection of personal data, the sale of financial products and pharmaceuticals regulation, as well as competition law, intellectual property law and certain statutes on regulated industries, such as natural gas and electricity. Since the transposition of the Collective Redress Directive, this also includes EU rules such as the Digital Services Act and the Digital Markets Act.
- Collective redress actions may only be brought by certain representative organisations and only in respect of harm suffered by either consumers or small and medium-sized enterprises (SMEs) within the meaning of Commission Recommendation 2003/361/EC.
- Collective redress actions may only be brought in respect of facts underlying collective harm that occurred after 1 September 2014.
- All collective redress actions must be brought in the enterprise courts of Brussels.

Save for collective redress actions and other limited exceptions, a plaintiff before the Belgian courts must usually have a direct, personal and actual interest in a claim to be able to institute legal proceedings. This prevents a plaintiff from bringing claims on behalf of others in a single action. Therefore, outside the scope of application of the Code of Economic Law, collective redress actions are not permitted in Belgium.

### Joined actions

Joined actions, on the contrary, are permitted in Belgium. A joined action is where multiple plaintiffs either jointly bring an action or request the court during proceedings to join their individual actions. This is only possible, however, if their claims are so closely connected that it is appropriate to try them together, in order to avoid potentially incompatible decisions. In these circumstances, the claims will be heard and tried together. Each plaintiff must have an immediate, personal and actual interest in the claim and must have consented to the commencement of proceedings in his name.

Prior to the entry into force of the Belgian collective redress regime in 2014, joined actions were commonly used as a substitute for collective redress actions. They are still used for breaches of statutory rules for which access to actions for collective redress is limited. For instance, actions by multiple plaintiffs (ranging in the hundreds or even thousands), represented through powers of attorney, have been commenced in the area of investors' litigation, where actions for collective redress are not available for all types of investors and/or all types of causes of action. Such actions may be initiated by public interest associations representing small investors, who obtain powers of attorney from affected investors to commence damages claims in their name. However, each plaintiff must (i) be named and identified individually in the action, (ii) have a direct, personal and actual interest in the claim, and (iii) provide evidence of the existence and extent of the damage it has suffered individually as a result of the allegedly wrongful act.

### Actions for the protection of a collective interest

By way of derogation from the requirement of a direct, personal and actual interest, certain legal entities and representative organisations have been given the statutory right, in accordance with their statutory purpose, to bring a representative action on behalf of an unidentified group of people to defend specific collective interests, such as consumer interests, the environment and human rights (eg, anti-discrimination). Until recently, these actions could not, in principle, seek the recovery of monetary compensation for harm but could only seek injunctions to stop unlawful practices harming the relevant collective interest. The right to bring these actions was also reserved to legal entities. For instance, certain consumer rights organisations were permitted to bring proceedings for injunctive relief against certain breaches of consumer law on behalf of a group of unidentified consumers. For the status quo, see questions 2 and 6.

# Belgium

## Q2 Who may bring them?

### Actions for collective redress

According to the Code of Economic Law, collective redress actions may only be brought by one of four types of entities if they concern the reparation of harm suffered by consumers:

- a legal entity which has been designated by the Belgian Minister as a qualified entity for consumers (which requires evidence that it satisfies certain criteria);
- an organisation or public body which has been designated as a qualified entity in another EU Member State;
- a legal entity which has not been designated as a qualified entity for consumers, but which proves to the court that it satisfies all of the criteria to be designated as such by the Belgian Minister; or
- the Consumer Ombudsman, although only with a view to negotiating a collective settlement agreement. If no collective settlement agreement is found, the Consumer Ombudsman must be replaced by another representative. This right of action for the Consumer Ombudsman is controversial and subject to a pending test case.

If it concerns the reparation of harm suffered by a class of SMEs, the action for collective redress can only be brought by:

- a legal entity which has been designated by the Belgian Minister as a qualified entity for SMEs (which requires evidence that it satisfies certain criteria);
- an inter-professional organisation for the protection of SMEs which has legal personality and is represented in the High Council for Self-Employed Persons and SMEs;
- a legal entity which has not been designated as a qualified entity for SMEs, but which proves to the court that it satisfies all of the criteria to be designated as such by the Belgian Minister; or
- a legal entity which has as its statutory purpose the protection of the collective interests of SMEs, and which has been designated as such in another Member State of the EU or the EEA and which satisfies the criteria for designation as a qualified entity for SMEs by the Belgian Minister.

### Joined actions

Joined actions may be brought by any group of plaintiffs whose claims are so closely connected that it is appropriate to try them together in order to avoid incompatible decisions. Likewise, claims that have already been lodged with a court may be joined in the course of the proceedings if the condition of a sufficiently close connection is satisfied.

### Actions for the protection of a collective interest

Finally, actions for the protection of a collective interest may only be brought by organisations which have been authorised to do so, either explicitly or generally by the law. These include, for example, consumer protection organisations, environmental organisations and legal entities whose purpose is to protect human rights and fundamental freedoms. For instance, legal entities may bring actions which seek to protect human rights or fundamental freedoms as recognised in the Belgian constitution or other international treaties binding on Belgium under the following conditions:

- the legal entity is acting in line with its statutory purpose with a view to protecting an interest related to that purpose;
- that statutory purpose is specific and does not consist merely in the pursuit of the general interest;
- the legal entity pursues this goal in a continuous and effective manner; and
- the action is in the pursuit of a purely collective interest.

## Q3 Opt in or opt out?

### Actions for collective redress

Under the original 2014 regime, it was left to the courts to decide whether to apply an opt in or opt out regime to a class action, except in certain circumstances where the court was required to apply an opt in regime. However, the Act of 21 April 2024 has replaced this with a general requirement that classes are always composed on an opt in basis.

There is only one exception to this rule: when a (potential) defendant and a (potential) class representative request court approval of a class settlement, they can request that this be done on an opt out basis. However, they cannot resort to opt out when the claims being settled relate to the reparation of bodily or moral collective harm – in such cases, they can only select the opt in regime. Likewise, class members who do not habitually reside in Belgium (for consumer claims) or do not have their primary establishment there (for claims brought on behalf of SMEs) must always opt into a settlement.

### Joined action

For a joined action to be lodged or for multiple existing actions to be joined, the plaintiffs must be identified and must have lodged the action personally, ie in their own name. It is therefore necessary specifically to opt into a joined action.

### Actions for the protection of a collective interest

Since actions for the protection of a collective interest are in the collective interest, there is no specific group that is required to consent to the lodging of the claim.

## Q4 Limitations?

Various limitations apply to the Belgian collective redress action. Specifically, such an action can only be brought:

- by a limited number of entities (see question 2);
- on behalf of a group of consumers or of SMEs;
- before the enterprise courts of Brussels;
- in respect of a breach by an undertaking of a contract or of one of the acts or EU rules specifically listed (see question 1); and
- for facts which occurred after 1 September 2014.

# Belgium

Joined actions can be brought for any type of matter, but require the consent of all parties whose claims are exercised.

## Q5 Judge or jury?

Since there are no juries in any civil case in Belgium, any collective action will be decided by a (panel of) judge(s).

## Q6 What relief can be obtained?

In collective redress actions, various types of redress may be obtained, including damages, specific performance, compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate. All types of relief may also be sought in joined actions. Conversely, in proceedings for the protection of a collective interest, representative organisations are usually only entitled to seek injunctions to stop unlawful practices that harm the collective interests they represent and may not claim damages for breach of these interests.

## Q7 How are collective actions funded?

In principle, each party will be responsible for its own costs.

However, the successful party may obtain reimbursement of its procedural costs and part of its legal fees from the unsuccessful party. This reimbursement is determined by the adjudicating court within set upper and lower limits, which vary depending on the value of the initial claim. The maximum amount that may be recovered from the unsuccessful party is €47,093.02 for claims valued at over €1,000,000. Contingency fees or "no win, no fee" agreements are not permitted, although a success fee may be agreed upon.

Litigation funding is generally permitted under Belgian law and few restrictions apply. However, in collective redress actions, qualified entities can only be designated by the Belgian Minister, or legal entities which have no designation can only be admitted by the court, if they can evidence that they are independent and not influenced by litigation funders. This includes showing that they have processes in place to avoid influence by a funder as well as conflicts of interest between their own interests and those of funders and class members. In addition, prospective class representatives are required to provide transparency in their originating application regarding any funding which they receive from a third party for the action.

## Q8 Is pre-trial discovery/ disclosure available?

Belgian law does not have a procedure corresponding to disclosure. There is no general discovery, nor pre-trial witness depositions. As a general rule, each party must send a copy of the exhibits cited in its trial brief to the opposing party. In some cases, such as when there are serious indications that a party is withholding a specific, relevant document, the judge may order the production of that document.

In competition damages claims, the Act of 6 June 2017 extended document production orders to categories of documents rather than individually specified documents, as part of the transposition of the Directive 2014/104/EU.

## Q9 Are collective actions widely used in practice?

Collective redress actions have enjoyed reasonable success in Belgium since their introduction in 2014, with over a dozen actions brought so far. Whilst initially the Belgian consumer rights organisation Test-Aankoop/Test-Achats was the only one to bring such actions, recent years have seen other class representatives entering the scene.

The transposition of the Collective Redress Directive in 2024, and especially the possibility for qualified entities designated in other Member States to bring actions in Belgium, also appears to have given the regime new impetus.

## Q10 Likely future scope and development?

As part of the transposition of the Collective Redress Directive into Belgian law in 2024, cross-border collective redress actions for classes of consumers became available in Belgium. This allows qualified entities designated in other Member States to bring collective redress actions in Belgium. As this regime gains traction, we expect an increase in the number of collective redress actions brought in Belgium.

At the same time, we are seeing increased regulatory scrutiny through instruments such as the DSA, DMA and GDPR. Since collective redress actions may be brought in Belgium on the basis of those EU rules, we expect follow-on collective redress actions to become more commonplace.

# Belgium

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# France



# France

The collective redress regime was significantly reformed by the new law on class actions (*Loi n°2025-391 of 30 April 2025*, the "**2025 Law on Class Actions**"), which implements the EU Directive on representative actions for the protection of the collective interests of consumers (the "**Collective Redress Directive**"). The new legislation applies to class actions introduced after 3 May 2025, even if the misconduct was committed prior to the law's publication (except for the new "serial damages" penalty, which only applies to misconduct committed after the publication of the bill).

The 2025 Law on Class Actions created a unified regime for class actions and replaced the prior sector-specific rules. Additionally, the new rules allow legal persons to benefit from class actions, while class actions were previously intended for individuals only (except for environmental class actions). They do not set limits in terms of the number of employees or annual turnover for legal persons to be beneficiaries. They do however require that all beneficiaries be placed in a similar situation, resulting from the same misconduct or misconduct of the same nature.

## Q1 What forms of collective actions are permitted?

### Class actions

- **Unification of the French class actions regime:** Prior to the 2025 Law on Class Actions, class actions were only admissible in the following sectors: consumer law, antitrust and competition law, health products liability, environmental law, personal data protection, discrimination, and property leases. The 2025 Law on Class Actions replaces the sector-specific rules and creates a new general unified regime for all sectors, which allows the claimants to seek the cessation of a wrongdoing and/or a compensation for damages suffered.
- **Introduction of cross-border representative actions:** The 2025 Law on Class Actions also introduces cross-border representative actions – ie, class actions brought by a "qualified entity" in a European Member State other than that in which the entity is designated as qualified entity. In accordance with the Collective Redress Directive, cross-border representative actions may only be brought in areas listed in Annex 1 of said Directive (for example, consumer protection, environment, health, personal data protection, transport).
- **Specific treatment of antitrust follow-on class actions:** The 2025 Law on Class Actions sets out specific provisions regarding class actions following breaches by a legal person of either (i) Articles 101 and 102 of the Treaty on the Functioning of the European Union on antitrust and cartels or (ii) French antitrust laws, provided the following conditions are met:
  - a decision must have been issued by the competent national or European authorities or courts, identifying the wrongdoings of the defendant; and
  - the part of the decision which identified the wrongdoings can no longer be subject to appeal – though it remains to be seen whether "appeal" refers to all types of appeals, including before the *Cour de cassation* (ie, the French Supreme court), or only to ordinary appeals before the courts of appeal.

### Other collective actions

In addition, French law still recognises several other forms of collective actions (apart from "class actions" *per se*) that may be directly introduced by the claimants and/or with the involvement of an association (whether as a party to the proceedings or not):

- **Joint proceedings** ("*actions jointes*"): Several claimants, represented by the same lawyer, can bring their claims jointly against the same defendant(s) through a single writ of summons;
- **Joint representation proceedings** ("*action en représentation conjointe*") : An authorised association may, if expressly mandated by at least two individuals who have suffered damage resulting from the same cause, bring an action on their behalf. Such actions are expressly permissible in the areas of consumer law (Articles L622-1 to 4 and R622-1 to 10 of the Consumer Code), defence of investors in securities and financial products (Articles L452-2 to 4 of the Monetary and Financial Code); and environmental law (Articles L142-3 and R142-1 to R142-9 of the Environmental Code).
- **Mandates given by several claimants to an association:** In a 2015 decision (Cass. Crim. 20 May 2015, no. 14-81.147), the *Cour de cassation* validated the action brought by an association that had been given mandates from over 55,000 of its members to act on their behalf. The Court considered that no law prohibits granting a mandate to a third party to file a claim (in that case, for restitution) on one's behalf, including an association – provided that the mandate(s) meet(s) the required conditions (see question 2 below).
- **Actions of "defence leagues"** ("*ligues de défense*"): Case law has recognised that an association may bring a collective civil action to defend the combined interests of its members.

# France

- **Actions brought in the collective interests of consumers** (“*action exercée dans l’intérêt collectif des consommateurs*”): Under Article L.621-1 of the Consumer Code, authorised consumer associations may take legal action to seek compensation for damages caused by a criminal offence to the collective interest of consumers. The damages for which the association seeks compensation must be caused to the “collective interest of consumers”. Criminal offences causing damage for which the association may seek compensation include those that infringe the freedom of prices and competition. More generally, all offences which may harm the collective interest of persons regarded as consumers are covered, such as active and passive bribery (Cass. crim. 27 October 1997: RJDA 2/98 No. 231).
- **Actions in defence of “important causes”:** Articles 2-1 et seq. of the Criminal Procedure Code allow specific associations to bring an action before civil or criminal courts, based on the defence of the collective interest they represent, to obtain damages resulting from a criminal offence. The scope of these articles covers a wide range of criminal offences, such as racial discrimination, corruption and terrorism.
- **Actions regarding competition offences**, such as price fixing and unfair competition: Article L.490-10 of the Commercial Code permits professional organisations to initiate proceedings in a civil or commercial court for harm caused directly or indirectly to the collective interests of the profession or sector which they represent.

## Q2 Who may bring them?

### Class actions

- **Class actions seeking compensation for damages** can be brought by non-profit government accredited associations. Legal standing to bring a class action for compensation purposes is limited to non-profit government accredited associations. Accreditation by the *Directeur général de la concurrence, de la consommation et de la répression des fraudes* (DGCCRF - Director General for Competition Policy, Consumer Affairs and Fraud Control) may be granted to an association when the following five conditions are cumulatively met:
  - at least one year of continuous and effective activity;
  - a statutory purpose that includes the defence of the interests that have allegedly been infringed;
  - no ongoing insolvency proceedings;
  - independence and freedom from influence by persons, other than the represented persons and beneficiaries of the class action, having an economic interest in the claim – to this end, the non-profit association must implement written procedures to prevent any conflict of interests;
  - transparency regarding its statutory purpose, activities, main funding sources and governance.

  Approval may be withdrawn whenever these conditions are no longer met.

  The list of approved associations and entities is published on the website of the *Ministère chargé de la consommation* (ministry responsible for consumer affairs).
- **Class actions seeking the cessation of a wrongdoing** can be brought by non-profit associations. Prior governmental approval of the non-profit association is not necessarily required when the class action aims solely at the cessation of a wrongdoing.

  Therefore, in addition to non-profit government accredited associations meeting the above-mentioned requirements, legal standing to bring class actions seeking the cessation of a wrongdoing is also granted to non-profit associations meeting the following three cumulative conditions:
  - registered for over two years;
  - having performed effective and public activities for at least 24 consecutive months;
  - the association’s statutory purpose covers the defence of the interests allegedly infringed.
- Class actions seeking the cessation of a wrongdoing can also be brought by the public prosecutor. In addition, the public prosecutor can join any class action, including those seeking compensation for damages, to support the claim.
- Other **specific class actions** can be brought by trade unions. The following specific class actions can be brought by trade unions:
  - alleged work discrimination;
  - alleged infringement to personal data protection; or
  - when the class action seeks to put an end to an employer’s failure to fulfil its obligations or to compensate for damage caused by this failure to several persons placed under the authority of this employer.

  Farmers’ and fishers’ unions can also bring specific class actions to obtain an injunction for the cessation of a breach or compensation for damages caused by such breach to their members.
- **Cross-border representative actions** can be brought by “qualified entities”. In accordance with the Collective Redress Directive, the 2025 Law on Class Actions grants legal standing to French qualified entities which comply with the following six cumulative requirements:
  - having a continuous and effective activity for over 12 consecutive months;
  - having a statutory purpose that includes the defence of consumers’ interests;
  - pursuing a non-profit purpose;
  - having no on-going insolvency proceedings;
  - being independent and free of influence from persons having an economic interest in the claim (other than consumers), with procedures in place to prevent such influence and conflict of interests;
  - being transparent regarding their statutory purpose, activities, main funding sources and governance.

# France

Accreditations for "qualified entities" meeting the above requirements are granted by the DGCCRF, who can withdraw its approval if the conditions are no longer met.

### Other specific collective actions

- **Joint representation proceedings on behalf and for the benefit of each claimant in the areas of consumer law, defence of investors in securities and financial products and environmental law** can be brought by authorised associations. To be authorised, an association must fulfil the requirements specific to the area in which it operates (consumer law: Articles L811-1 and R811-1 to 7 of the Consumer Code; defence of investors in securities and financial products: Articles L452-1 and D452-1 to 8 of the Monetary and Financial Code; and environmental law: Articles L141-1 and R141-1 to R141-26 of the Environmental Code). In order to initiate an action, the association must receive written instructions from each claimant. Each claimant must be known and identified. A claimant can revoke his instructions at any time and pursue the action on his own account, as long as he informs the court, the defendant and any other party to the proceedings.
- **Actions in the collective interest of consumers** can be brought by authorised association or union of family associations. Where the loss suffered is related to the commission of a criminal offence, an authorised association (meeting the conditions of Articles L811-1 and R811-1 to 7 of the Consumer Code) or a union of family associations (national or departmental, per Articles L211-2 et seq. of the Social Action and Families Code) may file a criminal complaint and seek compensation for damages. Alternatively, it may only intervene in a civil action before the criminal court which has already been commenced by one or more consumers with respect to losses related to goods or services received by them.
- **Defence leagues cases and cases brought in defence of "important causes"** can be brought by specific associations.
  - For defence leagues cases, a duly registered association may bring the action on its own behalf to defend the interests of its members, provided that (i) its charter expressly provides for a right to act before the courts (eg, Cass. civ. 1, 27 May 1975, No. 74-11.480) or (ii) these interests fall within its stated purpose (eg, Cass. Civ. 1, 18 September 2008, No. 06-22.038; Cass. Civ. 1, 2 October 2013, No. 12-21.152);
  - For cases brought in defence of "important causes", articles 2-1 to 2-23 of the Criminal Procedure Code each provide for specific requirements relating to the admissibility of the action, depending on the criminal offense committed. Such requirements are mainly related to (i) the proper registration and duration of existence of the association, (ii) its statutory object, which must be related to the offense for which the action is introduced, and (iii) the agreement of the victim and/or the initiation of proceedings by the public prosecutor
- **An association may be given mandates to act on behalf of some of its members**, provided that (i) the existence of such mandates is proven and that (ii) the name of the principal(s) appears in each procedural document executed by the agent (Cass. Crim. 20 May 2015, no. 14-81.147).
- **Civil cases regarding competition offences**, such as price fixing and unfair competition, can be brought by professional organisations (ie, unions of professional), for the harm caused to the collective interests of the profession or sector they represent.

## Q3 Opt in or opt out?

With regard to its new class actions mechanism, France adopted a "delayed opt in" mechanism, meaning that beneficiaries do not need to express their wish to join the action before the proceedings have begun; they need to do so later in the proceedings, once the court has ruled on the liability of the defendant.

Generally, the court will first rule on the admissibility of the claim and then, as the case may be, on the liability of the defendant or the existence of a wrongdoing. In case of liability, the decision defines the criteria of the class of beneficiaries. Whenever possible, the Court may also rule on how damages are to be assessed.

The beneficiaries meeting the criteria of the class may then opt in (for a limited period of time – see section 4 below). The decision to opt in does not imply to adhere to the association or the trade union having brought the claim.

## Q4 Limitations?

### Class actions

- **Statute of limitations:** First and foremost, there is no specific statute of limitations for class actions beyond those applicable generally under Article 2224 of the Civil Code (except for antitrust follow-on class actions, for which the 2025 Law on Class Actions specifies that they must be initiated within less than five years from the date on which the decision which identified the wrongdoings can no longer be appealed).

  Claims on a contractual or tortious basis must be brought within five years of the damage (that is, five years from the day the injured parties become aware, or should have become aware, of the facts that enable them to bring a claim).

  For personal injury, the limitation period is ten years, starting from the date at which the state of health is considered stable (Article 2224 of the Civil Code). For product liability, the limitation period is three years (Article 1245-16 of the Civil Code). This cannot be extended beyond ten years from the date on which the product was sold (Article 1245-15 of the Civil Code).
- **Early dismissal of obviously baseless class actions:** An obviously inadmissible or unfounded action can be summarily dismissed following a substantiated decision from the court.

# France

- **Limited time to opt in:** The beneficiaries meeting the criteria of the class may opt in for at least two months and at most five years following the last publicity measures ordered by the court.
- **Specific instance courts:** Only eight specialised first instance courts have been designated to have jurisdiction to hear class actions. These courts are Paris, Marseille, Bordeaux, Lille, Lyon, Nancy, Rennes and Fort-de-France.
- **Prior notice required in employment-related class actions:** Prior notice is required in employment-related class actions: the claimant must formally request that the employer cease the alleged wrongdoing. In this case, and where the employment related class-action seeks to defend the interests of several employees, a six-month delay must be observed before filing a writ of summons.
- **Health products eligible for class actions:** The legislator has also introduced a limitation to the general application of the legal regime for class actions in health product liability. Such an action may only be brought in cases of breaches specifically relating to certain health products referred to in Article L. 5311-1 of the Public Health Code (eg, medical devices and accessories, drugs and medicines, contraceptive products, etc.).
- **Prohibition of legal solicitation:** The 2025 Law on Class Actions does not affect the prohibition of unlawful solicitation (as established by Articles 54 to 66-4 of Law No. 71-1130 of 31 December 1971 and Decree No. 72-785 of 25 August 1972) which prohibits offering, by any means, services intended to provide legal consultations, draft legal documents, or promoting the signing of a contract for such purposes except by the persons and under the conditions set out by Article 54 et. seq. This prohibition encompasses all forms of legal solicitation, whether it involves non-litigation consulting, assistance and representation in court, or the solicitation of contracts for the same purposes.

### Other collective actions

Aside from limitations applicable to all types of actions (eg, statutes of limitation, requirement for prior notice as the case may be, specifically competent jurisdictions for certain claims, etc.), as well as specific legal standing requirements detailed above (see question 2 above), a significant limitation faced by associations in the context of collective actions is the restriction on advertisement targeting potential claimants: without prejudice to the legal solicitation offence, associations cannot advertise for potential claimants on the radio or television, nor by means of posters, flyers or personal letters. An exception to this rule is that, under the action for the joint representation of investors and pursuant to Article L.452-2 of the Monetary and Financial Code, associations can be authorised by the President of the Court to use the media in order to seek members of the class. This is a special regime for collective actions, different from that applicable to class actions, where the judge orders, at the defendant's expense, appropriate advertising measures to inform potential claimants.

## Q5 Judge or jury?

Class actions and other collective actions will be heard by one or three judges, depending on the amount and/or complexity of the matter (this can even be increased to five judges in the most complex matters). There is no jury in civil cases in France.

## Q6 What relief can be obtained?

### Class actions

Under the former regimes, the relief available depended on the type of action. Under the new regime, such restrictions no longer exist. Now, for all class actions, the claimants can seek the cessation of the wrongdoing and/or a compensation for damages suffered.

- **Injunction for the cessation of a wrongdoing:** When the class action seeks the cessation of a wrongdoing, the claimant is required to establish neither that the members of the group suffered damages nor that the defendant acted with intent or negligence.

  If the court finds that a wrongdoing is occurring, it orders the defendant to cease or cause the cessation of the said wrongdoing and to take, within a period set by the court, all necessary measures for this purpose, if necessary with the assistance of a third party appointed by the judge. The court may also order any provisional measures necessary to bring an end to the alleged wrongdoing, within a period it specifies, to prevent imminent damage or to put a stop to a clearly unlawful disturbance
- **Compensation for damages:** When the class action seeks compensation for damages, the claimant must present individual cases in support of its claims. If the defendant is found liable, the court rules on:
  - the damages to be compensated (type and, if possible, amount or methods to assess the damages to be compensated) for each category of group members based on the eligibility criteria established by the court (compensation is generally financial, but compensation in kind can be ordered by the court, except in cases related to bodily injury);
  - the time limit to become a member of the group and receive compensation.

  Compensation for damages following a class action can be received following either an individual or a collective procedure:
  - Under the individual procedure, the defendant will compensate each member of the group following their individual declaration and request. If the defendant refuses a group member's request to be compensated, the member can appeal to the court.

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> Except in cases related to bodily injury, the court may also decide (at the claimant's request and provided that the case allows it), to implement a collective procedure. This procedure is half judgement, half mediation, in that the association (claimant) will receive a mandate from the court to negotiate with the defendant, on behalf of the whole group, the amount of damages to be paid to each group member. The court must indicate the amount or methods to assess the amounts of damages to be paid by the defendant to each category of group members. The court will also set a deadline by which the negotiation must be concluded, which must be of at least six months.

The procedure is intended to result in an agreement between the association and the defendant, which is then ratified by the court (who will ensure that the interests of the beneficiaries to the class action are preserved). A partial agreement can be reached, and the matter can be referred back to the court to rule on the remaining damages – or the individual procedure can become applicable if the matter is not referred to the court within a year. If no agreement at all is reached by the deadline, the court rules directly on the damages.

A civil fine of a maximum amount of €50,000 can be imposed on any party that is considered by the court to be abusively delaying or preventing the conclusion of an agreement.

> **Mediation:** The 2025 Law on Class Actions allows authorised associations to participate in mediation, which can be attempted at any point during the proceedings. If a settlement agreement is reached, it must be approved by the court, which ensures that the interests of the beneficiaries of the class action are preserved.

## Other collective actions

> **Joint representation proceedings:** Damages may be awarded to the individual claimants.

> **Defence leagues actions:** Damages may be awarded to the association for the harm caused to the collective interests of its members. In addition, individual members may seek damages on their own behalf.

> **Actions brought in the collective interests of consumers:** The association, exercising the rights given to a civil party, may obtain damages. It may also seek an injunction restraining the defendant from engaging in illegal activities, since this action is designed to seek relief which is in the interests of the group as a whole.

> **Actions in the defence of so-called "important causes":** Damages may be allocated to the association.

> **Mediation:** A procedure was introduced in 2014 under which the applicant consumer association and the company undertake mediation to determine settlement of the action. The resulting agreement will be presented to the judge who, after confirming that it accords with the consumers' interests, will declare the agreement fully enforceable.

## Serial damages civil penalty

The 2025 Law on Class Actions introduced a new "serial damages" civil penalty in Article 1254 of the Civil Code, applicable by the courts to all professionals in the conduct of their business. The new "serial damages" civil penalty has the following features:

> **Conditions for imposing the civil penalty:** Where any court finds that a professional (i) has caused serial damages (ie, damages to multiple persons placed in a similar situation), (ii) following a deliberate breach of its contractual or legal obligations committed to obtain undue profits or savings.

> **Claimants to the civil penalty:** The penalty can be ordered by any court (both judicial and administrative) and in any type of ongoing proceedings at the request of the public prosecutor or the government.

> **Amount of the new penalty:** The amount of this penalty must be proportionate to (i) the seriousness of the misconduct and (ii) the profit gained by the perpetrator.

> **Caps applicable to the new penalty:** In any case, the penalty for a legal person is capped at five times the corresponding profit. Furthermore, when the civil penalty may be combined with an administrative or criminal penalty, the total amount of fines awarded cannot exceed the highest legal maximum for these fines.

> **Non-insurable penalty:** The risk associated with this new civil penalty is not insurable.

This penalty is not exclusive to class actions. Rather, it is applicable in all judicial proceedings.

## Q7 How are collective actions funded?

Class actions are subject to the following rules:

> **Provisional costs:** The court may order the defendant to pay a deposit intended to cover some of the costs (eg, lawyers' fees) incurred by the claimant.

> **Contribution by the losing party:** Generally, under French law, the losing party can be sentenced to contribute a sum fixed by the court to cover the costs of the successful party, in addition to the payment of the court's administrative fees. Legal aid may also be available to qualified claimants.

Additionally, the 2025 Law on Class Actions specifies that when the court's decision is rendered in favour of the claimant, the costs to inform the potential beneficiary from the decision and their possibility to opt in are borne by the defendant. Conversely, if the case is found to be inadmissible or unfounded, the claimant may be sentenced to bear the cost of the publicity measures to inform the general public of the outcome of the case.

> **Introduction of third-party funding:** The 2025 Law on Class Actions introduces, for the first time under French law, provisions on third-party funding. It provides that persons having legal standing to bring a class action may receive third party funding under two strict cumulative conditions:

  > the funding must not enable the funder to exert any influence on the initiation or conduct of the class action in any way likely to harm the interests of the represented persons; and

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- the funding must be made public. In particular, the receiver of the third party funding must disclose to the public (on its website): (i) the list of the main third parties from which it has received funding, whether in cash or in kind, together with the value of the funding received, and (ii) the main terms and conditions of the funding agreements entered into with third parties (in particular their duration, whether they constitute a donation or a loan, any remuneration of the third party, and the main obligations of the parties to the agreement). This information must be updated annually until the end of the class action proceedings.

In case of a dispute over the accredited non-profit association's compliance with these conditions, the court may order the disclosure of documents justifying the absence of conflict of interest.

If a conflict of interest between the claimant and the third-party funder is established, the court must declare the action inadmissible and refuse to approve any settlement agreement. The court can also, on its own initiative, declare a claim inadmissible if it finds a conflict of interest between the claimant and the third-party funder.

Additionally, in case of a conflict of interest with a third party – including a third-party funder – administrative authorities may withdraw the association's approval as the necessary legal requirements in this respect would no longer be met.

- **Interdiction of purely contingent fees:** Lawyers' professional ethics rules forbid them from accepting payment in the form of a sole contingency fee. However, payment of a supplementary fee payable upon the outcome of the case (ie, a "success" fee) or for the services rendered is acceptable.
- **Creation of a special fund to finance class actions:** The proceeds of the civil penalty introduced by the 2025 Law on Class Actions will also be allocated to a specific fund designed to finance class actions.

## Q8 Is pre-trial discovery/ disclosure available?

For class actions and other collective actions, there are no general discovery or pre-trial witness depositions in France. As a general rule, the burden of proof lies on the claimants and each party must produce any relevant documents to support its claim. If a party has reason to believe that the other party is withholding relevant documents, it may request the court to order the filing of such documents by the other party. In addition, pre-trial measures can also be ordered to obtain access to evidence.

## Q9 Are collective actions widely used in practice?

Prior to the introduction of the 2025 Law on Class Actions, class actions were not widely used in practice. According to publicly available sources, only approximately 40 class actions had been brought in France over ten years (since 2014), of which approximately:

- 55% were related to consumer protection;
- 20% were financial or administrative cases;
- 10% were discrimination cases;
- 10% were health products cases;
- 5% were related to personal data protection.

Of these actions, only one was successful and resulted in a finding of liability against the defendant. One action was also withdrawn. Otherwise, approximately:

- 50% are still ongoing;
- 25% were dismissed on procedural grounds;
- 15% were dismissed on the merits;
- 10% were settled amicably.

In 2025, France accounted for less than 1% of class actions at European level (2% for the 2020–2024 period, therefore decreasing).

Due to the previous lack of attractiveness of the class actions regime, the most commonly used procedural set-up for seeking collective redress is joint proceedings (ie, claimants represented by the same lawyer through the same writ of summons).

In July 2025, one of the largest French consumers' associations (UFC Que Choisir) declared that it had initiated a class action related to the defective Takata airbags. This class action should be the first one initiated under the new unified regime of the 2025 Law on Class Actions. A first procedural hearing was scheduled on 15 October 2025.

# France

## Q10 Likely future scope and development?

The new 2025 Law on Class Actions brings a unification and clarification of the French class action regime that had been called for by many practitioners. It also introduces for the first time a general legal framework for third-party financing (which was not specifically regulated under French law until then), as well as transparency and access by the public to information regarding class actions – through (i) the publication on the website of the *Ministère de la justice* (Ministry of Justice) of a detailed public register of all pending class actions before French courts, (ii) the possibility for the claimant to a class action to inform the public of the relevant information, and (iii) publicity measures which may (or, in certain cases, must) be ordered by the courts for each individual case.

Following the 2025 Law on Class Actions, there appears to be potential for the expansion of this procedural mechanism in France. Despite some limitations remaining – amongst which the number of non-profit government accredited associations allowed to bring class actions – the new law addresses several of the structural limitations that had previously hindered the development of collective redress actions since their initial introduction in 2014. By broadening the scope of eligible claims and applicable remedies, as well as streamlining procedural requirements, the 2025 Law on Class Actions aims to improve and broaden the legal environment for class actions. This modernised legal framework could therefore attract renewed interest from both the general public and legal practitioners, who may increasingly view class actions as a viable and strategic tool for handling mass claims. The new regime however raises new procedural questions that are likely to lead to further litigation.

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# Germany



# Germany

Collective redress procedures have evolved significantly with the Consumer Rights Enforcement Act (*Verbraucherrechtedurchsetzungsgesetz*, "**VDuG**"), which entered into force in autumn 2023 following implementation of the EU Collective Redress Directive ("**CRD**"). The VDuG consolidates and expands collective redress mechanisms, introducing new representative actions directed at redress and compensation for damages whilst incorporating existing model declaratory actions. These procedures complement other collective redress mechanisms in specific areas of law as well as procedural mechanisms to bundle claims.

## Q1 What forms of collective actions are permitted?

German civil procedural law does not permit the bringing of a claim in the name of a group of unknown claimants in the form of a class action akin to that available in the US. However, the VDuG has moved German law closer to US-style class actions through the introduction of representative class actions for redress, whilst maintaining important safeguards and procedural differences (read more in our client alert).

### Representative actions for redress

The VDuG allows qualified entities to bring actions for damages and other forms of redress on behalf of consumers and small businesses, representing a significant departure from traditional German civil procedure.

> The scope of application deliberately exceeds the CRD's requirements:

  Whilst the CRD provides for limitation to actions for infringement of certain consumer protection acts under EU law, the VDuG applies to all "civil disputes concerning claims and legal relationships of a large number of consumers against a trader". This gold-plating creates significant additional risks for companies, particularly in areas such as competition law where considerable aggregated damages sums are regularly at stake.

  Consumers and small businesses (employing fewer than 10 people with annual turnover or annual balance sheet not exceeding 2 million euros) may benefit from representative actions. To benefit from the outcome, interested parties must register their claims in the register of representative actions within three weeks after the conclusion of oral proceedings, following an opt in model.

> Only qualified entities meeting specific requirements may bring representative actions, including consumer protection organisations registered under German law that meet stringent criteria, or qualified entities from other EU Member States registered in the EU Commission's list pursuant to the CRD. An action is admissible if the qualified entity alleges in a comprehensible manner that claims of at least 50 consumers may be affected, and the consumer claims are "essentially similar" ("*im Wesentlichen gleichartig*").

> The VDuG includes important safeguards against abuse, particularly regarding litigation funding. Actions are inadmissible if financed by competitors of the defendant, entities dependent on the defendant, or funders entitled to more than 10% of the economic benefit. Disclosure obligations require plaintiffs to reveal funding sources and contractual arrangements with third parties.

> Representative actions follow a multi-phase process comprising a court phase, settlement phase, and implementation phase conducted by a court-appointed administrator. Higher Regional Courts have jurisdiction at first instance, and appeals against judgments do not require admission. The procedure includes a blocking effect preventing parallel collective actions on the same subject matter and suspending individual actions by registered consumers.

### Model declaratory actions

The VDuG incorporates the former Model Declaratory Action Act (*Musterfeststellungsklagengesetz*), consolidating model declaratory actions with the new framework for representative redress actions. Accordingly, the same restrictions apply with regard to standing, ie, only qualified institutions that comply with certain criteria and can claim that at least 50 consumers are affected are entitled to file model declaratory actions under the VDuG. These actions are also subject to the same rules on jurisdiction, the same restrictions as to funding and essentially the same procedural peculiarities.

However, decisions in the new model case proceedings are of declaratory nature only. The Higher Regional Courts (*Oberlandesgerichte*), which are the courts of first instance for all actions under the VDuG, do not award damages or issue an injunction order. Instead, consumers must first register their claims and subsequently initiate their own individual proceedings based on the facts determined in the model case proceedings.

# Germany

## The assignment model

Another option for bundling individual claims against the same defendant(s) into one legal dispute is to assign them to a claims vehicle under the German Civil Code (*Bürgerliches Gesetzbuch*, "**BGB**"). This model is often used to enforce mass damage claims and frequently involves third-party funders. The idea is that the claims vehicle files the lawsuit in its own name, having been assigned the damage claims by the individual claimants. For actually pursuing the claims that have been assigned to them in court, the claims vehicles need to obtain a licence for debt collection (*Inkassolizenz*).

The Federal Court of Justice (*Bundesgerichtshof*, "**BGH**") considered this to be generally consistent with the German Legal Services Act (*Rechtsdienstleistungsgesetz*). However, the ruling concerned relatively simple cases primarily aimed at consumer protection. It was left open whether the BGH's reasoning also applies in complex B2B cases such as cartel damages claims, where the debt collection model is often used to bundle very different individual claims (read more in our blog post).

For cartel damages claims, the CJEU confirmed that, under certain conditions, national legislation preventing such group actions can violate EU law. According to the judgment, that is the case (i) where national law does not provide any other collective means of grouping individual claims, and (ii) where it is impossible or excessively difficult to bring an individual action seeking to assert that right to compensation. Whether these criteria are met under German law, as asserted by the referring German court, is left to the national courts to assess (read more in our blog post).

Until the German courts conclusively rule on the remaining open questions, claimants and defendants alike will continue to face considerable legal uncertainty. Nonetheless, the assignment model still remains the collective redress instrument of choice in many scenarios for the time being.

## Collective redress mechanisms limited to specific areas of law

There are also several collective redress mechanisms that are limited to other areas of law:

- Under the Act on Actions for Injunctions (*Unterlassungsklagengesetz*, "**UKlaG**"), certain qualified representative organisations (such as consumer protection associations and chambers of commerce) may commence proceedings for injunctions preventing breaches of consumer law or statutory restrictions on the use of standard business terms.
- In addition, under the Act against Unfair Competition (*Gesetz gegen unlauteren Wettbewerb*, "**UWG**"), entities engaging in a commercial practice that is illegal under the UWG may be sued by certain qualified representative organisations (such as consumer protection associations and chambers of commerce) for elimination of the unlawful conduct and any effects that have resulted from it and, in the event of the risk of recurrence, to cease and desist. The same entities can claim recovery of improper gains (*Gewinnabschöpfungsklage*) from companies which benefitted financially by intentionally violating the UWG. However, successfully recovered funds are not paid to the entities bringing the action but to the German federal budget. A similar provision exists in the area of competition law pursuant to the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*, "**GWB**").
- Finally, the procedure under the Capital Markets Model Case Act (*KapitalanlegerMusterverfahrensgesetz*, "**KapMuG**") allows a claimant in an appropriate capital markets dispute to apply for specific factual and legal issues to be clarified before the Higher Regional Court (*Oberlandesgericht*) by way of a lead or model case with a binding outcome. If at least nine further applications are filed, the Higher Regional Court selects one lead case. Until judgment is given, all other pending proceedings in which the court's decision depends on the results of the lead case are stayed, regardless of whether the parties to those proceedings have applied for a KapMuG proceeding or not. The decision reached in the lead case will be legally binding on all cases that have been stayed, which will then resume hearing in their respective courts.

# Germany

## Collective redress mechanisms under procedural law

The Code of Civil Procedure (*Zivilprozessordnung*, "**ZPO**") allows for the procedural bundling of claims under certain circumstances:

- Germany has recently introduced a preliminary ruling procedure (*Leitentscheidungsverfahren*) aimed at enabling an early BGH decision on fundamental legal questions that arise in a large number of parallel proceedings. In such cases, the BGH can speed up the proceedings by designating a case from the pending appeals with the broadest possible spectrum of open legal questions for a preliminary ruling. While waiting for the BGH's lead decision, the lower courts may stay proceedings in related cases.
- Individual proceedings initiated by multiple claimants against the same defendant may be heard at the same time by the same court under sections 59 to 62 ZPO (so-called *Streitgenossenschaft*).
- The court may direct pursuant to section 147 ZPO that proceedings be consolidated in order to be heard and decided at the same time, if the claims forming several pending proceedings have legal connections between them or could have been asserted in one single complaint.
- In addition, collective actions may be brought by consumer protection associations under section 79 ZPO in certain circumstances (*Einziehungsklage*).

## Q2 Who may bring them?

As a general rule, all claims have to be brought individually in Germany. However, as mentioned above, the VDuG, in particular, permits qualified entities to bring representative actions on behalf of registered consumers and small businesses. Other collective actions, such as those under the KapMuG, must still be commenced by individual claimants who are then bound by the ruling in the lead case.

## Q3 Opt in or opt out?

German civil procedure law does not permit claims to be brought in the name of an uncertain group of claimants. All collective actions are therefore generally subject to the "opting in" of each claimant. Under the VDuG, for instance, consumers wishing to benefit from a ruling in a representative action must register on a claims register.

## Q4 Limitations?

As mentioned above, most collective actions are limited to specific areas of law:

- The VDuG applies to all civil disputes concerning claims and legal relationships of a large number of consumers against a trader, and extends protection to small businesses employing fewer than 10 people with annual turnover or balance sheet not exceeding 2 million euros.
- The KapMuG applies to certain disputes under capital markets law, in particular to claims for damages caused by allegedly inaccurate public investment information, eg, in cases of prospectus liability.
- Actions commenced under the UKlaG are limited, as their name indicates, to injunctions and do not apply to employment matters (section 15 UKlaG).
- Actions commenced under the UWG and the GWB are limited to the recovery of improper gains obtained by parties intentionally contravening competition law.

For the other mechanisms described above, no such limitations exist.

## Q5 Judge or jury?

Civil actions are tried by one or more judges in Germany.

## Q6 What relief can be obtained?

See above. Punitive damages are not obtainable under German law.

## Q7 How are collective actions funded?

The usual rule is that the losing party bears the costs of the lawsuit, including the costs of the successful party.

Contingency fees were introduced into German law in 2008. They are, however, only permissible in individual cases and only where the client would, due to their economic situation and from a reasonable perspective, be deterred from pursuing their rights without a contingency fee agreement. In addition, in the case of court proceedings, attorneys may only agree on no/lower remuneration for losing a case if they are entitled to higher remuneration than the statutory fees should they be successful.

Professional third-party funding organisations are becoming more popular, particularly in the area of competition and consumer law. However, the VDuG includes specific restrictions on litigation funding for representative actions, including prohibitions on funding by competitors or entities entitled to more than 10% of the economic benefit, as well as disclosure obligations regarding funding sources.

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## Q8 Is pre-trial discovery/ disclosure available?

There is no procedure for pre-trial disclosure of documents. Pre-trial witness depositions may be taken, provided that the other party consents or there is a threat that the evidence would otherwise be lost or unobtainable at trial (section 485 ZPO). In addition, section 142 ZPO grants the right to request the production of specific documents or narrow categories of documents if the requesting party can substantiate its main content and its relevance to the outcome of the case. “Fishing expeditions” are not allowed.

Likewise, there is generally only a limited substantive right of disclosure, resulting from the duty to perform obligations in good faith according to section 242 BGB. For competition litigation, however, the legislator introduced disclosure mechanisms as part of the implementation of the EU Cartel Damages Directive and made use of the wide discretion provided by the Directive to introduce a substantive rather than a procedural right to disclosure from cartel members, as well as from third parties, upon a substantiated request. Similar rules are expected to be introduced for product liability in the course of the implementation of the new Product Liability Directive.

## Q9 Are collective actions widely used in practice?

The new representative actions fall short of initial expectations. This is primarily due to restrictive litigation funding rules and narrow standing requirements imposed by EU law that restrict actions to qualified associations with typically limited resources. However, in certain scenarios with high numbers of affected consumers and significant public interest (eg, data privacy or greenwashing cases), the number of representative actions is expected to increase.

Meanwhile, the assignment model gains further traction with tailwinds from BGH and CJEU case law and due to the availability of third-party litigation funding. This is particularly the case for complex B2B disputes such as competition damages actions that are not always suitable for representative actions.

## Q10 Likely future scope and development?

The VDuG represents the most significant reform of German collective redress law, implementing the EU Collective Redress Directive and introducing representative redress actions alongside existing model declaratory actions. The new law goes beyond the EU requirements by applying to all consumer disputes rather than being limited to specific EU consumer protection acts. This creates both opportunities for enhanced consumer protection and increased litigation risks for companies. The multi-phase procedure and opt in model represent a compromise between effective collective redress and protection against abuse.
It remains to be seen how the new representative actions will be accepted in practice and whether they will achieve their intended strengthening of consumer protection whilst managing the increased litigation risks for businesses.

# Germany

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# Hong Kong



# Hong Kong

The only type of collective actions permitted in Hong Kong SAR is representative proceedings. Parties with a common interest and a common grievance may agree that proceedings are conducted by or against any one or more of them as representing any or all of them. Such actions are effectively opt in. A judgment or order given in the proceedings will bind all represented parties but may not be enforced against any person not a party to the proceedings without the court's permission.

Hong Kong's Law Reform Commission has recommended the introduction of a comprehensive class action regime for multi-party litigation, based on an opt-out approach, initially for consumer cases. However, the introduction of a class action regime in Hong Kong does not appear to be imminent.

## Q1 What forms of collective actions are permitted?

The only type of collective actions permitted in Hong Kong is representative proceedings under Order 15 rule 12 of the Rules of the High Court ("**RHC**"). Similar rules for representative proceedings are also provided for in the District Court and the Small Claims Tribunal.

Order 15 rule 12 RHC provides that, where numerous persons have the same interest in any proceedings, the proceedings may be begun and, unless the court otherwise orders, continued, by or against any one or more of them as representing any or all of them. This has been held to mean that all the members of the alleged class should have a common interest and a common grievance and that the relief is in its nature beneficial to all (*Pan Atlantic Insurance Co. and Republic Insurance v Pine Top Insurance Co* [1989] 1 Lloyd's Rep 568).

In addition, under this rule the court may, at any stage of the proceedings, on the application of the plaintiff and on terms as appropriate, appoint any one or more of the defendants or other persons to represent the defendants.

## Q2 Who may bring them?

All legal persons, including individuals and companies with an interest in the action, may bring such proceedings.

## Q3 Opt in or opt out?

Collective actions in Hong Kong are currently "opt in", although they are not expressly characterised as such. Order 15 rule 12(3) RHC provides that a judgment or order given in representative proceedings shall be binding on all persons represented by the plaintiffs or defendants but shall not be enforced against any person not a party to the proceedings except with the court's permission.

## Q4 Limitations?

The representative proceedings procedure governed by Order 15 rule 12 RHC applies to all causes and matters. There is no limitation on who may bring an action in representative proceedings, provided that the parties can satisfy the "same interest test" or "common ingredient test" which requires all class members to show identical issues of fact and law.

According to *Markt & Co Ltd v Knight Steamship Co Ltd* [1910] 2 KB 1021 (CA), the "same interest test" requires: (a) the same contract between all plaintiff class members and the defendant; (b) the same defence pleaded by the defendant against all the plaintiff class members; and (c) the same relief claimed by the plaintiff class members. The "same interest test" has been relaxed by subsequent judgments to become the "common ingredient test", which allows for separate contracts, separate defences against different class members and damages to be awarded in representative actions.

## Q5 Judge or jury?

Civil actions in Hong Kong, apart from cases involving defamation, are heard by a single judge.

## Q6 What relief can be obtained?

The usual remedies sought in civil proceedings, including damages, declaratory relief and injunctive relief, are available. As a matter of Hong Kong law, punitive damages of the type awarded in US proceedings are not generally available. However, in rare exceptions of egregious tortious activity, the courts in Hong Kong can grant punitive damages.

# Hong Kong

## Q7 How are collective actions funded?

Generally speaking, in civil actions involving co-parties, the court has the discretion to apportion the amount of costs to be borne by each party. The court may order that costs incurred in a group action will be borne by all the members of the group equally and not only by those members bringing the lead action (*Ward v Guinness Mahon & Co Ltd* [1996] 4 All ER 112).

Contingency fees and third-party funding are not permissible.

Government funding is not automatically available to parties in a representative proceeding. Under section 8(1) of the Legal Aid Ordinance ("**LAO**"), any person, including those acting in a representative capacity, may apply for legal aid. However, to be eligible, the applicant must first satisfy both a means test, to establish that he meets the financial eligibility requirements, and a merits test, to show that he has reasonable grounds for bringing or defending a civil proceeding.

Legal aid may also be available to applicants who are not acting as "representative parties". Section 9(e) of the LAO provides that where an application for legal aid is made, the Director of Legal Aid may "take or cause to be taken such steps as may be necessary to conserve the interests of the applicant or of any person on whose behalf the applicant is acting pending determination of his application".

## Q8 Is pre-trial discovery/ disclosure available?

Order 24 RHC sets out the requirements for mutual pre-trial discovery between parties, as well as court-ordered discovery by any party, of documents which are or have been in their possession, custody or power and which relate to matters in question in the action.

Further, section 41 of the High Court Ordinance ("**HCO**") gives the court the power to order discovery before the commencement of proceedings by a person who is likely to be a party to the subsequent proceedings and who has or is likely to have in his possession, custody or power, documents directly relevant to an issue arising out of the claim. Similarly, section 42 of the HCO allows a party to representative proceedings to apply to the court to order a person who is not a party to give discovery of documents if it appears to the court that such person has or is likely to have documents in his possession, custody or power which are relevant to issues arising out of the claim. This may apply to a represented person who is not a party.

## Q9 Are collective actions widely used in practice?

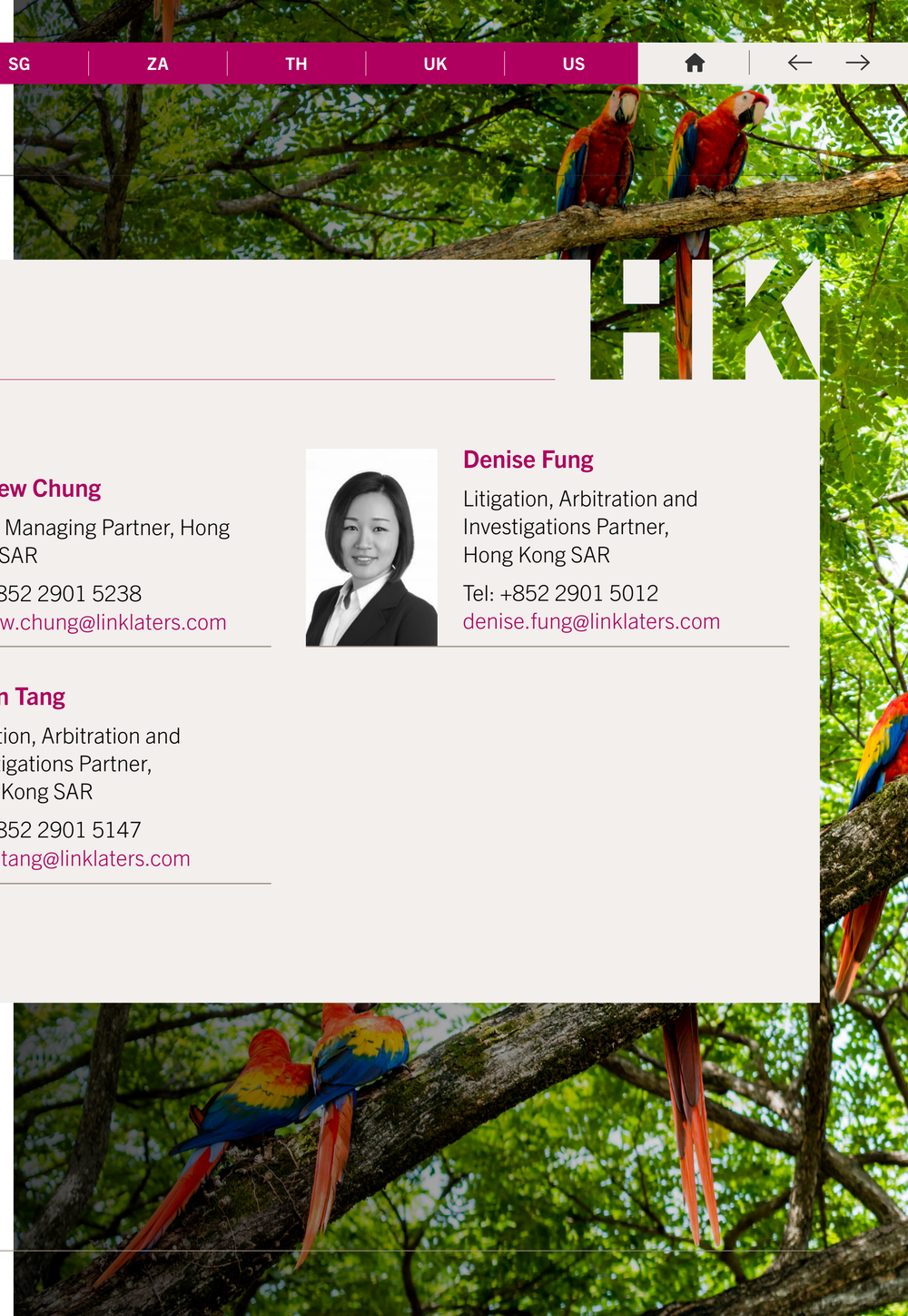
Representative actions have occasionally featured in areas such as trust litigation, public nuisance, and disputes involving land or property with groups of property owners within a development, but they remain relatively rare in Hong Kong.

## Q10 Likely future scope and development?

The Law Commission of Hong Kong published its Report on Class Action ("**Report**") in 2012, setting out its proposals for the introduction of a comprehensive class action regime in Hong Kong. Very little progress has been made since the Report was published, despite the introduction of a class action regime being described as one of the law reform initiatives of the Hong Kong Department of Justice ("**DoJ**").

A cross-sector working group was set up by the DoJ to study and consider the Report's proposals. On 26 August 2021, the working group awarded a consultancy contract to PricewaterhouseCoopers Advisory Services Limited to conduct a study on the potential and likely economic and other related impacts on Hong Kong if a class action regime, starting with a pilot scheme restricted to consumer class action only, is to be introduced. The study is yet to be released. That being the case, the introduction of a class action regime in Hong Kong does not appear to be imminent.

# Hong Kong



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# Indonesia



# Indonesia

Indonesia's collective redress framework centers on class action lawsuits, governed by Supreme Court Regulation No. 1 of 2002 on Class Action Procedure ("**SC Regulation 1/2002**"). While not as broad as some jurisdictions, Indonesia has developed meaningful collective action mechanisms in specific sectors, particularly environmental protection and consumer rights. Sector-specific regulations work alongside SC Regulation 1/2002 to support implementation in these areas.

## Q1 What forms of collective actions are permitted?

SC Regulation 1/2002 does not explicitly exclude class action lawsuits for general civil claims, and its provision states that it is intended to support the implementation of class action lawsuits in subject matters where class action is supported by law, such as environmental protection, consumer rights and forestry. These regulations include:

- **Environmental Law** (Law No. 32 of 2009 on Environmental Protection and Management, as amended) recognises class actions for environmental harm and provides standing for both individuals and environmental organisation entities.
- **Consumer Protection Law** (Law No. 8 of 1999 on Consumer Protection) allows consumers and qualified consumer protection institutions to bring claims, although actions by institutions are generally treated as representative actions.
- **Forestry Law** (Law No. 41 of 1999 on Forestry, as amended) permits both individuals and forestry organisations to initiate class actions for forest conservation.

Although not expressly regulated, Indonesian courts have previously accepted citizen lawsuits, where a group of individuals files a claim on behalf of the country's citizens against the government or a government institution for failing to fulfil citizens' rights.

## Q2 Who may bring them?

Under SC Regulation 1/2002, class actions in Indonesia must be initiated by individuals who have suffered a loss. These individuals act as class representatives, filing the claim both on their own behalf and on behalf of a larger group of affected persons (the class). A class representative is not required to obtain a power of attorney from each class member, provided they meet the requirements set out in the regulation such as the existence of substantial similarity in facts and legal basis among claims and the representative's honesty and commitment to protect the class's interests.

Representative bodies, such as consumer associations or environmental organizations, do not qualify as class representatives under SC Regulation 1/2002, as they do not suffer direct harm. However, certain sectoral laws provide legal standing for organisations to bring public interest claims, which are procedurally distinct from class actions. For example:

- The Consumer Protection Law allows qualified consumer protection institutions to file claims against business actors.
- The Environmental Law and Waste Management Law permit qualified environmental organisations to bring lawsuits for the preservation of environmental functions and public health.
- The Forestry Law uniquely allows both individuals and forestry organisations to initiate class actions for forest conservation.

At the outset of proceedings, the court must assess whether the class action meets the formal and material requirements under SC Regulation 1/2002.
If deemed valid, the court will issue a determination and instruct the plaintiff to submit a proposed notification procedure for approval. If the requirements are not met, the case will be dismissed without examination of its merits.

## Q3 Opt in or opt out?

Class actions in Indonesia operate under an opt-out system. Once the court has approved the class action, the class representative is required to notify potential class members of the claim. The method of notification must be approved by the judge and may include publication through print and/or electronic media, announcements at government offices or courts, or direct communication to identifiable class members.

The notification must include the following information:

- The case number and identities of the plaintiff(s) as group representatives, and the defendant(s).
- A brief summary of the case.
- A definition of the class represented.
- An explanation of what it means to be included as a class member.
- Details about the right of class members to opt out, and how class membership works.

# Indonesia

- Deadlines specifying exact month, date, and hour by which members can opt out.
- The address for submitting opt-out statements.
- Designated person in charge and contact channels for further inquiries.
- The opt-out form as prescribed under SC Regulation 1/2002.
- A description of the compensation being claimed.

Class members who wish to opt out must submit the prescribed form within the timeframe set by the court.

## Q4 Limitations?

SC Regulation 1/2002 does not explicitly define the sectors in which class actions may be brought. However, its preamble suggests that the regulation is intended to supplement existing laws that expressly recognise class action mechanisms. In practice, class actions have been limited to sectors where such recognition is provided, including the Environment Law, the Consumer Protection Law and the Forestry Law.

This sectoral approach was affirmed in Supreme Court Decision No. 304 K/Pdt.Sus/2012, where the court rejected a class action in an industrial relations dispute, reasoning that the class action mechanism is not recognised in that area of law.

While the regulation does not categorically exclude other sectors, the prevailing interpretation is that class actions are generally limited to areas where the underlying legislation explicitly supports such a mechanism. As such, parties seeking to initiate a class action outside these sectors may face admissibility challenges.

The class action mechanism in the environmental sector has been further developed through Supreme Court Regulation No. 1 of 2023, which adds more details particularly on the examination procedures, notification requirements, compensation assessment, and consolidation of multiple class actions, but it confirms that class action procedures in environmental cases continue to be guided by SC Regulation 1/2002.

## Q5 Judge or jury?

Judge.

## Q6 What relief can be obtained?

Although SC Regulation 1/2002 does not explicitly list the types of relief available in class actions, it affirms that the general provisions of civil procedural law continue to apply alongside the specific rules for class actions. This means that the full range of remedies available under Indonesian civil law, such as monetary compensation, declaratory relief, and non-material damages (which must nonetheless be clearly quantifiable), may be pursued through class action proceedings.

SC Regulation 1/2002 sets out that any claim for damages must be presented in a clear, detailed, and comprehensive manner, and must include:

- A proposed mechanism for distributing compensation to class members.
- A proposal for establishing a team or panel to assist with the distribution process.

## Q7 How are collective actions funded?

There is currently no specific regulatory framework governing the funding of class actions in Indonesia. In practice, these actions are typically self-funded by the class representatives, who bear the costs of litigation, including court fees, legal representation, and notification expenses.

Where the case is represented by a legal aid provider (ie, legal aid institution), it is also possible for the legal aid institution to receive grants, donations, or other forms of public funding.

The concept of contingency fees is also not expressly recognised under Indonesian law, although it is not expressly prohibited either. In practice, it is possible for a plaintiff and their legal counsel to pre-arrange a contingency fee agreement.

Third-party litigation funding remains unregulated and is not yet widely practiced in Indonesia. As such, parties seeking alternative funding arrangements should proceed with caution and consider the ethical and reputational implications (although ultimately, such arrangements are not prohibited by law).

## Q8 Is pre-trial discovery/ disclosure available?

The concept of pre-trial discovery or disclosure, as commonly practiced in common law jurisdictions, is not recognised under Indonesian civil procedural law. There is no formal mechanism requiring parties to disclose documents, evidence, or witness lists prior to trial. Instead, Indonesian litigation follows an adversarial model, where each party is responsible for presenting its own evidence during the trial phase.

In practice, this means that plaintiffs in class actions must prepare their case without access to the defendant's internal documents or data unless such evidence is voluntarily disclosed or obtained through other lawful means. Judges typically play a passive role, focusing on evaluating the evidence presented during hearings.

This limitation can pose challenges in complex class actions, particularly those involving technical or financial matters where access to internal records may be critical. As a result, plaintiffs often rely on publicly available information, expert testimony, or investigative efforts prior to filing suit.

# Indonesia

## Q9 Are collective actions widely used in practice?

The class action mechanism is well recognised among Indonesian legal practitioners, though its use remains relatively limited compared to jurisdictions with more developed collective redress frameworks. Nonetheless, there have been a number of notable and successful class action lawsuits in recent years, particularly in areas such as environmental protection and consumer rights.

## Q10 Likely future scope and development?

As of the date of this guide, there are no active initiatives by the Indonesian government or parliament that would significantly alter the existing framework for class actions in the near future. The mechanism remains governed by SC Regulation 1/2002 and its application continues to be shaped primarily by judicial practice and sectoral laws.

That said, there has been some indication of potential reform. A draft bill for a new Indonesian Civil Procedural Code, which includes provisions recognising class actions for general civil claims, has been listed in the parliament's list of priority bills since 2021. However, there has been no substantive progress or public consultation on the draft since its initial release, and its legislative trajectory remains uncertain.

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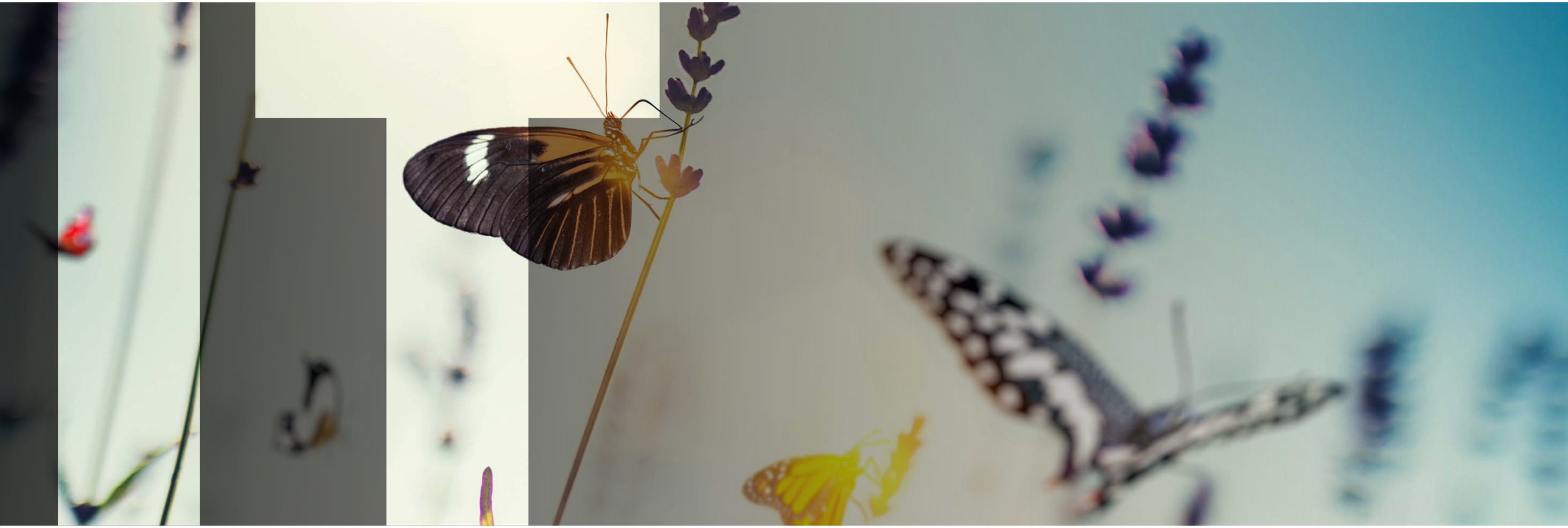


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# Italy



# Italy

Italy's collective redress framework has undergone significant reform in recent years. Legislative changes in 2019 and 2023 have broadened the scope of collective redress, enhancing consumer protection and expanding access to justice.

## Q1 What forms of collective actions are permitted?

On 3 April 2019, the Italian Parliament approved Law No. 31/2019. The law entered into force on 19 May 2021 and substantially reformed class actions in Italy by amending the Code of Civil Procedure (Articles 840-bis et seq., the **"General Class Action Regime"**). The law permits class actions against companies and entities providing public services or utilities for misconduct in their business activities.

On 9 March 2023, the Italian Government enacted Legislative Decree No. 28/2023 (the "**Legislative Decree**") to implement Directive (EU) 2020/1828 on representative actions for the protection of consumers' collective interests (the "**Collective Redress Directive**") in Italy. The Legislative Decree introduces a new regime under the Italian Consumer Code (Legislative Decree No. 206/2005, Articles 140-ter to 140-quaterdecies), enabling "qualified entities" (mainly consumer associations) to bring representative actions.

A dual-track system is thus now in place. On the one hand, national and cross-border representative actions are available under the Italian Consumer Code (implementing the Collective Redress Directive). These can only be initiated by qualified entities to protect consumers' interests in specific subject matters (see question 4 below for details). On the other hand, general class action proceedings can be brought under the Italian Code of Civil Procedure. Unlike representative actions, these are not limited to specific subject matters and can be brought by associations, organisations, or individual class members.

### Class action regulation under the Civil Code

Class actions were previously only available to consumers and users under the Italian Consumer Code (Articles 139, 140 and 140-bis). The remedy has been extended in scope and moved to the Code of Civil Procedure (Articles 840-bis through 840-sexiesdecies).

Pursuant to the General Class Action Regime, class actions can be brought in Italy not only by consumers (*consumatori*) or users (*utenti*) but also by any person who is part of a class and intends to enforce "homogeneous" rights of such class. The following scenarios may qualify as examples of homogeneous individual rights: identical contractual rights (except for quantum, if any) of a plurality of persons that are in the homogeneous legal position vis-à-vis an undertaking as a result of the conclusion with the latter of a contract on the basis of a standard contractual form; or homogeneous customers' claims deriving from the same tortuous conduct committed by an undertaking in carrying out its business activities (eg, under product liability).

The Italian class action differs from the United States equivalent in several respects:

- Class actions in Italy may only be brought against businesses, including corporations, partnerships, and other business entities and undertakings.
- Class actions shall in principle be brought before the specialised business chambers (*sezioni specializzate in materia di imprese*) of the Court where the defendant has its legal office.
- The commencement of a class action does not prevent an individual from bringing separate proceedings to claim the same damages.

### Implementation of the Collective Redress Directive in the Consumer Code

The Legislative Decree introduces a new representative action regime into the Italian Consumer Code (Articles 140-ter through 140-quaterdecies). Qualified entities (including certain consumer associations and organisations) are allowed to autonomously bring representative actions (to seek injunctive and/or redress measures) against traders, even without any consumer being formally represented by the organisation when initiating proceedings (see question 3 for details). These entities can seek injunctions, damages, and other forms of redress on behalf of groups of consumers who have suffered harm as a result of a trader's alleged breach of certain provisions of EU law and domestic statutes transposing EU legislation (see question 4 below).

A representative action may take two forms: (i) national representative actions, where both the initiation of proceedings and the designation of the authorised organisation occur within the same Member State; and (ii) cross-border representative actions, which involve a qualified entity designated in one Member State bringing proceedings in a different Member State. This distinction ensures that consumers can seek redress beyond their own jurisdiction, supported by entities recognised in other countries.

# Italy

## Q2 Who may bring them?

### General Class Action Regime

Under the General Class Action Regime, class actions may be brought not only by any person, but also by certain associations and organisations safeguarding the rights and interests concerned, provided they are registered on a specific list held by the Italian Ministry of Justice.

Previously, class actions were limited to specific cases: breach of contractual rights of consumers, product liability, unfair commercial practices, and unlawful competitive behaviour. Under the General Class Action Regime, class actions are no longer limited to certain civil law claims, provided the claims are "homogeneous".

### Implementation of the Collective Redress Directive in the Consumer Code

The entities that may bring a national representative action include consumer associations and organisations registered under Article 137 of the Italian Consumer Code, provided they have obtained the required authorisation. In addition, national independent public authorities recognised under Article 3(6) of Regulation (EU) 2017/2394, as well as entities designated by other EU Member States and listed in the register published by the European Commission are also eligible.

For cross-border actions, Italian entities seeking to bring representative actions before a competent authority in another EU Member State must be listed in a special section of the national register and meet specific requirements.

## Q3 Opt in or opt out?

### General Class Action Regime

The General Class Action Regime provides for a double opt in system: opt in is permitted (i) following the order of the Court declaring the action admissible by applying via the online portal for the class action (pre-judgment opt in), or (ii) after delivery of the judgment establishing the liability of the defendant (post-judgment opt in).

### Implementation of the Collective Redress Directive in the Consumer Code

The Legislative Decree provides for an opt in system, according to which consumers will be able to join the action only after the latter has been considered admissible by the court. Potential costs to be borne by the consumers are limited compared to those applicable under the ordinary class action regime.

## Q4 Limitations?

### General Class Action Regime

A class action may be filed by any member of the class and also by organisations or associations that aim to safeguard the rights and interests concerned (see question 2 above). However, the General Class Action Regime provides that these organisations and associations shall be not-for-profit and must be registered on a public list at the Ministry of Justice.

Article 840-quater provides that 60 days after publication of a class action on the Ministry of Justice's website, no further class actions may be brought against the same defendant on the same facts. A new class action may only be brought where there are new factual or legal elements, the previous action was declared inadmissible, or the prior ruling did not include a finding on the merits.

All applications for class actions are subject to an admissibility assessment undertaken by the judge at the first hearing. This step is similar in content and scope to the class certification process under US law. The class action will be considered inadmissible if:

- the claim appears to be manifestly groundless after a preliminary review by the court,
- there is a conflict of interest,
- the rights of the class members are not homogeneous, or
- the promoter of the action is not in a position to adequately represent the interests of the class.

Finally, both the calculation of damages and any potential enforcement action shall be carried out exclusively by a common representative of the participants in the class action. This representative must meet the requirements for appointment as an insolvency administrator.

### Implementation of the Collective Redress Directive in the Consumer Code

Representative actions permit the protection of rights and interests that have been harmed or may be harmed by violations of specific EU law or EU law-derived provisions, including those relating to liability for damages caused by defective products, unfair terms in contracts concluded with consumers, air carrier liability in respect of the carriage of passengers and their baggage, consumer protection as regards the indication of prices of products offered to consumers, electronic commerce, food safety, unfair commercial practices, and the protection of personal data.

## Q5 Judge or jury?

Judge. There is no jury in civil law proceedings in Italy.

## Q6 What relief can be obtained?

The relief obtainable extends to a declaratory judgment on the defendant's liability, compensation for losses and restitution of any undue payment. Injunctive redress can also be obtained under certain circumstances. Punitive damages are not available.

# Italy

## Q7 How are collective actions funded?

### General Class Action Regime

Third-party litigation funding is not subject to specific regulatory limitations under Italian law but remains uncommon in practice. Italy has not enacted dedicated legislation governing litigation funders or funding arrangements in collective proceedings. While not prohibited, limited use reflects both the absence of a comprehensive regulatory framework and the recent development of Italy's collective redress mechanisms. Class actions are therefore generally funded by claimants.

According to Article 840-ter, paragraph 8, of the Italian Code of Civil Procedure, if the class action is considered inadmissible, the court will immediately rule on the legal costs of bringing the action.

If the claim is declared admissible, the proceedings continue with the following stage. At the request of one of the parties, the judge may appoint an expert (*consulente tecnico d'ufficio*) to deal with technical issues relating to the proceedings, in which case the defendant shall cover the costs of the expert and make an advance payment for their fees.

The court may determine, where necessary, an amount which every claimant should pay into an expense fund. Should a claimant fail to pay its allotted sum into the fund, it will be prevented from taking part in the proceedings. These amounts may be increased by the judge while the damages due are being calculated.

At the end of the calculation phase, the judge will rule on the legal costs and expenses and order the defendant to pay the fees of the common representative and the claimants' lawyers. The fees of the common representative are calculated as a specific percentage of the total sum due to the claimants and will depend on the number of participants to the class action (the percentage decreases as the number of participants increases). The defendant will also be ordered to pay an additional sum to the claimants' lawyers, which is calculated in the same way as for the common representative. The fees of the common representative may be increased or decreased by 50%, although the above mentioned additional sum in favour of the lawyers may only be decreased by 50%.

These specific rules on the payment of legal expenses follow the general principle that the losing party must pay the legal costs of the winning party. However, there can be exceptions to this general rule. For example, if the judge believes the case to be complex, they may decide that each party should bear its own costs or may decide that the losing party must pay only a portion of the costs of the winning party.

### Implementation of the Collective Redress Directive in the Consumer Code

As mentioned above, third-party litigation funding is generally allowed in Italy, but remains largely unregulated and underused. Notwithstanding the rare use, the Legislative Decree still provides: (i) as requirements to be included in the qualified entities' list, the need to have specific conflict-of-interest related checks and balances included in by-laws, and to publish the information on the entities' sources of financing; (ii) the duty for the qualified entity to disclose any financing sources of the action in its application; and (iii) the inadmissibility of a representative action for conflict of interest if the action's funding provider is a competitor of or a person dependent on the defendant.

## Q8 Is pre-trial discovery/ disclosure available?

There are no general discovery or pre-trial witness depositions in Italy.

## Q9 Are collective actions widely used in practice?

The use of collective redress mechanisms in Italy has evolved significantly following recent legislative reforms. Under the previous framework in the Italian Consumer Code, class actions were infrequently used due to restrictive procedural requirements and limited scope. The General Class Action Regime's entry into force in May 2021 marked a substantial shift, resulting in increased use of collective proceedings. This trend has been further accelerated by the introduction of representative actions under the Italian Consumer Code in March 2023, implementing the Collective Redress Directive.

Some statistical data regarding collective proceedings usage is available at the online portal administered by the Italian Ministry of Justice. As of the current reporting period, there are 98 active collective proceedings, encompassing both class actions under the Code of Civil Procedure and representative actions under the Consumer Code. The distribution shows 41 proceedings published in 2024 and 57 in 2025 (current as of October 2025), though the latter figure excludes proposed class actions under preliminary review that have not yet been published.

# Italy

## Q10 Likely future scope and development?

Both the General Class Action Regime and the regime implementing the Collective Redress Directive are designed to facilitate the bringing of class actions.

Under the General Class Action Regime:

- the entitlement to bring a class action has been extended considerably, given that each member of the class, as well as associations and organisations, may sue the perpetrator of the unlawful conduct;
- claimants now have two opportunities to join the action (after the declaration of admissibility and after the decision upholding the claim); and
- several advantages for claimants have been implemented, particularly in terms of cost reduction.

These developments have increased the number of class actions, which were quite uncommon under the previous legislation.

In addition to this, the General Class Action Regime could significantly affect the behaviour of public and private companies which may potentially be sued in a class action by claimants injured as a result of their conduct. In this respect, the General Class Action Regime could have a deterrent effect. Indeed, should they lose a case, defendants to a class action could face huge financial penalties, both in terms of payment of compensation for widespread damage and payment of fees due to the common representative and the claimants' lawyers.

Regarding representative actions, data show increasing growth in class action usage, and the number of such actions will likely continue to grow in coming years. This aligns with the growth trend observed in the first two years of representative actions' availability in Italy and the Directive's objective of increasing representative actions in Member States. As emphasised by Recital 9 of the Directive, representative actions should enable qualified entities to ensure trader compliance with relevant EU law provisions and overcome obstacles faced by consumers in individual actions. Should the national or European legislator broaden the list of provisions in Annex II-*septies* of the Italian Consumer Code or Annex I of the Directive (as indicated in Recital 17 of the Directive), representative actions would experience further expansion.

## Contacts



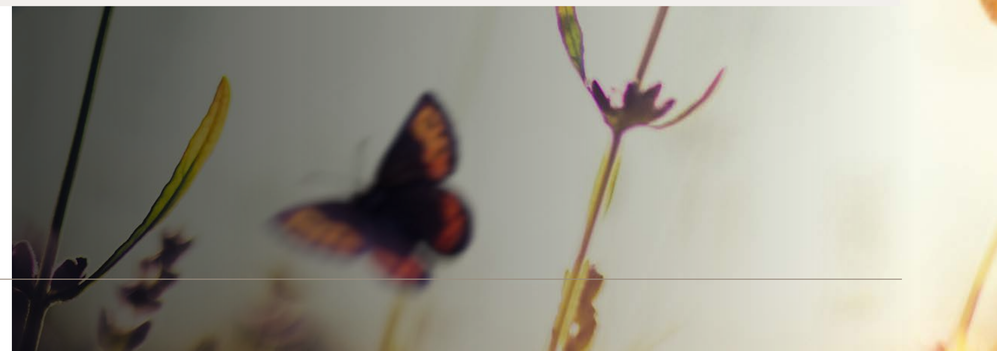

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# Luxembourg



# Luxembourg

While general class actions are not permitted in Luxembourg, plaintiffs with similar but separate claims against the same defendant(s) may bring an action on a group basis by way of a joint action. There are, in addition, a number of procedures by which actions may be brought on behalf of a group of plaintiffs, including representative actions brought in the name of a duly qualified organisation and on behalf of its members, for the defence of their collective interests. Moreover, in 2025, Luxembourg implemented EU law and introduced the possibility to bring collective claims for consumers.

## Q1 What forms of collective actions are permitted?

Under the New Code of Civil Procedure, introduced in 1998 (*Nouveau Code de Procédure Civile*, the "**NCPC**"), the principle is that plaintiffs are not permitted to bring a general class action in court. However, the NCPC provides for a range of mechanisms which allow plaintiffs to pursue their claims collectively before the court.

Plaintiffs with similar but separate claims against the same defendant(s) may bring an action on a group basis by way of a joint action. Under article 206 NCPC, it is also possible to ask the court to join closely related claims and rule on them together. Luxembourg courts have adopted a liberal approach to joining separate cases, usually doing so to simplify pleadings, avoid conflicting judgments, and reduce procedural costs. Claims may be connected where they share the same facts, objective, or likelihood of a common solution.

Alternatively, proceedings may be commenced against one or more defendant(s) by the service of a single application at the request of a large number of claimants. Each claimant still has to be individually identified in the application.

Under article 483 NCPC, it is also possible for a claimant with a direct or indirect material or moral interest to intervene in pending proceedings on a voluntary basis (*intervention volontaire*). Similarly, a third party may be obliged to intervene in pending proceedings (*intervention forcée*) if the court decision may affect its rights.

With the Law of 20 November 2025 ("**Collective Redress Law**"), Luxembourg amended its Consumption Code to introduce a collective redress procedure under articles L. 511-1 to L. 530-7 of the Consumption Code, where the interests of multiple consumers are affected by the same or by similar harm caused by one or more professionals. The scope of the law transposing Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers (the "**Collective Redress Directive**") covers the 66 acts listed in the Directive's Annex I. Therefore, it is now possible to bring a class action in Luxembourg in the areas covered by the Collective Redress Law, such as financial services, including banking and insurance, energy, telecommunications, health, and the environment.

## Q2 Who may bring them?

As no general class action is permitted under Luxembourg law, each claimant must in principle commence their own proceedings against one or more defendants. Pursuant to article 50 NCPC regarding the provisions common to all courts, only claimants with sufficient standing (*qualité à agir*) and a legitimate and direct interest (*intérêt à agir*) may bring an action in court, except as specifically provided by law (the principle of *nul ne plaide par procureur*). Consequently, a joint action must be brought by all claimants individually, although this may be done by means of a single writ of summons.

Alternatively, a representative action may be brought in the name of a duly qualified organisation on behalf of its members, but only for the defence of their collective interests, not individual interests. Currently, such actions are limited to consumer claims, although this may be extended in future to professions such as architects and doctors. To date, only two associations are authorised to bring such proceedings: the ULC (*Union Luxembourgeoise des Consommateurs*), a non-profit organisation, and the ACL (*Automobile Club du Grand-Duché du Luxembourg*).

Following the adoption of the Collective Redress Law, Luxembourg introduced provisions governing class actions, although these are, as mentioned, limited to specific areas defined by Annex I of the Collective Redress Directive. Accordingly, the Consumption Code establishes particular requirements regarding legal standing to bring such class actions. Under Article L. 511-4 of the Consumption Code, only consumer protection associations, some regulatory entities such as the CSSF, and qualified entities appointed in EU or EEA Member States have legal standing to initiate collective action procedures on behalf of individual consumers.

# Luxembourg

The Collective Redress Law also amended the Consumption Code's provisions regarding infringement procedures. In areas covered by Annex I of the Collective Redress Directive, these amendments allow the initiation of summary proceedings to request an injunction ordering cessation of any infringement by a professional. Under Articles L. 321-1 to L. 322-3 of the Consumption Code, such actions may be brought by an individual, an approved consumer protection association, a qualified entity designated in another EU or EEA Member State, certain sectoral regulatory authorities, or a government minister. These proceedings may be initiated without the need to demonstrate the existence of any loss. However, it is not possible to use them to defend the individual interests of consumers affected by the professional's infringement: their sole purpose is to compel compliance with legal obligations.

## Q3 Opt in or opt out?

Judgments only bind claimants who are party to the proceedings. Collective actions in Luxembourg can therefore be considered opt-in actions.

However, for collective redress actions brought under the Collective Redress Law, the court decides whether group membership operates on an opt-in or an opt-out basis. The opt-in method is mandatory only where bodily or moral harm is alleged or where consumers live outside Luxembourg.

## Q4 Limitations?

There are no specific legal provisions limiting an entity's ability to publicise a proposed joint action. However, the possibility and extent of such publication must be analysed on a case-by-case basis with regard to, for example, press law. However, lawyers in Luxembourg are prohibited from actively promoting specific services beyond offering simple information.

## Q5 Judge or jury?

Actions are tried by one or three judges, depending on the jurisdiction hearing the case. There are no juries in Luxembourg.

## Q6 What relief can be obtained?

A joint action may result in both damages and/or injunctive relief.

A representative action may also result in both damages and/or injunctive relief.

In consumer matters covered by the Collective Redress Law, depending on the proceeding chosen, injunctive relief alone or injunctive relief and/or damages can be sought.

Punitive damages are not permitted. Damages awarded by the courts are compensatory only.

## Q7 How are collective actions funded?

Generally, each party bears its own legal costs. A successful party's fees and expenses are not usually recoverable from the unsuccessful party. However, under article 240 NCPC, the successful party may recover a lump sum from the losing party by way of a procedural indemnity (*indemnité de procedure*). The amount of the indemnity is determined by the judge and typically varies between €1,500 and €10,000, depending on the complexity of the case and the amount at stake.

Judicial costs (ie, bailiff's costs) are paid by the unsuccessful party, or proportionally by all the parties involved, depending on the outcome of the matter and the decision of the court. Article 2.4.5.3 of the Internal Regulation of the Luxembourg Bar Association (*Règlement intérieur de l'ordre des Avocats du Barreau de Luxembourg*) prohibits lawyers from setting their fees by reference to the outcome of a matter before the outcome is known. However, an agreement which not only provides for fees that are determined by reference to the services rendered, but also by reference to the result obtained, would be permitted. State-funded legal aid may be available for persons with an income lower than the minimum wage (currently €2,703.74 per month).

The Collective Redress Law (article L. 513-1 of the Consumption Code) contains specific provisions regarding third-party funding of collective actions. While third-party funding is generally permitted, it is subject to important safeguards: funders must not exert undue influence over claimants' decisions in a way that may compromise the collective interests of consumers. In addition, third-party funding is prohibited if the action targets a defendant who is either a competitor of the funder or on whom the funder is dependent.

## Q8 Is pre-trial discovery/ disclosure available?

An application may be made for pre-trial disclosure where there is a legitimate reason to establish and preserve relevant evidence before the main trial. Witness depositions are permitted under the general legal investigation measures in article 350 NCPC. In addition, a party may ask a witness to make a written statement before trial commences.

## Q9 Are collective actions widely used in practice?

Considering the very recent adoption of the Collective Redress Law, there is no precedent yet.

# Luxembourg

## Q10 Likely future scope and development?

There is currently no contemplated development in this area in Luxembourg. Following the recent adoption of the Collective Redress Law, the focus will be on whether consumers take advantage of it and introduce procedures in the future.

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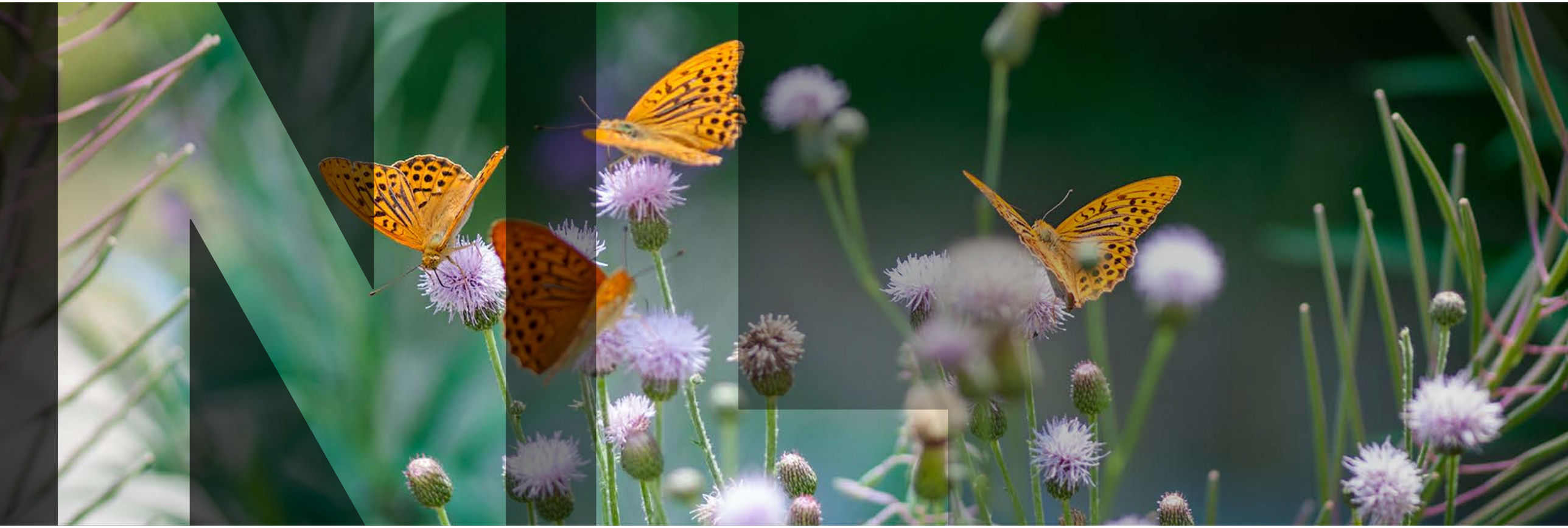


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# The Netherlands



# The Netherlands

Collective action procedures are well developed in Dutch law, which allows claims on behalf of a number of injured parties to be commenced in one action by an association or foundation with full legal capacity established for this purpose. Until a few years ago, under the Settlement of Mass Damages in Collective Action Act (*Wet Collectieve Afwikkeling Massaschade*, "**WCAM**") damages were not allowed to be claimed in collective proceedings, but had to be claimed in separate damages proceedings. However, the Collective Damages Act (*Wet Afwikkeling Massaschade in Collectieve Actie*, "**WAMCA**"), which entered into force on 1 January 2020, changed this. For claims that relate to events occurring on or after 15 November 2016, it is now possible to file a claim for monetary damages in a Dutch collective action.

Developments in Dutch and European law – including in consumer protection, ESG, and product liability – continue to shape the landscape. Organisations facing potential exposure to mass claims should note the likelihood of further procedural reform and ongoing scrutiny in the period ahead. Monitoring litigation trends and court practice remains important for anticipating risk and responding effectively as the regime develops.

## Q1 What forms of collective actions are permitted?

### Collective claim

Where numerous parties ("**Injured Parties**") have an alleged claim for compensation of damage suffered as a result of one or more similar acts by another party ("**Responsible Party**"), under Article 3:305a of the Dutch Civil Code ("**DCC**"), an association or foundation (a "**Representative Organisation**") can represent the interests of these Injured Parties and initiate one single claim against the Responsible Party before the Dutch court. Provided that the Representative Organisation meets the criteria set out in Article 3:305a DCC (set out below), it may initiate a collective action.

Under the WAMCA, a central (public) register was established in which all pending collective actions have to be recorded. When initiating a claim, the Representative Organisation must enter the collective action in this register no more than two days after serving the writ of summons. The entry will trigger a period (in principle three months but it can be extended to six months), during which other Representative Organisations may file collective actions on behalf of the Injured Parties they represent and which are in respect of the same event(s), and similar facts and legal points. During this period the court will stay the initial collective action. After the period has lapsed, all collective actions initiated regarding those same events will be dealt with on a consolidated basis. If there is more than one Representative Organisation, the court will select the most suitable organisation as so-called "**Exclusive Representative**" (see question 2 below).

For the WAMCA to apply, the procedure must have a sufficiently close connection with the Dutch jurisdiction. Under the WAMCA, the Representative Organisation can claim collective (monetary) damages on behalf of the Injured Parties. This means that the question of whether and to what extent a party suffered damage does not have to be answered on an individual basis, as was the case under the old regime. A court judgment granting or dismissing claims in the collective action is in principle binding for all Injured Parties who are domiciled in the Netherlands and did not opt out, and for all Injured Parties not domiciled in the Netherlands who opted-in (see question 2 below).

The pre-WAMCA regime that did not allow for damages to be claimed in a collective action will apply to actions relating to events that took place before 15 November 2016. Where this regime applies, the Representative Organisation will have to ask the Dutch court for a declaratory judgment regarding the liability of the Responsible Party. If the liability of the Responsible Party is established in a judgment between the Responsible Party and the Representative Organisation, each Injured Party can then separately bring its own claim for compensation on that basis.

It is possible to appeal the judgment of the court in a collective action, first to the Court of Appeal and thereafter to the Dutch Supreme Court.

### Collective settlement

The WAMCA is designed to provide ample room for settlement of the dispute. After the period to opt out/in has lapsed, the court will set a period for the parties to try to reach a settlement. If no settlement is reached, the case will proceed. The court also has the discretion to order the Exclusive Representative and the defendant(s) to provide it with a proposal on the collective settlement of the alleged damage, which it may use to determine the damages to be allocated to the Injured Parties. If, in the course of the proceedings, the Exclusive Representative and the defendant(s) reach a settlement, the same conditions apply as for settlements under the WCAM.

## Q2 Who may bring them?

Article 3:305a DCC provides that only Representative Organisations may bring collective actions. A Representative Organisation is an association (*vereniging*) or foundation (*stichting*) established under Dutch law, which is permitted to represent the interests of the Injured Parties in accordance with the criteria set out in Article 3:305a DCC.

# The Netherlands

Prior to the introduction of WAMCA in 2020, quality requirements for Representative Organisations were introduced under which a Representative Organisation could be declared inadmissible if the interests of the persons it represents are "insufficiently safeguarded". The courts would also take into account the (non-binding) Claim Code published by an independent commission, which contains a set of governance requirements for Representative Organisations, to assess whether a Representative Organisation was sufficiently safeguarding the interests of the Injured Parties. A second edition of this Claim Code was published in 2019.

The WAMCA introduced additional admissibility requirements for Representative Organisations and their claims, including funding, transparency and governance requirements. For example, the Representative Organisation should in principle: (i) have sufficient means to fulfil the costs of initiating the proceedings and sufficient authority over the claims to be initiated; (ii) be transparent in respect of the salaries of its directors and the calculation of the contributions by its representees; (iii) be able to show that it has the experience and expertise to bring such an action; and (iv) have proper means to involve its representees in the decision-making process. Its founders/directors are not permitted to have any profit motive that may be promoted through the Representative Organisation.

Emerging case law under the new regime indicates that courts closely scrutinise the independence of Representative Organisations from their funders, particularly examining supervisory board composition and potential conflicts of interest. Cases have been dismissed where insufficient distance existed between board members and funders, or where funders had excessive influence over decision-making. However, courts take a pragmatic approach to minor formal governance defects that do not affect the substance of representation.

Further to these requirements, the collective action must have a sufficiently close connection to the Dutch jurisdiction ("scope-rule"). This will exist if: (i) the majority of individuals on behalf of whom the collective action is initiated reside in the Netherlands; or (ii) the defendant resides in the Netherlands and there are additional circumstances that show a sufficient connection with the Netherlands; or (iii) the circumstance(s) on which the collective action is based took place in the Netherlands.

Finally, a collective action is inadmissible if the Representative Organisation has not first attempted to settle the case with the Responsible Party, by sending it a letter of claim offering a two-week period in which to enter into settlement negotiations. If no settlement is reached the case will proceed, provided that the Representative Organisation is deemed admissible (see above), the collective action is not deemed prima facie inappropriate, and the Representative Organisation has sufficiently demonstrated to the court that the collective action is more efficient and effective than individual proceedings.

If there is more than one Representative Organisation, the court will select the most suitable organisation as the Exclusive Representative for the group/class of Injured Parties represented in the collective action. The decision of the court will be based on the size of the class and the number of claims represented by the Representative Organisation, as well as the actions performed by that Representative Organisation for its representees or in previous cases. The appointment of the Exclusive Representative cannot be appealed. The Exclusive Representative will represent all members of the class and will be point of contact for the defendant. Although the other Representative Organisations will remain parties in the proceedings, in principle only the Exclusive Representative will be allowed to submit procedural briefs. The court may rule that unrepresented claimants are also allowed to submit procedural briefs.

Courts apply a flexible approach to representativeness, considering both the percentage of affected parties represented and the proportion of total claimed damages. Recent cases show that even relatively modest percentages (ranging from less than 1% to around 16%) can be deemed sufficient depending on the circumstances, including support from other respected organisations and the nature of the claims. The manner and timing of how parties join the Representative Organisation does not affect the representativeness assessment.

Admissibility discussions have lengthened proceedings, particularly in cases involving commercially motivated Representative Organisations, as courts develop case law interpreting the new legal requirements under the WAMCA. This development creates procedural uncertainty and additional steps where appeals are filed, though this effect may diminish as case law under the new legislation matures. Parties should therefore anticipate potentially longer timelines for WAMCA proceedings compared to expectations based on pre-2020 practice.

With the transposition of the EU Collective Redress Directive into Dutch law in 2025, foreign EU entities can now bring representative actions in Dutch courts as well, expanding the pool of potential claimants beyond Dutch-established organisations. This cross-border dimension may increase the volume and diversity of collective actions brought in the Netherlands.

## Q3 Opt in or opt out?

Under the old regime, each individual party has to commence its own separate action to benefit from the court decision in the proceedings brought against the Responsible Party by the Representative Organisation. Individual parties may even commence separate proceedings in relation to the extent of the Responsible Party's liability, despite the decision in the collective action. They can also decline to be bound by the decision in the collective action. In respect of the old WCAM collective settlement procedure, an opt out process is available once the settlement has been declared collectively binding by the Amsterdam Court of Appeal.

# The Netherlands

For proceedings under WAMCA, the court will offer Injured Parties residing in the Netherlands the option to opt out of the proceedings (available for at least a month following the decision appointing the Exclusive Representative). Unless decided otherwise by the court, Injured Parties who are not domiciled in the Netherlands will have to expressly opt in to the collective action for a judgment to have a binding effect on them. Again, the court will offer them this option, available for at least a month following the appointment of the Exclusive Representative. However, parties will be able to request the court to order that the opt out mechanism also applies to foreign Injured Parties in the interest of, for example, finality.

## Q4 Limitations?

Under the old regime, monetary damages could not be claimed by Representative Organisations. Other than that, there are no limitations as to the type of claims that can be brought or settled collectively, provided that the Injured Parties' claims result from one or more similar acts by the Responsible Party.

Under the new WAMCA there are no restrictions as to the type of claims that can be brought or settled collectively (again, provided that the Injured Parties' claims result from one or more similar acts by the Responsible Party). For the limitations to the scope of the proceedings, see above.

A Representative Organisation may suspend the applicable limitation period for claims for compensation of loss and damage on behalf of all Injured Parties, including Injured Parties who have not joined the Representative Organisation.

## Q5 Judge or jury?

Judge.

## Q6 What relief can be obtained?

As mentioned above, for collective actions filed before 1 January 2020 and/or which relate to an event or events occurring before 15 November 2016, the Representative Organisation cannot ask the Dutch court for compensation of damages in a collective claim but only for a declaratory judgment regarding the liability of the Responsible Party. The question of whether and to what extent a party suffered damage must be answered on an individual basis in separate civil proceedings.

For collective actions filed after 1 January 2020 and which relate to an event or events which occurred on or after 15 November 2016, all kinds of relief, including damages, can be claimed.

## Q7 How are collective actions funded?

Under the ethical rules applicable to Dutch lawyers, it is not allowed to represent clients on the basis of "no win no fee" or "no cure no pay". Therefore, they cannot be paid exclusively based on the potential proceeds of a collective claim or collective settlement. Pursuant to Dutch case law, however, a Representative Organisation can claim compensation for the "reasonable costs it has incurred for the purpose of establishing liability and the amount of damage".

The WAMCA imposes stricter financial requirements on the Representative Organisations filing collective actions. This is to safeguard the interests of the Injured Parties, as well as the Responsible Parties. For example, the board members involved in the Representative Organisation may not have a profit motive that is realised through the organisation, the Representative Organisation must be able to prove that it has sufficient means to fulfil the costs of initiating the proceedings and there should be safeguards to prevent a third party funder having a decisive influence over the claims.

Recent case law provides guidance on acceptable funder fees, with compensation exceeding 25% triggering increased scrutiny and a range of 10-25% mentioned as the generally accepted maximum. The TikTok case provided guidance on maximum compensation for process financing in future settlement approvals.

## Q8 Is pre-trial discovery/ disclosure available?

Dutch law is not familiar with US-style discovery of documents. Rather, there is a limited obligation to produce documents. A party with a legitimate interest in disclosure may request that specifically identified documents are produced (such as an email correspondence between named individuals on a particular date and topic). Dutch courts also have the authority to order production of books, records and other documents a party is legally obliged to maintain.

As of 1 January 2025, the Simplification and Modernisation of Dutch Evidence Law has introduced important changes to pre-trial evidence-gathering. The right of inspection is now more central within the procedural framework. Parties can proactively assess their entitlement to information and their obligations in response to requests, making inspection potentially a primary and cost-effective method for evidence collection rather than a last resort.

Additionally, the legislation has broadened conservatory (preservatory) measures for securing evidence. Dutch courts can now authorise ex parte orders – including a bailiff's statement of findings – to promptly secure critical evidence, even outside the intellectual property context. These reforms are designed to enhance procedural certainty and improve the enforcement of document production orders.

# The Netherlands

Any party with a potential claim also retains the option to file a petition with the Dutch court for a preliminary hearing of witnesses or experts. This is a well-established right under Dutch law, and such petitions are typically allowed.

While the full scope of these reforms will become clearer as new case law develops, the expectation is that the new procedures will streamline evidence collection and accelerate Dutch legal proceedings, including in complex or cross-border disputes.

## Q9 Are collective actions widely used in practice?

Yes, collective actions are widely used in practice. As of December 2025, 95 WAMCA proceedings have been registered (71 on the merits and 25 summary proceedings). However, the WAMCA has not produced the large surge in filings that some anticipated compared to pre-2020 levels.

## Q10 Likely future scope and development?

Collective actions look set to continue to be popular in the Netherlands.

The attractiveness of Dutch courts for collective actions is expected to grow steadily over the coming years, presenting increased risks and complexities for organisations operating in the Netherlands or with exposure to Dutch consumers. This expansion is driven by ongoing legislative reform, evolving case law, and changing claimant strategies.

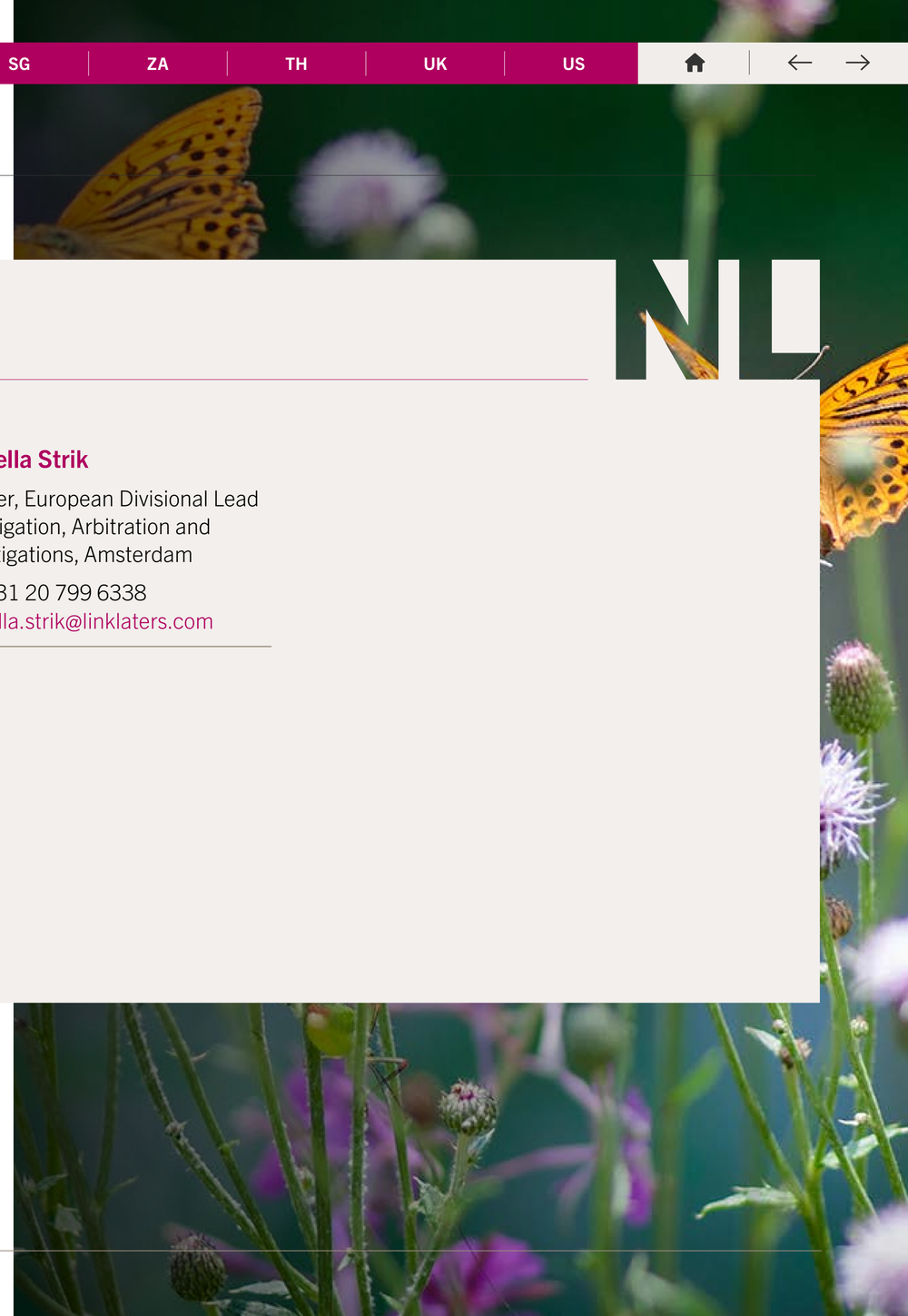
Dutch lawmakers are in the process of transposing several EU Directives that will expand the grounds for collective actions, including the Corporate Sustainability Due Diligence Directive and the reformed Product Liability Directive. These Directives will give broad standing to qualified entities, including foreign non-profit organisations, and are expected to prompt a steady flow of new claims targeting multinational companies, especially in sectors with high consumer interaction or ESG exposure. ESG-related issues (such as climate, human rights, and supply chain impacts) and product liability are anticipated to be prime areas of growth for Dutch collective proceedings. Companies should anticipate increased scrutiny from claimants and non-governmental organisations leveraging new EU compliance obligations as the basis for mass claims.

The WAMCA evaluation report published in November 2025 highlighted that the time required to secure an admissibility ruling in WAMCA procedures now frequently exceeds two years. This creates significant uncertainty for defendants, with extended resource commitments and potential for ongoing reputational impact well before any merits-based determination. Key recommendations from the report include introducing flexible waiting and opt out periods for public-interest actions, providing clearer guidance on third-party funding arrangements, and implementing a qualitative representativeness test focused on organisational suitability. The report also suggests enabling courts to appoint an amicus curiae to support collective damage assessment design and clarifying whether referral to damages assessment (*schadestaat*) aligns with WAMCA's coordinated collective settlement framework.

To what extent these and other recommendations will be incorporated in future iterations of WAMCA remains to be seen. For now, Dutch courts routinely examine the representativeness, independence, and funding arrangements of proposed claimant organisations – resulting in more procedural challenges, but also offering defendants meaningful admissibility defences. As third-party commercial funding is increasingly the engine for large collective claims, we anticipate further regulatory attention and opportunities for strategic challenge.

For organisations likely to be named as defendants, these trends reinforce the importance of preparing for longer pre-merits timelines, investing in robust compliance programmes and actively monitoring legislative and procedural changes. Early engagement with legal advisors, close scrutiny of claimant organisation governance, and proactive risk assessment can mitigate uncertainty and help navigate the increasingly complex Dutch collective action landscape.

# The Netherlands




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# Portugal



# Portugal

Under the Portuguese class action framework, claims may be brought by individuals and organisations across all areas and sectors, notably health, environment, quality of life, competition, data protection, consumer protection and cultural heritage. A general class action framework was approved in 1995 (Law no. 83/95 of 31 August 1995, "**Law 83/95**"). However, the transposition of EU Directive 2020/1828 on Representative Actions (the "**EU Collective Redress Directive**") into Portuguese Law – through Decree-Law no. 114-A/2023 of 5 December 2023 ("**DL 114-A/2023**"), which establishes a specific regime for consumer protection collective claims – has introduced new relevant rules in this respect. In relation to the applicable legislation, reference should also be made to Law no. 23/2018 of 5 June 2018 ("**Private Enforcement Law**"), which transposed Directive 2014/104/EU into national law, and establishes relevant rules for collective private enforcement actions in competition law, with significant practical relevance. In addition, joint and group actions are permitted, under which the claims of individuals with common or related issues may be heard together.

## Q1 What forms of collective actions are permitted?

Portuguese procedural rules allow for the submission of (i) class actions, (ii) mass actions and (iii) joint actions:

- Class actions are permitted under article 31 of the Code of Civil Procedure, which is based on article 52, paragraph 3 of the Constitution of the Portuguese Republic. This procedure is known as "ação popular", which is, in general, regulated by Law 83/95 and, following the transposition of the EU Collective Redress Directive, by DL 114-A/2023 (within its scope of application, which is focused on consumer protection class claims – it is debated whether actions concerning competition law infringements are also covered by this framework, given the recent nature of this legislation, and there is not yet case law from higher courts on this matter).

  According to the relevant provisions, an action may be brought by any person, association or foundation (but not companies or professionals), city council or by the public prosecutor, in representation of the members of a class, to protect collective interests (including the individual reflection of those collective interests) in areas and sectors as public health, environment, quality of life, goods and services consumer protection, competition, data protection and cultural heritage.

  This statutory mechanism encompasses the right for compensation for loss suffered.

- In parallel, mass actions are possible under the Portuguese Code of Civil Procedure. In this case, court proceedings are brought by several individual claimants concerning related or common issues, which are heard together.

- Joint actions are available under Article 267 of the Code of Civil Procedure, which allows the judge to join different cases when the involvement of all the interested parties is necessary to protect the effect of the decision or when different claims have the same grounds or are interrelated. This can even be the case when the cases are pending before different courts. However, for this mechanism to be applicable, each claimant must have initially commenced their own separate proceedings.

## Q2 Who may bring them?

Class actions may be brought by individual claimants or by an interested organisation, such as an association, foundation or city council, in representation of the members of a class (understood as holders of homogeneous positions in respect of the claim). For associations or foundations to be eligible to bring such proceedings, Portuguese law requires that they fulfil certain compulsory requirements. As such, they must:

- have legal personality;
- expressly include in their articles of association objectives for the defence of relevant interests in these types of actions; and
- not carry out any kind of professional activity competing with companies or independent professions.

As for the city council, it may only bring such proceedings if they are related to interests of the residents in their particular area.

Additionally, following the entering into force of DL 114-A/2023, legal standing in actions covered by that framework requires that associations or foundations are independent and not subject to the influence of entities other than consumers (in particular professionals who have an economic interest in bringing a class action, such as third-party funders), and have adopted procedures to prevent their influence and to prevent conflicts of interest between the organisation, the funders and consumers.

In parallel, DL 114-A/2023 also allows qualified entities from other EU Member States to bring cross-border class actions in Portuguese courts to protect consumer interests, with procedural flexibility to choose appropriate remedies under EU or Portuguese law whilst maintaining judicial oversight of their legitimacy and statutory compatibility.

## Q3 Opt in or opt out?

It is an opt out system. The general rule is that a judgment made in a class action will bind all members of the class, except for those who have formally "opted out". DL 114-A/2023 has introduced one opt in exception for consumers without habitual residence in Portugal in collective actions filed in this jurisdiction and seeking reparation measures.

# Portugal

## Q4 Limitations?

Apart from the limitations on the eligibility to bring class actions and representative actions as set out above, there are no other substantive limitations. A collective action may be brought under and follow the procedure of any of the types of actions foreseen in general in the Portuguese Code of Civil Procedure.

## Q5 Judge or jury?

Judge.

## Q6 What relief can be obtained?

Claimants may obtain redress according to the type of action brought, including an injunction and compensation for losses incurred and damage suffered. Punitive damages are not admissible in Portugal.

## Q7 How are collective actions funded?

The traditional funding structure for collective actions in Portugal follows the general principle that public funding is residual and does not truly represent a significant resource.

However, the Portuguese collective actions landscape has been fundamentally transformed by third-party litigation funding. Litigation funders' increasing interest in Portugal, combined with the Portuguese opt out framework, has led to multiple class actions funded by third-party funders, which, in turn, has been particularly relevant to the development of the class actions market in Portugal.

This development must now navigate the regulatory requirements introduced by DL 114-A/2023, which transposed the EU Collective Redress Directive, particularly regarding maintaining independence between funders and representative organisations. Additionally, DL 114-A/2023 provides that unclaimed compensation awarded to consumers, within a reasonable timeframe set by the court, is allocated to cover the entirety of costs, fees, and expenses incurred by the claimant in pursuing the action. In this regard, and under this framework, funder remuneration is considered as a legitimate expense incurred by the claimant, subject to judicial oversight regarding fairness and proportionality. In this respect, DL 114-A/2023 has included several relevant funding requirements:

i. The funding agreement must include a financial summary listing the sources of funding used to support the collective action and the different costs and expenses that will be borne by the third-party funder.

ii. The funding agreement must guarantee the independence of the claimant and the absence of conflicts of interest. The claimant is considered independent from the third-party funder if it is exclusively responsible for making all decisions relating to the collective action, with the guiding principle being the defence of the interests at stake, including the choice of legal representatives, the definition of procedural strategy, and decisions to initiate, continue, withdraw, settle, appeal or not appeal and, in general, to perform or not perform any procedural act within the collective action. The funder may not impose, prevent or influence these decisions in any way, and any clauses to the contrary are null and void, namely those that impose any authorisation or consultation with the third-party funder before making a decision or that associate a disadvantageous consequence for the claimant with making any of those decisions.

iii. The funding agreement may not provide for remuneration of the funder that goes beyond a fair and proportionate value (although this is not specifically defined in the applicable law), assessed in light of the characteristics and risk factors of the collective action in question and the market price of such funding.

In cases where there is a violation of the requirements regarding independence, absence of conflicts of interest, or prohibition on conflicts with defendants, the court invites the claimant to, within a certain period, refuse or make changes to the third-party funding agreement in order to ensure compliance with the violated provision, and must declare the claimant's lack of standing if the necessary changes are not made within the established period.

## Q8 Is pre-trial discovery/ disclosure available?

Although there is no procedural disclosure/discovery phase in Portugal, courts may order the production of documents by any of the parties.

This can be done (i) in actions brought for the purpose of obtaining such documents, as set out in traditional Portuguese procedural law and, regarding competition private enforcement actions, in the Private Enforcement Law, or (ii) within the action where the infringement is under discussion. In the second case, courts may order the production of documents either on their own initiative or at the request of a party. Any request submitted in this respect must specify, as precisely and as narrowly as possible, the documents or the relevant categories of documents whose production is requested and by reference to the facts alleged in the submissions.
There shall be a reasoned justification for such requests, and they are only admissible if there is a prior factual allegation connected to such evidence. These requests must satisfy legal tests of relevance, specificity and proportionality, and there are rules against "fishing expeditions".

# Portugal

Additionally, where there are grounds to believe that any documents in the possession of a future counterparty may be destroyed or become unavailable for any reason, it is possible to apply for an injunction to gain access to those documents or to preserve such documents with a view to initiating future judicial proceedings.

## Q9 Are collective actions widely used in practice?

Although there are no official statistics on the use of class actions in Portugal, the market has seen very significant growth in the last five years. Since 2020, at least 185 class actions have been filed in Portuguese courts. Class actions have been filed against entities operating across multiple economic sectors. The retail and distribution sector, particularly supermarket chains, accounts for the highest number of defendants, with numerous actions filed against major food retailers and regional distribution companies. The technology and digital services sector represents a significant share as well, including major multinational corporations in social media, e-commerce, and digital platforms. The automotive industry also features prominently, with actions against major manufacturers and their Portuguese subsidiaries. Additional sectors include telecommunications operators, financial services institutions, airlines, hospitality and tourism platforms, food and beverage producers, and pharmaceutical and cosmetics companies.

This broad sectoral distribution reflects the comprehensive scope of consumer protection law and its enforcement through class actions across all major consumer-facing industries in the Portuguese market.

## Q10 Likely future scope and development?

The likely future scope and development of collective actions in Portugal should be dynamic and shaped by regulatory changes, market dynamics, and evolving funding mechanisms.

Established organisations should continue to dominate the landscape in the immediate term, though it is possible that single-issue associations are launched for specific actions.

The sectoral focus of future development appears to be crystallising around specific areas where there is regulatory activity, bearing in mind that we have been observing substantial class action activity in the competition and tech and data protection sectors, which might continue. In particular, there may be movement in sectors where regulatory enforcement proceedings are ongoing, though the extent of follow-on activity will depend on evolving market conditions and litigation funder appetite.

The role of third-party litigation funding will be crucial to future development. We have been seeing relevant activity of funders, which already support multiple class actions proceedings. They will take account of the fact that although several class actions already started a few years ago, due to the lengthy evolution of the proceedings, there is still little visibility on the outcome of their investments. In parallel, the regime which arises from the transposition of the EU Collective Redress Directive in respect of funding is still to be tested at length before Portuguese courts.

Overall, the collective actions market in Portugal is at a pivotal moment where regulatory clarity, market maturation, and funding innovation will determine the trajectory of this legal mechanism. The outcome of ongoing cases will serve as important precedents for future litigation funder investment decisions, which will have a significant impact on the existing landscape.

# Portugal

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# Singapore



# Singapore

While Singapore law does not provide specifically for collective actions, such actions can be conducted in the Singapore courts through two mechanisms. First, they may be brought by way of representative proceedings, with the permission of the court. In considering whether to permit such an action, the court will weigh the practical and economical advantages of asserting and enforcing a claim collectively against any prejudicial consequences for the respondent. Second, the Singapore courts have also confirmed the possibility of an action by a designated entity which has taken assignment of multiple individual claims. Care must be taken to ensure that the arrangement does assign a bare cause of action or the proceeds of such action to a party which has no legitimate connection to it.

Representative actions remain a developing area of the law in Singapore. It is likely that the courts will develop the jurisprudence and procedure relating to them in future proceedings.

## Q1 What forms of collective actions are permitted?

The avenues for collective redress under Singapore law are:

- by way of representative proceedings under Order 4 Rule 6 of the Singapore Rules of Court 2021 and / or Order 10 Rule 19 of the Singapore International Commercial Court Rules 2021, which provide that where numerous persons have a common interest in proceedings, the proceedings may be commenced and continued by one or more claimants as representing the other persons; or
- by assigning the individual claims to an entity which will then act as the claimant in prosecuting the claims.

## Q2 Who may bring them?

Representative proceedings may be commenced by any person(s) who has a common interest with the persons whom he or she seeks to represent. In determining whether persons have a common interest, the court will consider the following factors:

- The class of represented persons must be capable of clear definition. This is critical because it identifies the individuals who are entitled to relief and who will be bound by the judgment.
- The proposed representative(s) must adequately represent the interests of the entire class and must be capable of prosecuting the interests of the entire class. The appointment of such a representative is at the court's discretion.
- There must be one or more significant issues of fact or law common to all the claimants for determination by the court. The court must compare the significance of the common issues between the claimants with the significance of the issues which differ between them.
- The interests of the defendant(s) to the proposed proceedings and any detrimental effect which may potentially arise through representative proceedings.
- All the claimants must have a common interest in the relief sought and that relief must be beneficial to all claimants.
- The court will also consider whether any of the claimants are bound by an arbitration agreement. In such circumstances the courts have indicated that they will either (i) stay the representative proceeding in favour of arbitration or (ii) narrow the represented group to exclude claimants subject to an arbitration agreement (*Beltran, Julian Moreno and another v Terraform Labs* (2023)).

Alternatively, the proceedings may be commenced by an entity to which the individual claims have been assigned. The use of a special purpose vehicle ("SPV") incorporated specifically to prosecute the claims is permissible, as long as there is no indication that the arrangement would allow a third party who otherwise has no interest in the action to take control of or wager on the litigation (*Ok Tedi Fly River Development v Ok Tedi Mining* (2021)). In determining whether the arrangement is permissible, the court will consider the following factors:

- Whether the SPV is controlled by the individuals with an underlying interest in the claim (the assignors of the claim), or by a disinterested third party;
- Whether the action is funded by the assignors of the claim or by a third party. Third-party funding of the costs of legal proceedings by an entity that is unconnected to the dispute is generally prohibited under Singapore law, except in relation to specific categories of proceedings (see below);
- Whether the SPV would retain the benefit of the proceeds of the litigation; and
- Whether there is otherwise any evidence that points to the existence of a third party financing or controlling the litigation.

## Q3 Opt in or opt out?

Opt in.

# Singapore

## Q4 Limitations?

Whether an action is allowed to proceed as a representative action is subject to the court's discretion. The court must be persuaded that it is appropriate for the case to proceed as a representative action, having regard to factors such as whether the respondent would be disadvantaged (eg, the inability to raise separate defences against different claimants), cost considerations, as well as whether the legal position of some or all represented claimants bars their participation in a representative proceeding. The Singapore Court of Appeal has stated that, while representative actions offer a practical and economical method of asserting and enforcing a claim, this must be weighed against any prejudicial consequences for the respondent in the representative action.

Further, a representative action is not available in the normal way in relation to proceedings which concern (a) the administration of the estate of a deceased person; (b) property subject to a trust; and (c) the construction of a written instrument, including a statute. However, in such cases, the court may appoint a person to represent the class of interested persons where the class includes persons who are not readily ascertainable or who cannot be found, or where the court otherwise regards it as appropriate to do so.

Where an action is commenced through an assignee (such as an SPV), the court can dismiss the action if it finds the assignment to be void – this could be the case where the assignment documents do not comply with the necessary formalities, or where the assignment would violate the rules against the bare assignment of claims or proceeds of action to a third party with no connection to the action, based on the factors mentioned above.

## Q5 Judge or jury?

Judge – there is no jury trial in Singapore.

## Q6 What relief can be obtained?

There are no specific rules or restrictions as to the reliefs available in representative proceedings - the same reliefs and remedies are available as in non-representative proceedings.

## Q7 How are collective actions funded?

There are no specific rules in relation to how representative actions may be funded in Singapore. However, there is a general prohibition in Singapore law against third-party funding of the costs of legal proceedings by an entity that is unconnected to the dispute. This general prohibition is subject to limited exceptions in respect of certain proceedings, including domestic and international arbitration, proceedings commenced in the Singapore International Commercial Court ("SICC"), and mediation or court proceedings arising from such proceedings. Where the action is commenced through an assignee, the courts have indicated that the existence of third-party funding might render the arrangement impermissible, but whether this position extends to the categories of proceedings for which third-party funding is expressly permitted has yet to be tested in the Singapore courts.

## Q8 Is pre-trial discovery/ disclosure available?

Pre-trial disclosure is available. The same procedure to disclosure applies as with non-representative proceedings.

However, represented claimants are not obliged to give discovery or evidence relating to the claims in the representative action, and a defendant will not be entitled to cross-examine these individuals.

## Q9 Are collective actions widely used in practice?

Representative proceedings are not common in Singapore. There are less than 10 reported cases which commenced as a representative action.

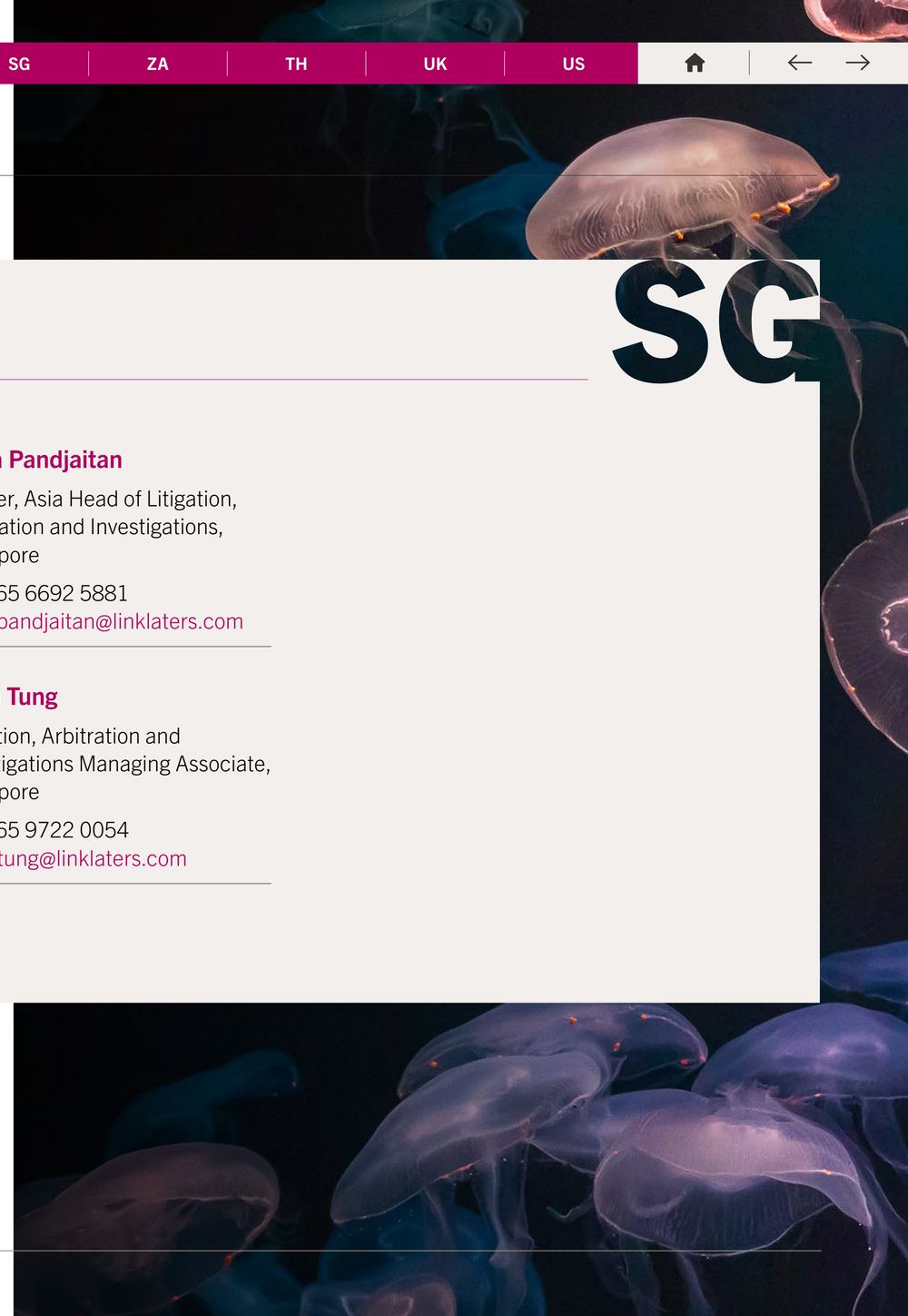
## Q10 Likely future scope and development?

The courts have indicated that they will take a broad and flexible approach to considering whether it is appropriate for an action to proceed as a representative action, as well as in administering and shaping the representative proceedings as they unfold.

The interaction between collective proceedings and agreements to arbitrate is a key area for development. The Singapore courts recently grappled with the procedural and policy considerations of discontinuing or suspending collective proceedings because some claimants may be subject to an arbitration agreement, noting that such claimants are likely to have no recourse given that class arbitration is generally not permitted (unless specifically provided for in the arbitration agreement). The courts have noted that these issues merit further consideration in an appropriate future case (*Beltran, Julian Moreno and another v Terraform Labs* (2023)).

The interface between third-party funding and collective actions (whether pursued by way of a representative action or through assignment to a litigation vehicle) is also a developing area of the law. It is likely that courts in future representative or assignee-based proceedings will take the opportunity to develop the jurisprudence and procedure relating to the conduct of such proceedings.

# Singapore



SG

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# South Africa



# South Africa

Actions for collective redress ("class actions") are recognised at common law (for, example, for consumer redress and mass personal injury claims); under the Constitution for infringements of rights guaranteed in the Bill of Rights and in the corporate sphere under certain pieces of legislation.

On 15 August 2025, amendments to the Uniform Rules of Court for practice in the High Court ("**the Rules**") were published by the Rules Board for Courts of Law. These amendments, which came into force on 19 September 2025, introduced for the first time a legislative definition of "*class action*" and a new Rule 11A dealing with the certification of such actions.

This marks the first occasion class actions have been expressly regulated. Whilst new, the Rules codify much of the common law developed in earlier court decisions; and although their application and interpretation will be guided by the prior jurisprudence, this is an exciting development which will inform the future landscape.

## Q1 What forms of collective actions are permitted?

Section 38(c) of the Constitution of the Republic of South Africa, 1996 ("**Constitution**") provides that:

*"Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:*

*(c) anyone acting as a member of, or in the interest of, a group or class of persons."*

The Constitution has therefore always recognised class actions specifically in relation to infringements of or threats to rights guaranteed in the Bill of Rights.

In 1998 the South African Law Commission ("**SALC**") published a report entitled "*The Recognition of Class Actions and Public Interest Actions in South African Law*" and prepared a draft "*Public Interest and Class Action Act*". Although never enacted, elements of the draft have been reflected in the subsequent development of class actions in the common law and now enshrined in Rule 11A of the Rules.

Rule 11A defines a class action as:

"*an action instituted by a representative on behalf of a class of persons, which may include the representative, in respect of whose claims the issues of fact or law involved are substantially similar in respect of all members of the class, and where the members of the class are bound by the outcome of the common issues in the action*".

It also establishes that no action shall proceed as a class action unless the court certifies it, having considered whether this is in the interests of justice.

In addition to class actions under the common law and in terms of the Constitution, class action proceedings have also been given express sanction in specific pieces of legislation. For example, section 157 of the Companies Act, 71 of 2008 ("**Companies Act**") provides for class actions in the corporate realm. The section permits any application to a court, the Companies Tribunal, the Takeover Regulations Panel or the Companies and Intellectual Property Commission, which arises out of the Companies Act to be exercised by:

- a person acting as a member of, or in the interests of, a group or class of affected persons; or
- an association acting in the interests of its members; or acting in the public interest, but with the leave of the court.

In addition, the Consumer Protection Act 68 of 2008 and the National Environment Management Act 107 of 1998 also include similar provisions authorising class action standing for infringements and the protection of rights under those pieces of legislation.

Prior to Rule 11A, however, South African courts faced somewhat of a regulatory gap in the sense that there were no statutory or regulatory rules governing class actions processes and procedures, the form they were to take and the requirements to bring a class action. While class actions had express constitutional (and other statutory) recognition (since the mid-1990s), there were no detailed procedural rules for bringing such actions.

The South African Courts moved to fill this gap by utilising their inherent power to protect and regulate their own process and to develop the common law in the interests of justice. They established appropriate procedural requirements for a class action and extended their scope beyond Bill of Rights infringements and other limited statutory occasions.

In the seminal case of *Children's Resource Centre Trust v Pioneer Food (Pty) Ltd* (50/2012) [2012] ZASCA 182 (29 November 2012) the Supreme Court of Appeal of South Africa ("**SCA**") held that: "*it would be irrational for the court to sanction a class action in cases where a constitutional right is invoked, but to deny it in equally appropriate circumstances merely because of the claimants' inability to point to the infringement of a right protected under the Bill of Rights. The SCA found further that the procedural requirements that will be determined in relation to the one type of case can equally easily be applied in the other. It was accordingly found that "class actions are a particularly appropriate way in which to vindicate some types of constitutional rights, but they are equally useful in the context of mass personal injury cases or consumer litigation*".

# South Africa

## Q2 Who may bring them?

Class actions may be instituted by a member of a specific class or by a person acting in the interests of that class.

Under Rule 11A (3)(a)(viii), the Court must determine whether the applicant is suitable to conduct the action and represent the class. Suitability is now framed more comprehensively than under the common law.

It encompasses the traditional requirements that the representative's interests do not conflict with those of the class; and that the representative has the capacity to conduct the litigation properly. Rule 11A requires the class representative to demonstrate:

- the ability to adequately represent the best interests of all class members;
- the absence of any conflict or potential conflict of interest with class members;
- the ability to make satisfactory funding arrangements for the class action; and
- the ability to conduct and manage the class action effectively.

## Q3 Opt in or opt out?

Prior to the new Rule and in practice, class actions in South Africa have been brought on both an opt in and opt out basis; and sometimes as a combination of both. This was recognised in *Nkala and Others v Harmony Gold Mining Company Limited and Others* [2016] ZAGPJHC 97 (13 May 2016), in which the court said that class actions may involve two stages. The first is an opt out stage during which applicants may elect not to be bound by the judgment on the merits. The second stage would be to opt in, during which the applicants elect to opt in to the damages phase.

Rule 11A requires that the affidavit in support of certification must stipulate whether the class will be an opt-in or opt-out class or a combination of both, providing legislative recognition for each scenario.

Important jurisdictional limitations have emerged regarding foreign class members.

- In *De Bruyn v Steinhoff International Holdings NV and Others* 2022 (1) SA 442 (GJ), the court held that certification of an opt-out class of foreign nationals (*perigrini*) was impermissible. This was because it would allow foreign class members to pursue litigation in multiple jurisdictions whilst not being bound by adverse South African outcomes. The solution in that case was to convert the class of foreign shareholders to an opt-in class, because "*if peregrini opt-in to the Foreign Shareholders Class, they intend to bring the class action, submit to the jurisdiction of this court and will be bound by the outcome before this court*".
- This principle was reinforced in *Various Parties obo Minors v Anglo American South Africa Limited and Others* (2020/32777) [2023] ZAGPJHC 1474 (14 December 2023), where the court concluded that "*a South African court can only certify a class comprised entirely of foreign peregrini, on an opt-in basis*" because foreign class members in an opt-out class have not submitted to the court's jurisdiction. The court explained the fundamental difference: "*In order to participate in a class action, individual class members are required to take proactive measures under the opt-in class action regime…Conversely, unless individual class members opt out of the class action, the opt-out class action regime automatically binds class members to the class action and the outcome of the litigation.*"

## Q4 Limitations?

Any prospective class will need to be certified by a court of law. Failing this, a class action cannot be brought.

Rule 11A, confirms that no action shall proceed as a class action unless the court, after considering that it is in the interests of justice, certifies that the action may be conducted as a class action. An application for certification must be on notice of motion supported by an affidavit; and accompanied by a draft set of Particulars of Claim (Statement of Claim) in the proposed class action.

Rule 11A(3) codifies the factors developed by the courts in *Children's Resource Centre* and refined in *Mukaddam v Pioneer Foods* (Pty) Ltd 2013 (5) SA 89 (CC). These include whether the class is objectively definable, whether a triable issue exists, whether issues of fact or law are common to the class, whether the relief sought is ascertainable, whether damages can be fairly allocated, whether the representative is suitable, and whether a class action is the most appropriate means of resolving the claims.

In *Mukaddam*, the Constitutional Court added further to the development of class actions in South Africa. While the court generally accepted the criteria set out in *Children's Resource Centre*, it noted that these requirements must serve as factors to be taken into account in determining where the interests of justice lie in a particular case and must not be treated as conditions precedent or jurisdictional facts which must be present before an application for certification may succeed. The court pointed out that the absence of one or another requirement must not oblige the court to refuse certification where the interests of justice demand otherwise. The Constitutional Court's focus was therefore on the flexible criterion of interests of justice as the guiding standard as to whether certification should be granted.

Recent case law has added further limitations:

- **The Triable issue standard** – *De Bruyn v Steinhoff*, held that "*without a cause of action, the application for certification must fail.*"
- **Jurisdiction for foreign class members** – *De Bruyn* and *Various Parties obo Minors v Anglo* confirmed that confirmed that classes comprised of foreign *peregrini* can only be certified on an opt-in basis.
- **Funding requirements** – *De Bruyn* confirmed that funding arrangements must be "*(i) necessary to provide access to justice; (ii) fair and reasonable; (iii) would not overcompensate the funders; (iv) would not interfere with the duty of the class lawyers to act in the best interests of their clients; and (v) would enable*

# South Africa

*class representatives to exercise control over the litigation in the best interests of class members*".

- **Precision in class definition** – *De Bruyn* held that "*class definition should permit class membership to be determined by recourse to objective criteria*". *Various Parties obo Minors v Anglo* emphasised that "*it is critical that this court carefully examines any proposed class definition and ensures that there is no mismatch between the class definition and the triable cause of action*".

## Q5 Judge or jury?

The jury system was abolished with the coming into effect of the Abolition of Juries Act 34 of 1969 and therefore all trials (and antecedent applications for class certification) are heard by judges.

## Q6 What relief can be obtained?

In terms of section 38 of the Constitution, "*the court may grant appropriate relief, including a declaration of rights*".

Rule 11A(7) of the Rules states that "*the court granting an order for certification may make any other order which it deems appropriate in the interests of justice.*"

Relief in a class action may include monetary damages, declaratory orders or interdicts (injunctions).

## Q7 How are collective actions funded?

Class actions are generally funded by third parties or on a contingency fee basis.

Prior to 2004 there was uncertainty regarding whether or not third party litigation funding agreements could be entered into and generally these agreements were held to be unenforceable. However, the case of *Price Waterhouse Coopers Inc and Others v National Potato Co-Operative Ltd* 2004 (6) SA 66 (SCA) held that litigation funding agreements were not contrary to public policy or void. Following this decision, it is now not uncommon for class actions to be funded by way of third-party litigation funding.

Funding may also occur on a contingency fee basis in terms of the Contingency Fees Act 66 of 1997. This statute provides that an attorney acting on a contingency basis may charge either double their normal time-based fees or 25% of the amount awarded, whichever is lower.

Under Rule 11A(4)(c) of the Rules, applicants seeking class action certification must demonstrate "*the ability to make satisfactory arrangements with regard to the funding of the class action*" as part of the suitability assessment. Courts assess third-party funding arrangements based on whether they: (i) are necessary to provide access to justice; (ii) are fair and reasonable; (iii) do not overcompensate funders; (iv) do not interfere with the class lawyers' duties to act in their clients' best interests; and (v) allow class representatives to exercise control in the best interests of class members.

Courts require full disclosure of funding arrangements and may appoint supervising attorneys to ensure independence of class lawyers from funder influence.

## Q8 Is pre-trial discovery/ disclosure available?

The procedural aspects related to pre-trial disclosure during a class action is governed by High Court Rule 35. A party may call on another party to make discovery of all relevant material once pleadings have closed. A party is entitled to be informed of and inspect all documentary evidence which is relevant or reasonably anticipated to be relevant to the issues in the trial subject to certain limitations, for instance documents which are privileged.

In the context of applications for class certification, and as with any other application processes, the Rules allow a party to seek copies of all documents to which reference is made in a party's affidavit. In addition, and in exceptional circumstances during the certification process, a Court may also allow very discreet discovery of clearly specified documents which are relevant to a reasonably anticipated issue in the certification application.

## Q9 Are collective actions widely used in practice?

Class actions have not yet been widely used in practice in South Africa.

There have only been approximately 15 cases where a South African superior court has made a definitive pronouncement on whether a matter could proceed as a class action. This does not mean that only 15 applications for class certification have been made as an unknown number of proposed class actions are settled before they reach Court.

As regards these 15 cases: there were only three cases between 2000 and 2012 during which courts pronounced on whether class actions could proceed as such. However, there were 12 cases between 2013 and 2019, representing a significant (300 per cent) increase in the incidence of class actions from the first 13-year period to the next seven-year period.

We cannot however shy away from the fact that the above data demonstrates that despite recent growth trends, collective (class) actions remain significantly underutilised in South Africa compared to comparable jurisdictions.

That said, class action jurisprudence, whilst nascent, is evolving and as funding has become easier and parties are becoming increasingly aware of their rights, it anticipated that we will see more and more class actions, especially as they are seen to provide access to justice.

# South Africa

## Q10 Likely future scope and development?

Criticisms have been levelled at the Constitutional Court's judgment in *Mukaddam* for diluting the utility of the certification process. While *Children's Resource Centre* provided clear criteria, *Mukaddam* emphasised flexibility and the "*interests of justice*" standard, creating uncertainty. It has been noted that the Court did not give sufficient guidance on when certification should be granted, treated the criteria as mere guidelines, and failed to engage with distinctions such as opt-in versus opt-out mechanisms.

The High Court in *Nkala and Others v Harmony Gold* confirmed that future class action litigation would be decided having regard to the landmark decisions of both *Children's Resource Centre* and *Mukaddam*, together with comparative law and access to justice. As Deputy Judge President Mojapelo observed: "*…, it is class action or no action at all. Class action is the only realistic option open to the mineworkers and their dependants. It is the only way they would be able to realise their constitutional rights of access to court bearing in mind that they are poor, lack the sophistication necessary to litigate individually, have no access to legal representatives and are continually battling the effects of two extremely debilitating diseases.*".

The most recent milestone in the development of South African class action litigation has been the introduction of Rule 11A and this may well be the impetus needed for far greater activity in this area.

This legislative development directly addresses the criticism that "*the procedural mechanisms pertaining to class action litigation may be best and most clearly articulated in legislation dealing with class action litigation.*"

The development also suggests that South Africa has moved beyond reliance solely on judicial precedent to establishing a more comprehensive and codified procedural framework for class actions, while still leaving room for judicial discretion to ensure access to justice.

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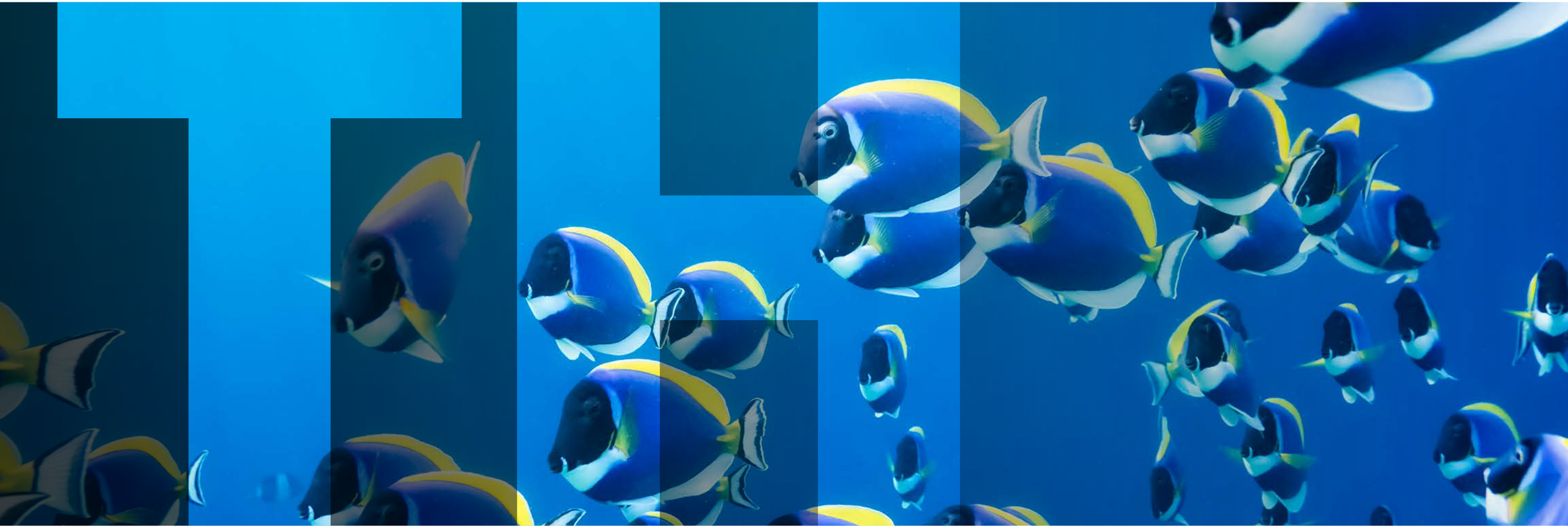


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# Thailand



# Thailand

Collective actions were introduced into Thai civil procedure in 2015. The Legislation permits class actions to be brought in certain civil claims, including tort and contract cases and cases relating to claims under environmental, consumer protection, labour, securities and trade competition laws. Class actions are commenced by a representative plaintiff, who must themselves be a member of the class. Class action proceedings in Thailand are opt out: every potential claimant falling within the class as defined will be bound by the court's judgment, unless they specifically opt out.

## Q1 What forms of collective actions are permitted?

The concept of "class action" was not recognised under Thai law until 2015. The Civil Procedure Act of Thailand was amended by the Act Amending the Civil Procedure Code (No. 26) B.E. 2558 (2015) (the "**Amendment Act**"), which introduced class action proceedings for civil cases in Thailand under the Civil Procedure Code of Thailand (the "**Civil Procedure Code**"), Sections 222/1 to 222/49.

The Civil Procedure Code (as amended by the Amendment Act) allows a class of "numerous" persons to bring a class action in one set of proceedings in certain types of civil case, upon approval of the court. The Amendment Act was published in the Government Gazette on 8 April 2015 and became effective on 3 December 2015. Since then, class action proceedings have become the main form of collective actions in Thailand.

## Q2 Who may bring them?

Class action proceedings under Thai law are representative proceedings – that is, claims are brought by a representative plaintiff on behalf of a larger group of persons.

There is no specific quantitative threshold on how many persons will be regarded as a "class" in order to qualify for class action proceedings. However, the representative plaintiff must prove to the satisfaction of the court that the class is "*so numerous that to conduct a case as an ordinary case shall be complicated and impractical*" (the so-called "numerosity") and prove that to conduct the case as a class action is more just and efficient than as an ordinary case (superiority). Those persons must have the same rights, deriving from the same facts and legal principle, and have the same unique characteristics of the class, to form a class of persons under the Civil Procedure Code – that is, a group of individuals or juristic persons who have suffered from a common event (commonality).

The representative plaintiff must also meet certain criteria prescribed by the Civil Procedure Code, as follows:

(i.) the plaintiff must be a member of the class with the characteristics, interest and acquisition of the right to be a member of the class (typicality), as prescribed by the President of the Supreme Court, for example, the plaintiff must acquire the right to be member of the class in good faith; and

(ii.) the plaintiff and its legal counsel must be able to conduct the case in such a way as to justly and sufficiently protect the right of the class of persons (adequacy of representation).

## Q3 Opt in or opt out?

Class action proceedings in Thailand operate under an opt out regime. Every potential claimant who falls within the definition of the class of people is considered as a member of the class and will be entitled to compensation upon the court's judgment, unless they opt out. Upon the court's approval to proceed with the case by way of class action proceedings, the court will notify all known members of the class of the approval order and will publish such notice in a widely circulated daily newspaper, among other appropriate communication channel, for three consecutive days. The notice must include the prescribed period (which shall be at least 45 days) within which members of the class may register their wish to opt out of the class.

Members of the class who do not opt out of being a member will be prohibited from bringing a claim against the defendant in the same matter as the claim already commenced by the representative plaintiff.

## Q4 Limitations?

Class action proceedings can only be brought in certain types of civil cases, prescribed by the Civil Procedure Code. These include tort claims, breach of contract cases and cases claiming legal rights under certain laws, such as laws relating to the environment, consumer protection, labour, securities and trade competition.

## Q5 Judge or jury?

Judge.

# Thailand

## Q6 What relief can be obtained?

The court has power to grant the usual remedies sought in civil proceedings such as damages, specific performance and injunctions.

## Q7 How are collective actions funded?

Where the court imposes an injunction on the defendant, the court has discretion to determine the amount of costs that the defendant must pay to the plaintiff's counsel as it deems appropriate, considering the difficulties of the case, and the length of time and work undertaken by counsel in relation to the action, including expenses.

If the judgment requires the defendant to pay damages, the court shall determine the costs payable to the counsel, which shall not exceed 30 percent of the amount of the compensation paid to the plaintiff and the members of the class.

## Q8 Is pre-trial discovery/ disclosure available?

There is no concept of pre-trial disclosure under Thai law.

In general, the parties are required to file their pleadings or statements to the court at the commencement of or during the proceedings.

When the court has permitted the class action, the court will set the date and order all parties to appear before the court for the parties to produce to the court the originals of all documentary or material evidence, which is intended to be relied on and in their possession that can be brought to the court, for inspection by the court and the opposing party.

In certain circumstances, upon the party's request, the court may order the other party to grant the access to their evidence, such as documents in their possession or of a third party.

## Q9 Are collective actions widely used in practice?

While specific public statistics on class action proceedings in Thailand are not available, such actions have been utilised in practice. For instance, groups of consumers have collectively initiated claims against car manufacturers alleging that vehicles supplied were not of satisfactory quality. Similarly, groups of investors have brought class actions against the issuer of defaulted bonds.

## Q10 Likely future scope and development?

We are not aware of any governmental initiatives to introduce new collective actions or to change the scope and extent of existing class action proceedings under the Civil Procedure Code.

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# United Kingdom



# United Kingdom

There is no generally applicable class action regime in England and Wales. There are, however, two types of proceeding which allow opt-out class action style claims to be brought in certain circumstances: representative actions and collective proceedings.

Outside of these class action style procedures, groups of claimants with related claims can bring multi-party claims, where multiple claimants are individually named on one or more claim forms (the document used to formally issue a claim). The courts of England and Wales have a toolbox of case management options for dealing with these kinds of claims, including "group litigation orders".

## Q1 What forms of collective redress are permitted?

England and Wales has two parallel class action style regimes: representative actions under rule 19.8 of the Civil Procedure Rules ("**CPR**") and collective proceedings under s.47B Competition Act 1998 ("**CA98**"). In addition, the courts have various case management procedures which they can use to deal with multi-party claims, including group litigation orders.

> *Representative actions*

The representative procedure has existed for several hundred years and has frequently been used to obtain declarations of legal rights. Nowadays, it is codified in CPR rule 19.8, which provides that claims may be brought by (or against) representatives who have the "*same interest*" in those claims as the persons they represent, and it is used beyond the declaration context.

Where claims depend on the circumstances of individual claimants, however, the courts have held that representatives do not have the "*same interest*" as the represented persons. The last few years have seen several cases where this "*same interest*" requirement has not been satisfied in claims for damages which have to be proved separately for each represented person. In *Jalla v Shell* (2021) the Court of Appeal held that representatives could not claim on behalf of individuals and communities affected by an oil spill because the nature of each represented person's cause of action was different. In *Lloyd v Google* (2021), the Supreme Court held that each represented person affected by unlawful data processing would need to show (on an individual basis) that the unlawful processing of their data surmounted a threshold of seriousness which entitled them to damages. The Court of Appeal in *Prismall v Google* (2024) has similarly held that there was no basis for saying that all claimants necessarily had a reasonable expectation of privacy in relation to their medical records (a requirement for their claims to succeed).

However, the High Court has allowed a representative action for recovery of undisclosed secret commissions to continue on the basis that matters particular to represented parties could be resolved by information which was obtainable from the defendants (*Commission Recovery v Marks & Clerk* (2023)).

Lord Leggatt in the Supreme Court in *Lloyd* did recognise that representative actions can be brought on a bifurcated basis. A bifurcated approach involves dealing with common issues by making declarations of legal rights on a representative basis, whilst leaving individual issues to be dealt with by the individual claimants. The appropriateness of bifurcated proceedings will depend on the circumstances of the case. In *Wirral v Indivior* (2025) the court dismissed bifurcated representative proceedings which were limited to defendant-side issues because the multi-party proceedings (which had been issued in parallel to the representative action) would give the court more case management flexibility.

> *Collective proceedings*

Collective proceedings combine two or more claims for breaches of competition law. These can be brought in the Competition Appeal Tribunal ("**CAT**") under s.47B CA98 and Part 4 of the Competition Appeal Tribunal Rules 2015 (SI 2015/1648) ("**CAT Rules**"). A class representative conducts collective proceedings on behalf of class members. Judgments and orders are binding on all class members unless otherwise specified.

Proposed class representatives need to obtain the CAT's permission to pursue collective proceedings past the initial "certification" stage. If the CAT allows collective proceedings to continue, it makes a collective proceedings order ("**CPO**").

More information about collective proceedings is available on Big CAT Watch: our UK competition collective proceedings tracker.

> *Multi-party claims (including group litigation orders)*

The combined effect of CPR rules 7.3 and 19.1 is that a single claim form can be used to commence claims by multiple named claimants if they are "*claims which can be conveniently disposed of in the same proceedings*". Alternatively, where separate claim forms have been issued, proceedings can be consolidated or tried jointly under CPR rules 3.1(2)(h)-(i) (which give the courts broad discretion to do this where they consider it appropriate and efficient).

The courts of England and Wales have a toolbox of case management powers which they use to manage multi-party claims. For example: evidence in one claim can be ordered to stand as evidence

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in another; one claim can be stayed pending the outcome of another claim; and trial by way of "test claimants" can be ordered.

The courts also have the power to make a group litigation order (**"GLO"**) under CPR rule 19.22. The jurisdiction to make a GLO arises wherever claims give rise to common or related issues of fact or law. When a GLO is made, a group register is created and individual claims can be entered onto it. By default, judgments and orders in relation to the common issues are binding on all parties to claims in the group register. As with other types of multi-party claims, the courts have a wide discretion about how to manage claims within a GLO, but they will often order a trial by way of test claimants, whilst the remaining claimants' claims are stayed.

Paragraph 2.3 of CPR Practice Direction 19B provides that prospective GLO applicants should first consider whether any other order would be more appropriate. There have been several decisions in recent years where courts have refused to make GLOs because: (i) the relevant multi-party claims could be best resolved using the court's general case management powers (*Moon v Link Fund Solutions* (2022); *Hammon v UCL* (2024)); or (ii) the costs of establishing a group register were not justified because of concerns about the viability and value of underlying claims (*Bennett v Equifax* (2022)).

In addition to collective proceedings, multi-party claims for domestic competition law breaches also fall within the CAT's jurisdiction. Similar to the courts, the CAT has broad case management powers which it can use to deal with those multi-party claims. CAT Practice Direction 2/2022 (Umbrella Proceedings) also allows it to decide issues, matters or features which are ubiquitous to different proceedings in a way that is binding on all proceedings within a common "umbrella".

## Q2 Who may bring them?

> *Representative actions*

A representative must have the "*same interest*" in the claim as the persons they represent. In *Lloyd, Jalla* and *Prismall* (discussed above), the courts have held that the "*same interest*" requirement was not satisfied where the claims of represented persons depended on their individual circumstances.

> *Collective proceedings*

Collective proceedings are brought by a class representative on behalf of the class. A class representative can be a member of the class, but is not required to be (and often is not).

The CAT may only authorise a person to act as a class representative if it considers that it is just and reasonable for them to do so. In determining whether it is just and reasonable for the proposed class representative to act, the CAT is required to consider whether the proposed class representative: would fairly and adequately act in the interests of class members; has a material conflict of interests with class members; and would be able to pay the defendant's recoverable costs if ordered to do so.

In practice, class representatives are often individuals with experience of consumer rights or competition law (or companies set up for the purposes of proceedings which have those kinds of individuals as directors).

> *Multi-party claims (including group litigation orders)*

Each claimant brings their own claim, but in practice a claimant firm, or group of claimant firms, will usually book-build the claim by means of publicity and outreach to those potentially interested in pursuing a claim and then manage the litigation centrally.

## Q3 Opt in or opt out?

> *Representative actions*

Representative actions bind all represented persons. By default, they do not involve any opt-out or opt-in mechanism. However, there is scope for the court to impose notification and opt-out or opt-in requirements as part of its case management discretion. In the absence of opt-in or opt-out mechanisms, a represented person could apply to be excluded from the proceedings.

> *Collective proceedings*

Collective proceedings may be brought on an opt-in or opt-out basis in respect of UK domiciled class members. Any class members domiciled outside the UK can only participate in collective proceedings if they opt in.

> *Multi-party claims (including group litigation orders)*

The claims are opt-in: each claimant brings their own claim.

Where a GLO has been made, claims can be added to the group register until the cut-off date (or afterwards with the court's permission). Parties to a claim on the group register may also apply for it to be removed. Unless the court orders otherwise, judgments and orders in relation to common issues are binding on all parties to claims on the group register.

## Q4 Limitations?

The limitations on representative actions and collective proceedings are described above and below.

## Q5 Judge or jury?

Judge.

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## Q6 What relief can be obtained?

> *Representative actions*

There are no formal restrictions on the types of remedy that can be claimed in a representative action. Historically, representative actions have mainly been used to obtain declarations of legal rights or injunctions. In principle, they can also be used to obtain monetary damages, but the "same interest" requirement means that is difficult to do so unless a bifurcated process is used (as discussed above).

> *Collective proceedings*

Class representatives can use collective proceedings to claim for damages, other sums of money or injunctions. However, the CAT is not permitted to award exemplary damages in collective proceedings.

An important aspect of the collective proceedings regime is that the CAT can award damages without assessing the amount which would be recoverable by each class member under the normal compensatory principle.

> *Multi-party claims (including group litigation orders)*

Any remedy usually available in civil proceedings may be sought by the claimants.

## Q7 How are these types of claims funded?

Parties to civil litigation in England and Wales typically fund their own claims. In recent years, however, contingency fees for lawyers and third-party litigation funding have become very significant aspects of the collective actions landscape.

Subject to regulations and restrictions, conditional fee agreements (where lawyers are only paid, or paid in full, if their client is successful) and damages-based agreements (where lawyers are paid a percentage of recoveries) are both generally permitted. A significant exception is that damages-based agreements are not permitted in opt-out collective proceedings in the CAT.

Third party litigation funding is also generally permitted, but in *PACCAR* (2023) the Supreme Court effectively held that funders' returns cannot be calculated as a percentage of damages recovered. Accordingly, current practice is that litigation funders' returns are calculated as a multiple of capital invested.

At the end of litigation, the general rule is that the unsuccessful party will pay part (usually the majority) of the successful party's costs. Funded claimants will typically obtain after-the-event insurance to cover the costs they are ordered to pay to the defendants if the claim is unsuccessful.

## Q8 Is pre-trial discovery/ disclosure available?

Yes, collective actions in England and Wales typically involve extensive documentary disclosure. Factual witness statements (which generally stand as evidence-in-chief at trial) and expert reports are also generally exchanged long before trial, in accordance with a case management timetable.

## Q9 Are these procedures widely used in practice?

> *Representative actions*

Representative actions are not currently being widely used as a means of obtaining collective redress, following several cases (referred to above) which were dismissed at a preliminary stage. One significant claim which the court did allow to continue was *Commission Recovery*, but this claim settled in October 2024.

> *Collective proceedings*

The collective proceedings regime has grown significantly in recent years. As of 1 December 2025 there have been 65 applications to bring collective proceedings before the CAT. Nearly all of those (56 out of the 65) have been issued since the Supreme Court's decision in *Merricks v Mastercard* (2020) which is considered to have lowered the threshold for the approval of CPOs.

More data and analysis about collective proceedings is available on Big CAT Watch: our UK competition collective proceedings tracker

> *Multi-party claims (including group litigation orders)*

Multi-party claims remain a popular avenue for seeking collective redress in England and Wales.

Only 125 GLOs have been made from the creation of the regime in May 2000 to the most recent update of the court register in February 2025. In recent years there has been a particular shift away from GLOs and towards the use of the courts' broader case management toolbox in multi-party claims.

However, GLOs are still used in product liability claims, such as in the NOx Emissions Group Litigation. A GLO has also been made in recent years in claims by communities in Nigeria in respect of damage suffered as a result of oil spills.

# United Kingdom

## Q10 Likely future scope and development?

The Civil Justice Council ("**CJC**") released its Review of Litigation Funding: Final Report in June 2025. In the report, the CJC recommended that the Supreme Court's decision in *PACCAR* should be reversed so that litigation funders' returns can be calculated as a percentage of damages recovered.

The CJC also recommended the regulation of litigation funding, including: capital adequacy requirements, control of conflicts of interests and disclosures of funding to the court and other parties to proceedings. The CJC proposed that consumers receive independent legal advice about proposed litigation funding agreements, and that the terms of those consumer litigation funding agreements are approved by the court.

The CJC also suggested that the Government consider introducing an Access to Justice Fund, funded by a small percentage of profits from litigation funding and lawyers' contingency fee agreements.

Although the question fell outside the scope of the CJC working party's terms of reference, the CJC did report that some consultation respondents had proposed that the representative actions procedure under CPR Rule 19.8 should be reformed so that works in a similar way to collective proceedings in the CAT and, therefore, becomes an general class actions regime.

In August 2025, the UK Government's Department for Business & Trade began a review of the opt-out collective proceedings regime. In its call for evidence, the Department said that it was seeking to find the right balance between achieving redress for consumers and limiting the burden of the opt-out collective proceedings regime on business. Our response to the call for evidence is available here.

UK

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# United States



# United States

Class actions have been possible in the US for many years and are the main procedure by which large-scale commercial disputes involving large numbers of claimants are resolved. The requirements around them are well-established: a court must certify the class before the action may commence and they are generally run on an opt out basis. Both compensatory and punitive damages are obtainable, if sufficiently egregious conduct on the part of defendants can be established. Recent decisions by the US Supreme Court have increased the burden on putative class action plaintiffs but also reinforced the continued viability of the class action mechanism, and the number of class actions is likely to continue to increase.

## Q1 What forms of collective actions are permitted?

The main procedure for collective actions in the US is the class action. Hundreds or thousands of claimants can be represented in one set of proceedings. Although rare, a defendant class action is also possible, particularly in insolvency-related litigation, in which a plaintiff seeks to pursue claims against a large number of defendants (eg a fraudulent transfer claim brought by a litigation trustee against former investors that received merger consideration shortly before a company's bankruptcy). This review, however, focuses on plaintiff class actions.

The requirements for bringing a class action in US federal courts are:

- **numerosity** – that there are too many would-be claimants to join them all in practice;
- **commonality** – the claims must all raise similar questions of fact or law;
- **adequacy** – the chosen representative must be appropriate;
- **typicality** – the representative's claims must be typical of those of the other individuals; and
- **superiority** – a class action must be the most appropriate method of settling the dispute.

Class actions are also permissible in state courts. Each state has its own procedural requirements, which are largely similar to the federal court requirements set out above.

An action may be maintained on behalf of a class only with the court's approval. To do this, the plaintiffs seeking to represent the class must file a motion to have the class certified. Group actions by multiple parties with similar claims are also possible, although less frequently seen than class actions.

## Q2 Who may bring them?

The procedure for filing a class action is to file suit with one or several named plaintiffs on behalf of a proposed class. The proposed class must consist of a group of individuals or business entities that have suffered a common injury or injuries. Typically, these cases result from an action on the part of a business, a particular product defect, a policy that applied to all proposed class members in a uniform manner or a regulatory enforcement action. After the complaint is filed, the plaintiff must file a motion to have the class certified. In many cases, class certification will require additional discovery in order to determine if the proposed class meets the standard for class certification.

Upon the motion to certify the class, the defendants may object to whether the issues are appropriately handled as a class action, to whether the named plaintiffs are sufficiently representative of the class, and to their relationship with the law firm or firms handling the case. The court will also examine the ability of the firm to prosecute the claim for the plaintiffs and its resources for dealing with class actions.

## Q3 Opt in or opt out?

Class actions in the US are generally opt out. Due process requires, in most cases, that notice describing the class action be sent, published or broadcast to class members. Class members must be given the opportunity to opt out of the class, ie if individuals wish to proceed with their own litigation they are entitled to do so, but only to the extent that they give timely notice to the class counsel or the court that they are opting out.

Pursuant to the Class Action Fairness Act 2005 ("**CAFA**"), defendants that enter into settlement agreements to resolve class actions in federal court are required to provide notice promptly after the filing of a proposed settlement in court to the appropriate federal or state agencies (eg state attorneys general) for all states in which potential class members reside.

If the CAFA notice is not provided, class members are entitled to challenge the finality of the settlement.

## Q4 Limitations?

The class action procedure is commonly utilised in the US when the requirements for maintaining a class described above are satisfied. There are no general limitations on the claims that may be pursued, assuming the prerequisites applicable to any civil claim exist (such as standing and timeliness).

# United States

## Q5 Judge or jury?

Most civil trials involve juries.

## Q6 What relief can be obtained?

In a class action, compensatory relief is available to every class member, provided legal standing is established, and an addressable legal harm is proven. To establish standing, a class member must demonstrate (1) an injury-in-fact that is concrete, particularized, and actual or imminent, (2) that this injury was likely caused by the defendant, and (3) that judicial relief could likely address and remedy the harm. Compensatory relief is calculated based on the damage suffered by the class as a whole.

Additionally, punitive damages are obtainable if sufficiently egregious conduct on the part of defendants can be established. In recent years, the US Supreme Court has issued decisions limiting the magnitude of punitive damages awards, requiring lower federal courts to review factors, including the degree of the conduct, the disparity between the actual harm and the punitive award and a comparison of the award to similar civil or criminal penalties. In particular, the punitive damages award must be reasonable and proportionate to the wrong committed, or it will be viewed as irrational, arbitrary, and a deprivation of constitutional protections. Federal courts are unlikely to sustain punitive damages awards that exceed a 9:1 ratio as compared with compensatory damages, although the inquiry remains case-specific.

Equitable remedies such as injunctions and declarative relief are also available. Federal courts will certify classes for injunctive or declarative relief if such a judgment would provide relief to each member of the class, ensuring that final relief is indivisible and not dependent on individual circumstances. Claims for compensatory relief may sometimes accompany demands for injunctive or declaratory relief.

## Q7 How are collective actions funded?

Contingency fees are permitted and are standard for plaintiffs in class actions. However, absent statutory or contractual provisions permitting the recovery of attorneys' fees, the successful party cannot recover costs from the unsuccessful party. Typically, plaintiffs' counsel file requests for fee disbursements that are paid out of any settlement funds following court approval of a negotiated settlement with a defendant.

## Q8 Is pre-trial discovery/ disclosure available?

Yes, there is pre-trial discovery, which can be extensive, as well as witness depositions. Disclosure of documents, as well as witness or expert depositions, is typically required prior to certifying a class and may be separate from any disclosure related to the merits of a case. Courts have been aggressive in recent years in enforcing requirements on outside and internal counsel related to the retention, collection and review of documents, particularly electronically stored information.

## Q9 Are collective actions widely used in practice?

Class actions are widely utilised in the United States, with recent years seeing an average of 9,000-10,000 federal class actions cases filed per year. These numbers have trended upwards over the past decade.

In the US, class actions most commonly feature consumer protection claims, and corporations in the automotive, financial, retail, and technology sectors feature most frequently as defendants. The most active plaintiffs tend to be individuals, though certain institutional plaintiffs appear frequently in some of the most complex, high-stakes class actions.

The vast majority of class actions are not resolved through trial. Instead, most are concluded either through settlements or procedural dismissals.

## Q10 Likely future scope and development?

Class actions are likely to continue to proliferate. Class actions are the main procedure by which large-scale commercial disputes involving large numbers of claimants are resolved and civil class actions often follow regulatory investigations, such as in the securities or antitrust context. Huge damages awards can be made by juries to penalise businesses, which act in part to regulate commercial activity. Many claims are driven by claimants' lawyers who stand to make large profits from contingency fees awarded as a proportion of those damages.

Recent decisions by the US Supreme Court and various federal and state courts continue to alter the face of class action litigation, including where and when claims might be brought.

For example, in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 138 S. Ct. 1061 (2018), the US Supreme Court held that state courts have concurrent jurisdiction with federal courts over class action claims brought under the federal Securities Act of 1933, and that such claims are not removable to federal court. *Cyan* had an immediate and significant impact, with state Securities Act filings reportedly increasing by 40% in 2019, and actually exceeding the number of federal-only court filings. In 2020, the Delaware Supreme Court held in *Salzberg v. Sciabacucchi*, 2020 WL 1280785, at *23 (Del. Mar. 18, 2020), that so-called federal forum provisions in Delaware corporation corporate charters that require any Securities Act claims, which are typically brought as class actions, to be pursued in federal court are valid and enforceable. In the years to come, other US states may follow Delaware's lead, which may result in Securities Act class actions shifting back more prevalently to federal courts.

In *China Agritech, Inc. v. Resh*, 138 S. Ct. 1800 (2018), the US Supreme Court held that the filing of a class action does not toll the statute of limitations for successive or "stacked" class actions – in other words, equitable tolling does not toll the statute of limitations for absent class members to pursue a separate class action if the initial action fails to be certified. With *American Pipe & Construction Co. v. Utah*, 94 S. Ct. 756 (1974), the US Supreme Court held that filing of a class action in federal court tolls the statute of limitations "for all purported members of the class who make timely

# United States

motions to intervene after the court has found the suit inappropriate for class action status." But with *China Agritech*, the US Supreme Court clarified that *American Pipe* tolling only permits absent class members to join the action or file individual claims, not to file successive class actions. In the years to come, federal courts may rely upon *China Agritech* to further limit the scope of equitable tolling in class actions.

In *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435 (2019), the US Supreme Court held that neither the general removal statute, 28 U.S.C. § 1441(a), nor CAFA's removal provision, 28 U.S.C. § 1453(b), allow a third-party counterclaim defendant to remove a class action claim to federal court. The Court reasoned that under statutory and precedential interpretation, the term "defendant" in the removal statutes applies only to those sued in the original complaint—not parties first brought in via counterclaim. This decision narrows the scope of removal in class action litigation, reaffirming that only original defendants may remove to federal court, even if the case otherwise meets federal jurisdictional requirements.

In *TransUnion LLC v. Ramirez,* 594 U.S. 413 (2021), the US Supreme Court clarified and extended its earlier decision in *Spokeo Inc. v. Robins*, 578 U.S. 330 (2016) on Article III standing in class actions, by confirming that a risk of future harm does not supply a basis for Article III standing. *Spokeo* had established that each class member must show an injury that is both "concrete" and "particularized" and that a bare statutory violation does not automatically establish standing in federal court.

In the wake of *TransUnion*, Circuit courts (ie US federal appellate courts) have reached different conclusions regarding an issue left unresolved by the US Supreme Court – namely, whether every class member must demonstrate Article III standing before a court can certify the class. The split cuts three ways. The Second and Eighth Circuits have adopted the strictest approach, holding that class certification is not permitted if any class members lack Article III standing. By contrast, the First, Fourth, and D.C. Circuits allow certification only if the number of uninjured members is minimal or de minimis. Finally, the Third, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits may permit certification even when more than a de minimis number of class members are uninjured.

In the wake of these high profile cases, including *Cyan*, *Sciabacucchi*, *China Agritech*, *Home Depot*, and *TransUnion*, the focus will now be on the application and interpretation of these opinions by lower courts. It will also be interesting to see whether the US Supreme Court steps in to resolve the Circuit split that has arisen in the footsteps of *TransUnion*.

US

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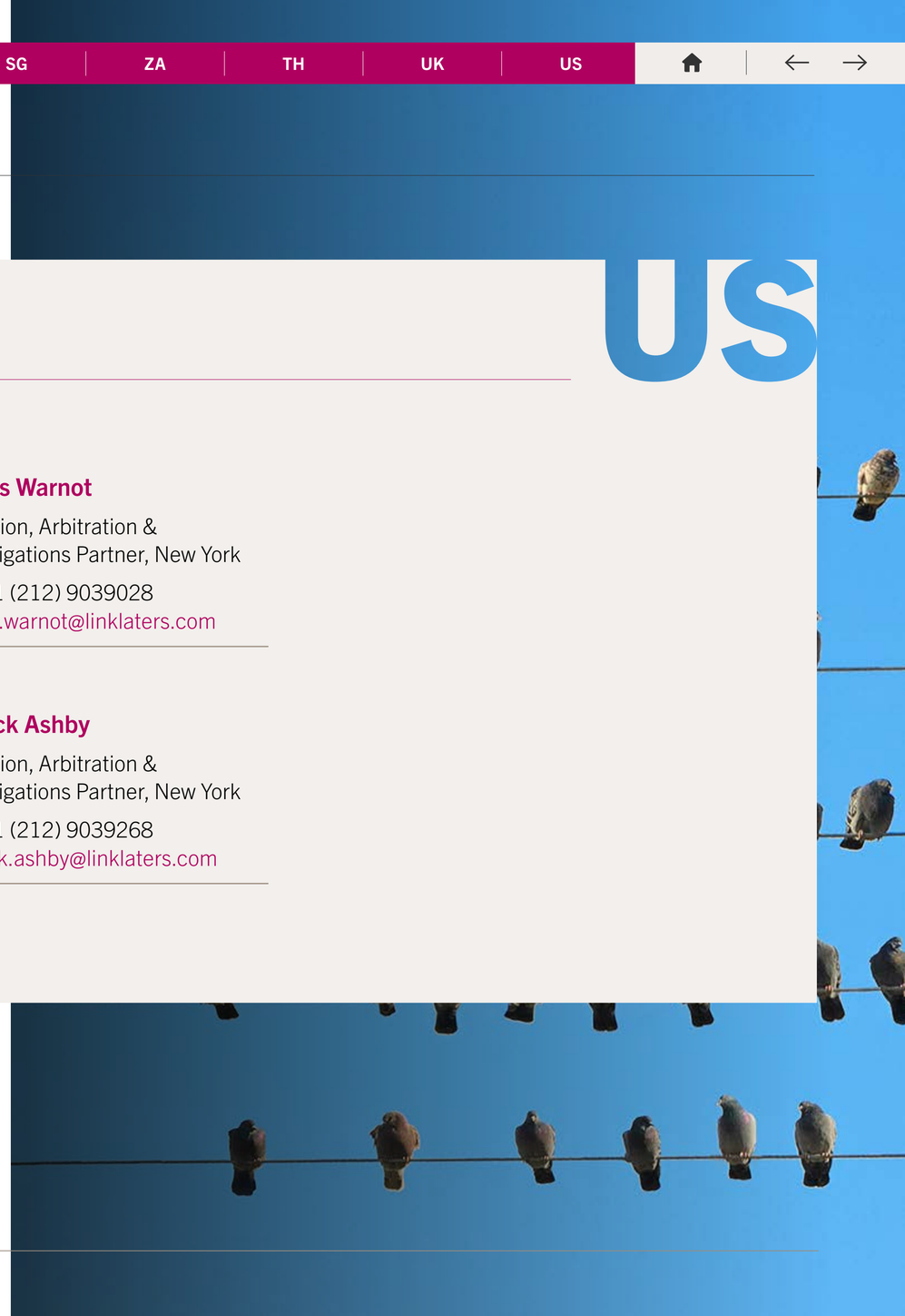


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