JONES DAY

CLASS ACTIONS WORLDVIEW

A Study of Trends Around the Globe

PART V – ARGENTINA, BRAZIL, AND TAIWAN • OCTOBER 2024

Class Actions Worldview: Part V—Argentina, Brazil, and Taiwan

Although class actions have been common in the United States for decades, they have not been as widely used in the rest of the world. The situation and risks remain in flux, however, as more countries have renewed momentum to enact class actions or class action-like procedures—sometimes without key procedural safeguards that exist in U.S. class proceedings. Jones Day has one of the largest and most successful groups of defense-side class action practitioners in the world. Building on the experience of litigators in 40 offices on five continents, this Guide examines new developments and risks in class action procedures around the globe (in particular, in Argentina, Australia, Belgium, Brazil, China, England and Wales, France, Germany, Italy, Japan, Spain, The Netherlands, and Taiwan), and assesses the common trends and differences among respective national laws. It is our goal that, armed with these insights on class action trends, companies operating across the world can understand, assess, and manage class and collective litigation risks in the global marketplace.

In Part V, we examine class actions activities in Argentina, Brazil, and Taiwan.

Previously in the series:

Part I: The United States and the European Union
Part II: Italy and Spain
Part III: Australia, Germany, and France
Part IV: China, Japan, Belgium, The Netherlands, and England and Wales

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A. BRIEF OVERVIEW AND HISTORY

The 1994 Reform to the Argentine Constitution incorporated collective rights—also called "third-generation rights," including substantive protections to the environment and consumers.[1] This protection to collective rights was bolstered in Argentina when the country gave constitutional status to several international treaties entered into by Argentina, which also incorporate new "rights," such as the right to housing or to an adequate living standard.[2]

As part of that constitutional amendment, the Argentine Constitution introduced the possibility of bringing lawsuits to protect collective rights. Under Article 43 of the Argentine Constitution, the affected individuals, a governmental institution labeled Ombudsman, and certain associations are entitled to bring a summary action ("*amparo colectivo*") in the event of "all forms of discrimination and for the protection of the environment, competition, users and consumers, and rights of collective impact in general."[3] In line with this constitutional provision, the Argentine Civil and Commercial Code enacted in August 2015 expressly recognized the existence of collective rights.[4]

In spite of these legal improvements, Argentina has not yet enacted a comprehensive regulatory framework regarding class actions ("*acciones de clase*") at a federal level. While the General Environmental Act[5] and the Consumer Protection Act[6] provide for class actions, they only contain certain isolated procedural provisions that are in principle limited to those specific areas of law. During the past decades, several class action bills have been introduced in the Argentine Congress with the intention of broadly regulating class actions, but none of those bills have passed to date.

In an attempt to provide a solution to the lack of a proper class action regime, the Argentine Supreme Court has developed certain admissibility rules and procedural guidelines regarding class actions, identifying the requirements of adequacy of representation, numerosity, and commonality that must be met to allow these types of proceedings. However, as in most civil law countries, Argentina does not apply the principle of *stare decisis*, thus creating uncertainty regarding the rights that may be protected by collective actions and the effects of the judgment issued in this type of lawsuit.

The landmark decision and gateway to class actions in Argentina is the Argentine Supreme Court ruling in *Halabi v. Executive Branch* (2009).[7] In this case, the majority reaffirmed that regardless of a law regulating class actions, Article 43 of the Argentine Constitution is fully operative and class actions (labeled as "*acciones colectivas*") are admitted under Argentine law with "*analogous characteristics and effects as those existent under US laws*." The *Halabi* decision identified three different categories of rights in Argentina: (i) individual

rights; (ii) collective rights related to collective interests as subject matter (e.g., environmental claims); and (iii) collective rights related to homogeneous individual interests (e.g., product liability claims). In *Halabi*, the Argentine Supreme Court also established the requirements for filing collective actions to protect rights described in items (ii) and (iii).

Following the decision in *Halabi*, the Argentine Supreme Court has issued other significant rulings in the area of class actions, such as the *Padec v. Swiss Medical* (2013).[8] In *Padec*, the Argentine Supreme Court recognized a consumer rights protection association's standing to file a class action on behalf of a group of consumers. Another important decision was issued in the *Loma Negra* (2015)[9] case. In *Loma Negra,* the Argentine Supreme Court denied standing to an NGO due to the overbroad definition of the class.

In absence of regulation from the Argentine Congress, these guidelines set by the Argentine Supreme Court have been in general closely followed by lower courts and practitioners when it comes to class actions. These court decisions ultimately led the Argentine Supreme Court to enact several administrative regulations ("*acordadas*") applicable to federal and national courts, which replicated many of the parameters outlined in *Halabi* and the subsequent rulings, aiming to improve certainty, publicity, and transparency in class actions. The most significant rulings in this regard are as follows:

- *Ruling No. 32/2014*, which created the Collective Proceedings Public Registry and required that, prior to identifying an action for the Registry, judges must issue a decision addressing whether all formal requirements for the collective action have been met, among other requisites.
- *Ruling No. 12/2016*, which set forth the "Class Actions Proceedings Regulation," including rules governing the proceedings in these suits in all the courts within the Argentine Federal Judiciary. The Regulation set some guidelines on how to register class actions in the Registry, the certification order that the court must issue after defendants answer the initial complaint, and the consolidation of collective proceedings with the same or similar purposes filed with different courts, among other issues.

The Argentine Supreme Court has clarified that, even in the presence of typically individual rights, class actions will also be available when there is a strong state interest in their protection.

In summary, the framework governing class actions in Argentina is mainly contained in case law, the rulings of the Argentine Supreme Court, and specific provisions of the Consumer Protection Act and other laws related to collective rights.

However, at a local level, certain jurisdictions have also begun to approve legislation with significant regulations regarding class actions. In March 2021, the Legislature of the City of Buenos Aires passed the Code of Procedure in Consumer Relations,[10] which establishes how consumer relation procedures will be carried out in the Consumer Courts of the City of Buenos Aires. It has been in force since April 19, 2021, and it will govern proceedings of new cases filed with Administrative, Tax, and Consumer Courts until the Argentine Consumer Relations Courts are transferred from the Federal Administration to the Government of the City of Buenos Aires. The new Code of Procedure in Consumer Relations includes provisions regarding consumer collective claims, including admissibility requirements, standards of adequate representation, potential scopes of the claim, publicity, *res judicata,* and settlement rules.

B. TYPES OF CLAIMS AND SCOPE OF LAWSUITS THAT CAN BE FILED

Under Argentine law, class actions can be filed in all areas of law involving the enforcement of collective rights or rights with collective impact—also known as "diffuse rights"—which protect the indivisible interests of an indeterminate number of persons. These types of lawsuits may then refer to environmental claims, governmental assets, labor rights, consumer protection rights, antitrust, human rights, public utilities, financial services, unilateral changes of contractual provisions, and data privacy. Conversely, class actions are not suitable to protect merely individual rights or the rights of individuals based on different underlying factual circumstances. As asserted in *Halabi*, the general rule of standing provides that individual rights must be exercised by the holder of that right.

Ruling No. 12/2016 of the Argentine Supreme Court, effective October 2016, specifies the admissibility requisites that any complaint concerning collective rights (except for environmental and criminal cases) must contain, apart from those stated in the Federal Procedural Code. Following the criteria set in *Halabi*, it distinguishes between rights with a collective impact regarding collective interests and individual but homogeneous interests. In all such cases, the Argentine Supreme Court has stressed that it is essential to corroborate that there is a "case" pursuant to Article 116 of the Argentine Constitution, as an action aimed at merely controlling the legality of a legal provision cannot be admitted.

1. **Class actions that concern collective assets**. This category refers to rights that are indivisible and correspond to the entire community, covering public goods, which are non-excludable and non-rival (such as the environment). Under these rights, single remedies are not feasible and plaintiffs are required to state: (a) the collective interest whose protection is sought; and (b) that the claim is focused on the collective nature of the right.
2. **Class actions concerning individual but homogeneous interests**. In these cases, there is no collective interest given that the rights affected are individual rights, rather than collective. However, there is a single, continued event causing the harm to each individual, and there is an identifiable, homogeneous factual cause of the individual's injury (such as may be the case of personal or monetary rights resulting from harms to the environment and competition, consumer rights, and rights of discriminated people). In this type of rights case, plaintiffs are required to state: (a) the existence of a common factual basis that causes an injury to a relevant number of individual rights; (b) that the claim is focused on the common effects of that injury's cause; and (c) that the right of access to justice of the members of the class is affected (i.e., that individual actions are not justified).

Notwithstanding the above, the Argentine Supreme Court has clarified that, even in the presence of typically individual rights, class actions will also be available when there is a strong state interest in their protection, whether this is because of their social relevance or due to the special features of the affected parties.[11]

Additionally, Ruling No. 12/2016 provides that either for item 1 or 2 above, plaintiffs must: (i) identify the group involved in the case; (ii) justify the adequate representation of the class; (iii) indicate that it is registered in the National Registry of

Consumers Associations; (iv) disclose whether it has initiated other actions that substantially resemble the impact on rights of collective incidence; and (v) consult the Public Registry of Collective Proceedings created by Ruling No. 32/2014 regarding the existence of another pending proceeding which claim may have a substantial similarity.

C. CLASS REPRESENTATIVES AND STANDING TO SUE

Collective actions can be filed before judicial courts or administrative authorities by: (i) legal entities with authority to represent collective rights (e.g., consumer associations, NGOs or similar associations); (ii) individuals entitled to protect collective rights, such as attorneys-in-fact acting as proxies with powers to represent a class; (iii) the *Defensor del Pueblo*, which is an autonomous governmental authority linked to the Federal Congress responsible for overseeing constitutional rights; (iv) public prosecutors; and (v) the Secretary of Trade.[12] Applicable statutes and regulations in effect in Argentina are not clear as to whether individuals may file collective actions on behalf of a class.

Regarding consumer associations, the Consumer Protection Act and Rulings contain certain requisites that such entities must meet to represent the interests of users and consumers, including to be formed as a legal entity, not participate in politics, be independent from professional or commercial interests, not receive contributions from business companies, and carry no advertising in their publications.[13] Moreover, associations are also entitled to appear as co-plaintiffs when collective rights are involved in a lawsuit.[14]

D. KEY PROCEDURAL REQUIREMENTS

Before discussing the procedural requirements per se, it is worth noting that Ruling No. 32/2014 created the Collective Proceedings Public Registry, a database operated by the Secretary of the Supreme Court, where all pending collective actions must be registered in order of appearance. This database is publicly accessible and free of charge.[15] In principle, the Registry was meant to be operative for national and federal courts; however, the intention of the supreme court is to conclude cooperation agreements with the Supreme Courts of the Provinces and of the city of Buenos Aires for reciprocal sharing of the information registered therein.

The purpose of the Registry is to publicize the class actions and prevent duplicated cases with similar or identical subject matter being handled by different judges as this could inevitably lead to contradictory judgments. In fact, the Registry was created following the decision in *Municipalidad de Berazategui v. Cablevisión*, in which the Argentine Supreme Court warned about an increase in collective actions with identical or similar matters of law or fact being tried in different courts across the country.[16] In *Asociación Civil DEFEINDER v. Telefónica* (2014)[17], the Argentine Supreme Court ruled that enrollment in the Registry is a necessary and exclusive condition for consumer associations to be brought on behalf of the interests of users and consumers.

There are no specific procedural laws enacted by the Argentine Congress regulating class certification on collective actions. Judges usually define the scope of the class on a case-by-case basis in light of the precedents issued by the Argentine Supreme Court. The key procedural steps regarding these types of proceedings are contained in Regulations No. 32/2014 and 12/2016 of the Argentine Supreme Court.

First, if the judge preliminarily finds that the complaint verifies the admissibility requirements for collective actions, he or she will require the Collective Proceedings Public Registry to report the existence of a similar class action that is already filed. This preliminary finding is made prior to listing the collective action in the Collective Proceedings Public Registry, and it works similarly to the class certification phase of actions in the United States.

The court may request further clarifications to the plaintiff until legal requirements are complied with. The court may also take measures to organize the proceedings. Even if the claim is not filed as a collective lawsuit, the court may determine that the proceedings continue as such if the requirements of Regulation No. 32/2014 are met. Collective proceedings with the same or similar purposes filed with different courts must

be consolidated at the court where the case was first listed on the Collective Proceedings Public Registry.

Second, should the Registry confirm that there is no other similar class action pending, the judge shall issue a Provisional Registration Resolution, before ordering service of the complaint to defendants. The Resolution of Registration must decide: (i) the provisional identification of the class; (ii) the subject-matter of the claim; (iii) the identification of defendants to the case; and (iv) order registration before the Registry. The Resolution of Registration is not subject to appeals but may be reviewed in an appealable decision after the defendant files its answer to the initial complaint.

Third, after the defendant answers the complaint, the court must issue a Certification Order ("*certificación del colectivo*") together with the decision of the preliminary motions or before the evidence hearing. The Certification Order must decide: (i) to ratify or modify as needed the Resolution of Registration; and (ii) set forth mechanisms to ensure the proper notice of all those persons who may have an interest in the outcome of the proceedings and their opt-out rights. The Certification Order is subject to appeal.[18]

Finally, the court must keep the Collective Proceedings Public Registry informed of every relevant decision issued in collective actions or any injunctions granted in connection with a future collective action that has yet to be registered with the Collective Proceedings Public Registry.

E. BINDING OTHERS

Non-parties can be bound to the result of the collective action. As previously noted, Regulations No. 32/2014 and 12/2016 provide that collective actions must be registered with the Collective Proceedings Public Registry to allow potentially interested parties to exercise their opt-out rights. Additionally, when making a preliminary assessment on whether the case should proceed as a collective action, the judge must consider the mechanisms that will best ensure that potentially interested parties can be notified and preserve opt-out rights. These regulations do not apply to collective cases dealing with environmental and criminal law. The Consumer Protection Act further provides that final judgments that grant claims in collective actions apply indistinctively to individuals in the protected class (or, in other words, have *erga ormes* effects) but for consumers who exercised their opt-out rights prior to the judgment.[19]

F. REMEDIES AVAILABLE

Plaintiffs can recover damages, lost profits, and any other damages caused directly by the defendant. There is no cap on the amount of damages that can be recovered.

Punitive damages are generally not accepted in Argentina. However, the Consumer Protection Act provides that—independently from other indemnifications—consumers can request judges to impose a civil fine to suppliers who breach their legal or contractual obligations.[20] When more than one supplier is responsible for the breach, they may all be considered joint and severally liable. Courts have discretionary authority to assess punitive damages in consumer cases, but the amount of punitive damages is capped at approximately ARS 2,075,963,253[21] (approximately USD 2,110,791[22]).

Declaratory relief in Argentina is available only at the end of the lawsuit. Injunctions and interim relief are available at all times during proceedings.

G. SETTLEMENTS AND FINANCING

There are no specific settlement rules applicable to collective actions in Argentina. If a settlement is reached once proceedings have commenced, the court should be informed. Local civil procedure rules also provide for compulsory private mediation between opposing parties in order to settle the dispute before going to court or, if applicable, during the case.

If the class action involves a settlement, the judge must establish guidelines in connection with the procedure to pay monetary damages for the benefit of the entire affected class.

Absent a specific regulation, class action costs are in principle regulated by the local rules applicable in the jurisdiction where the collective action is pending. Class action costs comprise

all reasonable expenses arising from court proceedings as well as costs incurred to avoid proceedings. Generally, class action costs include: (i) court taxes; (ii) attorney's fees; and (iii) expert's fees.

Under the loser-pays rule, the losing party bears all the costs in the amount established by the court. For claims filed under the Consumer Protection Act, however, courts automatically grant claimants the benefit to litigate without costs or, at a minimum, without paying court taxes.[23] Moreover, the Argentine Supreme Court recently held in *ADDUC y otros c/ AySA y otro s/ proceso de conocimiento* that consumer associations that file class actions under the Consumer Protection Act are automatically granted the legal aid benefit (which covers all costs of the judicial proceeding, including court taxes).

Additionally, as a general rule, attorney's fees are estimated by courts based on the minimum and maximum fees stated in the local attorney regulations, which vary according to their performance during the case. At federal and national levels, attorney's fees in pecuniary matters for lower court work would range from 16.8% to 21% of the value of the claim.[24]

Third-party funding is not regulated in Argentina.

H. OTHER KEY CLASS ACTION ISSUES

The issue of statute of limitations in Argentine collective actions is governed by the general rules in the Argentine Civil and Commercial Code, or by specific legislation depending on the subject matter. Under the Argentine Civil and Commercial Code, the general statute of limitations period in civil and commercial matters is five years, while the statute of limitations period for claims seeking damages arising from civil liability is three years. Current case law has applied these statute of limitations terms in a similar fashion to consumer class actions brought in Argentina.

Additionally, there are several bills of law seeking to regulate class actions pending in the Argentine Congress. The Argentine Congress, however, has been reluctant to enact comprehensive laws giving procedural guidance on class actions. As seen above, with the congress's inaction, the Argentine Supreme Court has been trying to deal with issues surrounding class actions by issuing its own regulations.

The author would like to thank Rodrigo F. García for his contributions to this section.

ENDNOTES

1 *See* Article 41 of the Argentine Constitution (providing that "all inhabitants enjoy the right to a healthy environment"); and Article 42 (aimed at protecting all consumers of goods and users of public utilities).

2 *See* Argentine Constitution, Article 75, § 22. This provision recognized, *inter alia*, the Universal Declaration of Human Rights (adopted by the General Assembly of the United Nations in 1948).

3 The Consumer Protection Act, enacted in 1993, granted standing to associations of consumers to defend the interests of consumers when these were threatened or affected.

4 *See* Article 14 of the Argentine Civil and Commercial Code (acknowledging the existence of both individual and collective rights, and preventing the exercise of individual rights that can negatively affect the environment and collective rights in general).

5 *See* Law No. 25,675, as amended.

6 *See* Law No. 24,240, as amended.

7 *See Halabi Ernesto v Poder Ejecutivo Nacional (PEN) Ley 25873 re Amparo Ley 16986,* February 24, 2009, (*Fallos* 332:111).

8 *See Padec v Swiss Medical S.A. re nulidad de cláusulas contractuales*, August 21, 2013, (*Fallos* 336:1236).

9 *See Asociación Protección Consumidores del Mercado Común del Sur c/ Loma Negra Cía. Industrial Argentina S.A. y otros*, February 10, 2015, (Fallos 338:40).

10 *See* Law No. 6,407 of the City of Buenos Aires.

11 *See Halabi*, § 6.

12 *See* Consumer Protection Act, Articles 52 and 55.

13 *See* Consumer Protection Act, Articles 56 and 57. These requirements are supplemented by rulings No. 32/2014 and No. 12/2016 of the Argentine Supreme Court.

14 *See* Consumer Protection Act, Article 52.

15 *See* Argentine Supreme Court's website.

16 *See Municipalidad de Berazategui v. Cablevisión S.A. re amparo*, September 23, 2014, (M. 1145. XLIX).

17 See *Asociación Civil DEFEINDER y otros v Telefónica de Argentina S.A. re proceso de conocimiento*, November 27, 2014, (A. 803. XLVI).

18 *See* Regulation No. 32/2014.

19 *See* Consumer Protection Act, Article 54.

20 *See* Consumer Protection Act, Article 52 bis.

21 Pursuant to Article 47(b) of the Consumer Protection Law, the maximum is 2,100 Total Basic Food Baskets (TBFB) as defined by the National Institute of Statistics and Censuses (abbreviated as 'INDEC' in Spanish). The TBFB is valued at $988,553.93 as of August 2024.

22 Calculation based on the selling exchange rate of the U.S. dollar quoted by the Banco de la Nación Argentina as of September 19, 2024.

23 *See* Consumer Protection Act, Section 53, last paragraph.

24 *See* Law No. 27,423 enacted in 2017.

Brazil

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A. BRIEF OVERVIEW AND HISTORY

In contrast to common law systems like the United States, civil law countries like Brazil do not have a long history of using class actions to litigate. Brazil has experienced a significant growth in class action proceedings only in the last 40 years. But even so, what is known in Brazil as a "class action" differs significantly from the class action proceedings available in common law countries both in terms of process and interests involved.

With the enactment of Law No. 7,347 in 1985, Brazilian legislators authorized certain public and private organizations to file class actions. Class actions in Brazil are generally limited to protecting public interests and are primarily designed to protect collective rights, diffuse rights, and certain individual homogeneous rights—all of which are broadly defined by law.

Generally, diffuse rights apply to a non-identifiable group of people linked by factual circumstances. On the other hand, collective rights apply to a more specific group of people connected by legal privity. Lastly, individual homogeneous rights are individual rights that have a common origin (e.g., with a similar factual or legal foundation). The main device used to protect these interests is a public civil class action (*ação civil pública*).

The following are the main federal laws that contain provisions regarding the protection of diffuse and collective rights in Brazil:

- Law No. 7,347/1985 regulates the material and procedural aspects of public civil class actions.
- Law No. 7,853/1989 regulates enforcement of rights of the handicapped through public civil class actions.
- Law No. 7,913/1989 regulates enforcement of rights of investors in securities markets through public civil class actions.
- Law No. 8,069/1990 regulates enforcement of children's rights through public civil class actions.
- Law No. 8,078/1990 (the "Brazilian Consumer Rights Code") regulates enforcement of consumer rights through public civil class actions.
- Law No. 10,741/2003 regulates enforcement of rights of the elderly through public civil class actions.
- Law No. 13,709/2018 (the "Brazilian General Data Protection Act") regulates enforcement of rights of consumers and data holders through public civil class actions.
- Law No. 14,230/2021 amended Law No. 8,429/1992 (which regulates acts of administrative improbity committed by Brazilian government officials) to expressly allow prosecutors to use public civil class actions in certain situations involving acts of administrative improbity.

Based on these laws, key recent cases include the following:

- In July 2024, the Federal Prosecutor's Office from the State of São Paulo and the Consumer Protection Institute ("IDEC") filed a public civil class action against WhatsApp LLC and the Brazilian National Data Protection Agency ("ANPD") before the Federal Court of São Paulo seeking, among other reliefs, a compensation from WhatsApp in the amount of BRL 1.7 billion for collective moral damages arising from WhatsApp's alleged improper revision to its data privacy policy in 2021. Additionally, plaintiffs also sought an injunction to prevent WhatsApp from sharing personal information gathered through the app with other companies owned by the Meta Group, and creating a system that allows WhatsApp customers to "opt-out" from sharing their personal information. On August 14, 2024, the 2nd Federal Court of São Paulo partially granted the injunction to prevent WhatsApp from sharing personal information gathered through the app with other companies owned by the Meta Group, and creating a system that allows WhatsApp customers to "opt-out" from sharing their personal information. The case is ongoing.
- In February 2021, a civil association called ANCED (*Associação Nacional dos Centros de Defesa da Criança e do Adolescente*) filed several public civil class actions before the Court of Children and Teenagers of the Federal District against videogame manufacturers (i.e., Ubisoft; Riot; Tencent; etc) and platforms (i.e., Apple; Microsoft; etc) claiming that loot boxes available in some games would violate Brazilian consumer and infant laws. Based on such allegations, ANCED requested injunctions to suspend the loot boxes used in those games until a final decision on the merits. ANCED also requested the ban of the game's loot boxes and that each defendant be sentenced to pay compensations in the amount of: (i) BRL 1.5 billion for collective moral damages; and (ii) BRL 1,000 to each child or teenager exposed to loot boxes. The injunction was denied, and the cases are ongoing.
- On November 25, 2020, the Rio Grande do Sul State Public Defender's Office filed a public civil class action against the French supermarket chain Carrefour claiming collective moral and social damages in the amount of BRL 200 million arising from the murder of a consumer within one of Carrefour's stores located in the State of Rio Grande do Sul. The murder of this consumer allegedly had a racial discrimination component. According to the Public Defender's Office, damages should be reverted to funds that focus on the fight against racial discrimination and enhancing consumer's rights. Additionally, the Public Defender's Office is asking the court to oblige Carrefour to develop a plan against racial discrimination focusing on employee and third-party vendor training. On June 11, 2021, Carrefour entered into a BRL 115 million settlement with multiple Brazilian authorities, including the Public Defender's Office, by which Carrefour agreed to create internal policies against racism and compensate collective damages in exchange for the withdrawal of the public civil class action.
- On September 21, 2020, the Federal District Prosecutor's Office brought the first public civil class action in Brazil under the Brazilian General Data Protection Act against two defendant companies, seeking to enjoin the illegal treatment of data through the sale of personal information of multiple Brazilian citizens. This lawsuit remains ongoing. Following the filing of this leading case in the Federal District of Brazil, there have been several other similar lawsuits brought by Brazilian prosecutors across the country.
- On December 18, 2019, the São Paulo State Prosecutors brought a public civil class action against Brazil-based cryptocurrency investment company Genza and its entities/shareholders seeking a BRL 1 billion compensation on behalf of Genza's approximate 45,000 investors who were allegedly harmed by Genza's supposed fraudulent transactions. The São Paulo State Prosecutors also requested the freezing of Genza's assets, Genza's dissolution, and the piercing of the corporate veil to reach Genza's shareholders. On February 14, 2020, the São Paulo State Court issued an order against Genza and its entities/shareholders ordering the freezing of BRL 800 million. Given the extremely large number of defendants, this lawsuit remains in a preliminary stage.
- On January 25, 2019, a mining dam based in the city of Brumadinho, Minas Gerais, managed by Vale, collapsed. Approximately 13 million cubic meters of tailings were spilled over, causing environmental damage and killing hundreds of individuals. State prosecutors, federal labor prosecutors, and employee associations filed separate public civil class

actions against Vale seeking billions in compensation for damages caused by the dam collapse. Vale settled some of these lawsuits, but other lawsuits are still ongoing.

- In December 2018, the São Paulo State Prosecutors brought a public civil class action against Google involving the advertisement of products through *YouTube* in violation of Brazilian teenager and child protection laws as well as the Brazilian Consumer Rights Code. The São Paulo State Prosecutors requested: (i) an injunctive relief to prevent Google from broadcasting allegedly illegal advertisements; (ii) that Google be compelled to implement internal controls aimed at preventing the broadcasting of advertisements through *YouTube* in violation of teenager and child protection laws; and (iii) collective moral damages. On December 19, 2019, Google settled the dispute with the São Paulo State Prosecutors, and agreed to create—together with the National Council for Advertisement Self-Regulation—guidelines for advertising to teenagers and children in the digital environment, and create a direct communication channel with state prosecutors to complain about future similar cases.
- As one can note from the above cases, plaintiff law firms see little incentive to bring claims against market players in Brazil. This is due to the public nature of public civil class actions, and the fact that certain features of litigation in common law countries are nonexistent in Brazil. For instance, in Brazil there are no jury trials in civil matters, no common law discovery or punitive damages, and legal proceedings may generally take multiple years to be resolved given the multiple layers of appeal. For this reason, third-party funding of public civil class actions is quite limited in Brazil.

B. TYPES OF CLAIMS AND SCOPE OF LAWSUITS THAT CAN BE FILED

Public civil class actions are available for claims addressing: (i) consumer laws (including product liability cases); (ii) environmental, artistic, aesthetic, historic, touristic, urban, and landscape laws; (iii) elder laws; (iv) governmental property; (v) public property; (vi) rights of the handicapped; (vii) children's rights; (viii) rights of securities' market investors; (ix) violation of the economic order and antitrust; (x) corruption; (xi) illegal acts of governmental authorities; (xii) human rights of minorities and religious groups; (xiii) data protection; (xiv) acts of administrative improbity; and (xv) any collective or diffuse rights not specifically regulated by law.

C. CLASS REPRESENTATIVES AND STANDING TO SUE

Generally, in Brazil, no person can file a lawsuit on behalf of another person, unless a law provides otherwise. This is because standing to litigate is personal to the plaintiff who has suffered losses. Individuals, therefore, do not have standing to bring class actions under Brazilian collective action laws. Instead, only the following fixed set of public and private entities have standing to institute class actions: (i) governmental authorities (Federal Union, states, municipalities); (ii) government-controlled companies and foundations; (iii) public defenders; (iv) state and federal prosecutors; and (v) those private nonprofit associations (a) created at least a year before filing the class action (when there is a "clear social interest" involved in the class action, the Brazilian case law usually exempts the association to meet this requirement), and (b) with a corporate objective to protect the general public interest implicated by the class action. These plaintiffs can file class actions before state or federal courts, depending on the parties involved in the lawsuit.

Most frequently, prosecutors file class actions in Brazil for the protection of consumers' rights and the environment. Public or private organizations that represent an affected class (i.e., labor unions or industry associations) also file class actions. For those class actions filed by nonprofit associations, the Brazilian Constitution (art. 5, XXI) requires that members of the association convene at a meeting and approve the decision to file a class action on behalf of its members to defend their common interests or rights. Members may also provide individual authorization for the association to initiate a class action.

While the Brazilian Supreme Court held in 2014 that such an authorization is required, Brazilian courts, such as the Superior Court of Justice, have recently held that such authorization may not be necessary in cases involving diffuse rights, such as consumer or environmental rights belonging to a non-identifiable group of people, as well as individual homogenous rights. The case law on this point remains unsettled. Additionally, the

Superior Court of Justice has also held that judges are allowed to review, without a request by the parties, whether one of the nonprofit association's objectives is actually designed to protect the specific public interest at issue in the class action.

The Prosecutor's Office must participate in any public civil class action to oversee the legality of the proceedings (including in public civil class actions brought by prosecutors). Prosecutors also have the right to initiate administrative civil investigations (*inquérito civil*) before deciding whether or not to file a class action. These investigations usually focus on producing evidence to support the claim and may involve governmental agencies and law enforcement authorities. Importantly, once prosecutors initiate such administrative civil investigations, these investigations can only be finally dismissed or closed with the approval of the Prosecutors' Superior Council (*Conselho Superior do Ministério* Público).

D. KEY PROCEDURAL REQUIREMENTS

In stark contrast to the United States, there are no specific procedures for class certification, defining a class, or becoming a class representative in connection with class actions in Brazil. The general procedure, instead, involves only a preliminary analysis of standing to sue, in accordance with the provisions of Law No. 7,347/1985 (Public Civil Class Actions Law), the general provisions of the Civil Procedure Code, and the Consumer Defense Code (if and where applicable). Plaintiffs must make a preliminary showing of legal interest to the court (i.e., the claim must be necessary and adequate to achieve plaintiff's goals). If the court finds that the enforcement of a class action decision will be too difficult because of myriad individual particularities in the case, the court may dismiss for lack of a legal interest. Brazilian law assumes that those public and private entities with standing to sue will adequately represent the class, but recent court decisions permit the judge to review whether an association has been authorized by its members to file public civil class actions involving their individual interests or whether the issues in the public civil class action match the purposes of the association as stated in its bylaws. And while notice of claims is provided via the official press, courts do not address issues such as predominance, commonality, or ascertainability.

E. BINDING OTHERS

Only the claimants listed in Section C above can file class actions. The list does not include individuals. Therefore, there are no specific opt-in or opt-out procedural rules to join class actions in Brazil, except in cases where similar claims have already been filed by individuals seeking their own recovery.

If the rights in dispute in a public civil class action are diffuse or collective rights, the judge determines the class of persons entitled to claim damages. The court then issues a general decision in connection with the claim, but does not award monetary damages to individuals. Favorable monetary judgments go into a fund managed by state or federal authorities for the benefit of those represented. However, if the rights in dispute are individual homogeneous rights arising from the same origin (i.e., same illegal conduct), the court will issue a general decision in connection with the claim, and either the claimants listed in Section C above or each individual affected by that origin will have to appear before the court to prove causation and damages.

Even though there are no specific opt-in/opt-out class action rules in Brazil, individuals with preexisting non-class claims based on the same issues or facts have two options under the ordinary rules of civil procedure when a class action starts. First, the individual plaintiff can request the suspension of his individual case to join the class action (up to 30 days after learning about the class action). The individual then benefits if the class action is successful but resumes the individual case if the class action is dismissed with prejudice. Alternatively, the individual can choose to continue his individual case while the class action proceeds. In that case, a favorable result in the class action would not benefit the individual plaintiff, who would simply continue to pursue his or her own case.

Importantly, the Superior Court of Justice has already held that a decision dismissing a class action filed to protect collective rights precludes other public or private organizations with standing from re-filing the same class action regardless of the grounds for dismissal. The decision dismissing class actions does not, however, preclude individuals from pursuing their own rights through individual lawsuits.

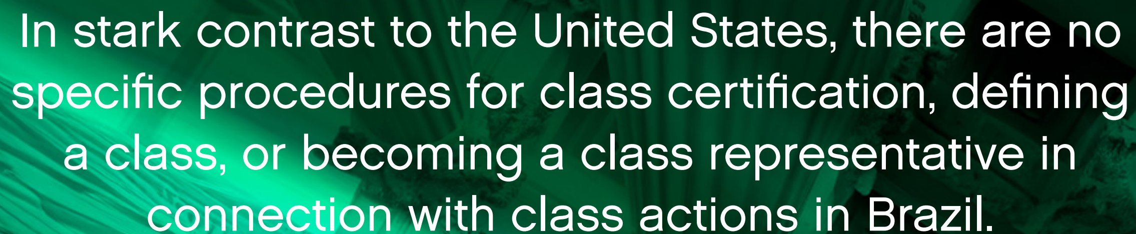
Also, if individuals move to intervene in ongoing class actions as co-plaintiffs, they will benefit from a favorable decision issued in the class action, but will be prevented from filing their own individual lawsuits if the class action is dismissed.

Finally, a public notice must be published in the official press soon after the filing of the class action.

F. REMEDIES AVAILABLE

Punitive damages are not available in Brazil. Compensatory damages (material and moral, the latter of which compensate the emotional distress incurred by the plaintiff and are determined at the court's discretion) are recoverable through lawsuits. Courts decide and cap the amount of damages. Recent decisions by the Superior Court of Justice also have prevented plaintiffs from seeking collective moral damages in public civil class actions dealing with individual homogeneous rights. According to the court, moral damages should be pursued individually by the holder of the right in the liquidation phase of the proceedings.

In addition, injunctive and declaratory relief, as well as specific performance are available in class actions. Injunctions can be sought at all times and, usually, are granted or denied within a few days or weeks by means of an interlocutory decision. As



to the other types of relief (damages, declaratory relief, and specific performance), claimants must state the relief sought in their complaint, and courts normally grant relief with a final decision on the merits after undergoing the evidentiary phase of the proceedings.

Claimants may freely amend their complaint to modify the relief sought until the defendant is served. Once the defendant is served, claimants may still amend their complaint until the end of the evidentiary phase, but the defendant must consent to the amendment in light of due process. In the complaint, the claimant must assert all of the known facts and applicable law that serve as the basis for the relief sought.

G. SETTLEMENTS AND FINANCING

Prosecutors filing public civil class actions usually formalize any settlement through the execution of a Conduct Adjustment Term (*Termo de Ajustamento de Conduta—TAC,* in Portuguese). The judge then approves those settlement terms, although no requirement for fairness or reasonableness review exists.

Attorneys and clients can negotiate their own private contractual arrangements, including contingency fees. While losing parties in Brazil generally pay the prevailing parties' litigation costs, losing parties do not have to pay judicial and legal fees in class actions, except in cases of bad faith. While this has been the prevailing position at the Brazilian Superior Court of Justice for the past several years, including by decision of its Special Chamber, in March 2022, the 3rd Panel of the Superior Court of Justice held that this position does not apply to public civil class actions brought by private associations—thus, leaving room for litigants to continue debating this issue.

Third-party funding of class actions is not common in Brazil given the low damages historically awarded by Brazilian courts and the significant length of legal proceedings, which are subject to multiple levels of appeal. Damages recovered in Brazilian class actions are either paid to the collective rights fund managed by the government or directly to individuals who have suffered damages. There are no clear laws regulating (allowing or permitting) this matter.

H. OTHER KEY CLASS ACTION ISSUES

The Law No. 7,347/1985 establishes that a final decision rendered in a public civil class action will be effective within the jurisdiction of the court that has rendered such decision. This legal provision has been thoroughly debated by Brazilian courts for several years. Some courts have decided that imposing geographic limits to decisions rendered in public civil class actions undermines the sole purpose of collective lawsuits as this limitation would require the filing of multiple public civil class actions dealing with the same matter in various jurisdictions to ensure that a collective right is protected in the entire country. Other courts have decided that the geographic limitation is not only valid, but necessary to limit the impact of decisions rendered by judges in smaller jurisdictions that would otherwise have nationwide effects.

After years of debate, the Superior Court of Justice case law was settled in the sense that decisions rendered in class actions should have nationwide effects. Recently, on April 8, 2021, the Brazilian Supreme Court held, by majority, that the provision in Law No. 7,347/1985 limiting the effects of decisions rendered in class actions is unconstitutional, confirming the position that decisions rendered in class actions should have nationwide effects. The Brazilian Supreme Court also held that the Brazilian court that first hears a class action with nationwide or regional effects will have jurisdiction over all related class actions to avoid conflicting decisions. The Brazilian Supreme Court decision is binding on all Brazilian courts.

The Superior Court of Justice has also recently decided another important procedural issue related to class actions. The decision was issued in the context of a "repetitive claim" proceeding, by which the Superior Court of Justice court creates a binding precedent as to a purely legal issue that have binding effect on lower courts. In this recent precedent, the Superior Court of Justice held that individual consumers may collect damages based on awards rendered in class actions filed by consumer associations regardless of whether or not those individual consumers are members of the plaintiff association.

The new Civil Procedure Code, which became effective on March 16, 2016, modernizes Brazil's civil procedure rules and contemplates substantial changes to litigation, including class actions, in Brazil. As relevant to class actions, these changes include the creation of new mechanisms to settle disputes before going to trial, new methods to count deadlines, and reductions on the number of appeals allowed, among others. For instance, the Code provides for the "Incident for Repetitive Claims Resolution" ("IRCR"), a procedural mechanism that suspends all ongoing individual and collective claims addressing the same legal issue in the state or region of the court that issues the suspension order, or within all of Brazil, if the suspension order is issued by either the Supreme Court or Superior Court of Justice. An IRCR will issue if there is: (i) repetition of cases that contain a controversy about the same legal issue; and (ii) a risk to legal security or equality. Then, after hearing the parties and others, the court will issue a decision resolving the legal controversy raised in the IRCR. The decision applies to all suspended and upcoming individual and collective cases dealing with the same legal issue within the jurisdiction of the court issuing the decision.

One other interesting procedural issue related to public civil class actions concerns jurisdiction. Except for cases that fall under federal jurisdiction, whenever there is a national or regional damage, the state courts of the capital of the state where the damage occurred and the Federal District will have jurisdiction to hear the case regardless of whether individuals in smaller cities suffered any damages. This feature is helpful for defending against bet-the-company public civil class actions so as to ensure that the case will be heard by a judge in the capital of the state or the Federal District where judges tend to be more accustomed to deciding cases of larger magnitude.

There are several active bills pending at the Senate and the House of Representatives seeking to change various aspects of the laws governing class actions in Brazil. Between September 2020 and April 2021, at least three bills of law were introduced in the Brazilian Congress seeking to revoke Law No. 7,347/1985 and create a brand new class actions regime in Brazil. Additionally, Bill No. 2943 and Bill No. 2270, introduced in May 2019 and August 2015, respectively, seek to provide the Federal and State Branches of the Brazilian Bar Association, as well as political parties, with standing to file class actions. Bill No. 6389, introduced in October 2016, seeks to provide certain bodies of the legislative branch and individuals with standing to file class actions. And Bill No. 3203, introduced in October 2015, seeks to expand to other public organizations with standing to file class actions the power to ask the court to start civil investigations to produce evidence before filing a class action. Currently, governing law allows only prosecutors to start an administrative civil investigation before filing a class action. It is uncertain whether any of these bills will become law.

Finally, a new Brazilian Civil Code is also under discussion in the Brazilian Congress. Some of the amendments relate to the way damages and causation are proven in Brazilian courts, and to the possibility of awarding punitive damages in Brazil. If and when these amendments are approved, this could be an incentive for plaintiff law firms to start bringing investor-backed class actions in Brazil.

The author would like to thank Álvaro Brito Arantes for his contributions to this section.

Taiwan

A. Brief Overview and History
B. Types of Claims and Scope of Lawsuits That Can Be Filed
C. Class Representatives and Standing to Sue
D. Key Procedural Requirements
E. Binding Others
F. Remedies Available
G. Settlements and Financing
H. Other Key Class Action Issues

Section Author:
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A. BRIEF OVERVIEW AND HISTORY

General Rules: Code of Civil Procedure

In Taiwan, the counterpart of the class action in U.S. law exists within the Code of Civil Procedure ("CCP") and is also governed by several other specialized laws. The CCP outlines the general principles and prerequisites for such actions, whereas other laws contain tailored provisions for specific matters, such as consumer disputes and labor-related disputes.

Since the 1930s, the CCP has included a system known as the "Appointing Parties." According to CCP Art. 41(1), "multiple parties, who have common interests and may not qualify to be an unincorporated association provided in the third paragraph of the preceding Article[1], may appoint one or more persons from themselves to sue or to be sued on behalf of the appointing parties and the appointed parties."

In other words, multiple parties who share mutual interests, and may not qualify as an unincorporated association with a representative or administrator, have the authority to select one or more individuals from themselves to initiate or defend legal actions on behalf of both the appointing parties and the appointed representatives.

At the beginning of the 21st century, the CCP underwent a significant overhaul. Several provisions were added to the "Appointing Parties" system. For instance, CCP Art. 44-1(1) provides that "multiple parties with common interests who are members of the same incorporated charitable association may, to the extent permitted by said association's purpose as prescribed in its articles of incorporation, appoint such association as an appointed party to sue on behalf of them."[2] CCP Art. 44-2(1) provides that "when multiple parties, whose common interests have arisen from the same public nuisance, traffic accident, product defect, or the same transaction or occurrence of any kind, appoint one or more persons from themselves in accordance with the provision of Article 41 to sue for the same category of legal claims, the court may, with the consent of the appointed party, or upon the original appointed party's motion that the court considers appropriate, publish a notice to the effect that other persons with the same common interests may join the action by filing a pleading within a designated period of time specifying: the transaction or occurrence giving rise to such claim; the evidence; and the demand for judgment for the relief sought. Those persons so joining shall be deemed to have made the same appointment in accordance with the provisions of Article 41." One can deduce from the aforementioned provisions that Taiwan follows an "opt-in" procedure.

Besides, CCP Art. 44-3(1) provides that "an incorporated charitable association or a foundation may initiate, with the permission of its competent governmental business authority and

to the extent permitted by the purposes as prescribed in its articles of incorporation, an action for injunctive relief prohibiting specific acts of a person who has violated the interests of the majority concerned."

In addition to the general provisions in the CCP, in order to meet the needs of specific types of matters, other laws also have relevant provisions.

For Consumer Matters: Consumer Protection Act

For example, concerning consumer matters, Taiwan's Consumer Protection Act ("CPA") stipulates that specific consumer advocacy groups are entitled to file lawsuits for damages or non-action.

As for the former (damages), CPA Art. 50(1) provides that "where numerous consumers are injured as a result of the same incident, a consumer advocacy group may take assignment of claims from 20 or more consumers and file a lawsuit in its own name. Consumers may terminate such assignment before the close of oral arguments, in which they shall notify the court." According to CPA Art. 50(3), the claims mentioned in Art. 50(1) include both pecuniary and non-pecuniary damages, and according to CPA Art. 51, where an action is brought in accordance with the CPA, and where the injuries in dispute are caused by willful misconduct, gross negligence, or negligence of a trader, punitive damages may be claimed.

As for the latter (non-action), CPA Art. 53(1) provides that when a trader commits a serious violation of this Act, consumer ombudsmen or consumer advocacy groups may petition the court for an injunction to discontinue or prohibit such actions.

For Labor Cases: Labor Incident Act

Furthermore, in labor cases, Taiwan's Labor Incident Act ("LIA"), which was implemented in 2020, contains several special provisions. LIA Art. 40(1) states that "a labor union may, within the scope of its purpose as described in its articles of incorporation, file a lawsuit prohibiting specific acts against the employer who infringes upon the interests of a majority of its members." This can be viewed as a special provision of CCP Art. 44-3.

Also, LIA Art. 41(1) provides that "when the labor union is appointed to initiate an action for its members pursuant to Paragraph 1, Article 44-1 of the Taiwan Code of Civil Procedure, the appointed person(s) may file additional claims before the end of oral arguments in the first instance trial, and request a declaratory judgment confirming the existence of the common basis prerequisites concerning the claim or legal relationship between the appointing persons and the defendant." This provision aims to promptly confirm the "common basis prerequisites," in order to enhance the efficiency of the trial and encourage the parties to resolve disputes by themselves based on the results of the declaratory judgment.

Other Relevant Rules

Besides the aforementioned special provisions for consumer matters and labor cases, the Securities Investor and Futures Trader Protection Act ("SIFTPA") and the Personal Data Protection Act ("PDPA") also contain similar provisions. Concerning securities or futures matters, SIFTPA Art. 28(1) provides that "for protection of the public interest, within the scope of this Act and its articles of incorporation, the protection institution may . . . file a lawsuit in its own name with respect to a securities or futures matter arising from a single cause that is injurious to multiple securities investors or futures traders, after having been so empowered by not less than 20 securities investors or futures traders. The securities investors or futures traders may withdraw the empowerment to . . . file a lawsuit prior to the conclusion of oral arguments or examination of witnesses and shall provide notice to the . . . court." Concerning infringement of rights of data subjects, PDPA Art. 34(1) provides that "where the rights of multiple data subjects have been infringed upon due to the same incident, the incorporated foundation or incorporated charity may file a lawsuit with the court in its own name after obtaining a written delegation of litigation rights of at least 20 data subjects. The data subjects may withdraw their delegation in writing before the conclusion of the oral argument and the data subjects shall notify the court thereof."

B. TYPES OF CLAIMS AND SCOPE OF LAWSUITS THAT CAN BE FILED

As mentioned in Section A, generally speaking, in all types of civil disputes, multiple parties with shared interests may appoint one or more representatives from among themselves to either initiate or defend an action on behalf of both the appointing and appointed parties (CCP Art. 41(1)), and in some situations, certain groups ("incorporated charitable association") may be appointed as the representative (CCP Art. 44-1(1)). Regarding the types of claims, the CCP does not contain special provisions for an action initiated by an appointed party.

C. CLASS REPRESENTATIVES AND STANDING TO SUE

Under CCP Art. 41(1), natural persons may be appointed to represent those with common interests in a lawsuit. The key prerequisite for the standing to sue for such a representative is the shared common interests. Beyond that, the CCP has no provisions regarding the qualifications of the appointed individuals. Under CCP 44-1(1), an incorporated charitable association may bring an action on behalf of its members who appoint it to do so.

There are also cases where certain groups may initiate legal proceedings on behalf of numerous individuals, but certain conditions need to be met to establish their standing to sue. For instance, CPA Art. 49(1) provides that "a consumer advocacy group, which has been established for more than 2 years after its approval, has designated personnel specializing in consumer protection, and has a rating of excellence by the Executive Yuan, may bring an action in its own name for consumers in accordance with Article 50 or an action for injunctive relief prohibiting specific acts in accordance with Article 53."

D. KEY PROCEDURAL REQUIREMENTS

Under CCP Art. 41(1), the key procedural requirements of the "Appointing Parties" system are, firstly, that the numerous individuals share "common interests," meaning that they share the same methods of attack or defense, secondly, that they do not qualify as an unincorporated association with a representative or administrator and thirdly, that the appointed person is one or several of those individuals with common interests.

Outside the CCP, some special procedural requirements exist. For example, under CPA Art. 50(1), there must be 20 or more individuals assigning claims to a consumer advocacy group before the group can file a lawsuit under that Article.

While the aforementioned requirements might resemble some of the U.S. certification requirements (e.g., the requirement of commonality) to some extent, Taiwan does not have a U.S.-style class certification procedure.

> Taiwan's Consumer Protection Act stipulates that specific consumer advocacy groups are entitled to file lawsuits for damages or non-action.

E. BINDING OTHERS

In the context of the aforementioned types of lawsuits, there are no specific provisions addressing the binding effect of a judgment. Hence, the general provisions provided in CCP Art. 401, which pertain to *res judicata*, are applicable. In particular, CCP Art. 401(2), which provides that "a final and binding judgment to which a party has acted as the plaintiff or the defendant for another person is also binding on such other person," might be applicable.

For instance, in cases involving the designation of a representative according to CCP Art. 41(1), not only does the judgment bind the appointed party, but the judgment's binding effect also extends to the appointing parties, pursuant to CCP Art. 401(2), for the appointed party acts as the plaintiff or the defendant for the appointing parties. However, such binding effect does not extend to individuals who share common interests but have not designated the representative.

F. REMEDIES AVAILABLE

The primary available remedy is compensatory damages, and in cases meeting the requirements set forth in CPA Art. 51, punitive damages may additionally be sought. Moreover, specific plaintiffs may file an injunction petition, seeking to prohibit defendants from engaging in certain actions, as provided in CCP Art. 44-3(1) ("an incorporated charitable association or a foundation"), CPA Art. 53(1) ("consumer ombudsmen or consumer advocacy groups"), and LIA Art. 40(1) ("a labor union").

G. SETTLEMENT AND FINANCING

Settlement

Special provisions exist in the CCP and other laws regarding the authority of representatives to settle cases, as it involves dispositions related to the proceedings themselves. For instance, CCP Art. 44(1) provides that the appointed parties may conduct all acts of litigation for the appointing parties, but the appointing parties may restrict the appointed parties' authority to settle the case, and LIA Art. 40(4) provides that settlement of the lawsuit described in LIA Art. 40(1) shall be subject to the approval of the court.

Financing

CCP and other laws contain some provisions related to expenses in the aforementioned types of lawsuits. For example, CCP Art. 77-22 provides that "(I) the appointed party who initiated an action in accordance with Article 44-2 may temporarily be exempted from paying the portion of the court costs in excess of NT$600,000 [equivalent to approximately US$18,600] if the amount of court costs collected is more than NT$600,000. (II) Court costs may be temporarily exempted from the collection on an action brought in accordance with Article 44-3. (III) After the action is concluded, the court of first instance shall make a ruling on its own initiative to collect court costs, which were temporarily exempted in accordance with the preceding two paragraphs or other regulations, from the party who should bear such costs. However, this does not apply if the incorporated association or foundation, as stipulated in Article 44-3, shall bear the litigation expenses or if other laws provide otherwise."

CPA Art. 52 provides that "If a consumer advocacy group files a lawsuit in accordance with Article 50 in its own name, the court costs for the portion of the claim exceeding NT$600,000 shall be exempted." CPA Art. 53(2) provides that court costs for an action brought under CPA Art. 53(1) shall be exempted.

Also, LIA Art. 40(2) provides that a lawyer should be retained for an action brought under LIA Art. 40(1), and LIA Art. 40(5) provides that "the remuneration for a lawyer as mentioned in [LIA Art. 40(2)] is part of the litigation costs, and its maximum amount should be defined. The payment standards should be determined by the Judicial Yuan, after considering the opinions of the Ministry of Justice and Taiwan Bar Association."

Regarding third-party funding, there are currently no specific regulations in Taiwan for the various types of litigation discussed in this report. However, Article 33, Paragraph 1 of the Bar Ethics Rules provides that "lawyers shall not accept the payment of legal fees from a third party on behalf of the client. However, with the informed consent of the client and without affecting the lawyer's independent professional judgment, this restriction does not apply."

What is particularly noteworthy is that under SIFTPA, the government-supported Securities and Futures Investors Protection Center ("SFIPC") has been established in Taiwan. SFIPC can use its protection fund, which came from institutions such as the Taiwan Stock Exchange Corporation, to initiate lawsuits on behalf of investors, as described in Section A.

H. OTHER KEY CLASS ACTION ISSUES

Leading Case Regarding CCP Art. 44-1: RCA Case

In Taiwan, there is a widely discussed judgment concerning CCP Art. 44-1 (Supreme Court Civil Judgment of Year 107 Tai Shang Zi No. 267). In that case, one of the defendants is RCA Taiwan Limited ("RCA"), which operated plants in Taiwan from 1970 to 1992, manufacturing electronic and electrical products. During the manufacturing process, it allegedly indiscriminately released various chemical substances into the ground and groundwater, resulting in soil and groundwater pollution. It is

alleged that they failed to implement protective measures, causing the employees to be exposed to high concentrations of harmful chemicals. Many RCA employees subsequently developed illnesses, and some even passed away. These employees and their families formed the "Association for the Care of Former RCA Taiwan Limited Employees in Taoyuan County," and, in accordance with CCP Art. 44-1, appointed this association to file a lawsuit against the defendant company. As of September 2024, part of the case remains unresolved and is still under litigation.

New Developments of Labor Collective Actions

The CCP added Art. 44-1 in 2003, which contains general provisions for appointing an association to initiate an action. In practice, this provision has often been used in labor disputes. As noted by Prof. Kuan-Ling Shen, who is an expert on the laws of civil procedure of Taiwan, in labor disputes, individual workers typically lack financial resources and legal expertise and are often reluctant to disrupt the harmony of labor-management relationships, which leads them to be reserved about asserting their rights through litigation. Therefore, it is important in labor disputes for the lawsuit to be initiated not by the individual worker but by an appropriate third party (an association).

To facilitate the initiation of an action by an association in labor disputes, LIA, which was promulgated in 2018 and came into effect in 2020, introduced new provisions regarding appointing a labor union to initiate an action. Recent research has been exploring past labor disputes involving multiple workers under CCP Art. 44-1, as well as the newly introduced LIA provisions and their possible implications. For details, please refer to Kuan-Ling Shen, *Developments of Labor Collective Action and New Changes*, 49(4) NTU L.J. 1979 (2020) (written in Mandarin).

ENDNOTES

1 CCP Art. 40(3) provides that "An unincorporated association with a representative or an administrator has the capacity to be a party."

2 CCP Art. 44-1(2) provides that "where an incorporated association initiates an action for monetary damages on behalf of its members in accordance with the provision of the preceding paragraph, if the entire body of the appointing parties agrees to allow the court to grant the full amount of a monetary award to them as a whole body and prescribes how such total award shall be distributed, and furthermore, if the entire body has filed a pleading to such effect, then the court may award a total sum of money to the entire body of the appointing parties without specifying the amount that the defendant must pay to each of the appointing parties respectively." This provision has not been widely applied in practice so far, but recently it has been used in an occupational accident case (Taiwan High Court Civil Judgment of Year 109 Zhong Lao Shang Zi No. 12 [Note: as of September 2024, this case is currently under review by the Supreme Court of Taiwan]).

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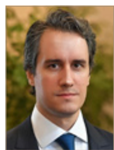

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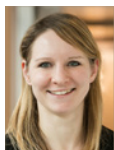

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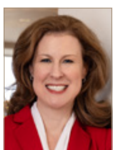

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