

International Comparative Legal Guides



Practical cross-border insights into class & group actions

Class & Group Actions 2022

14th Edition

Contributing Editors:

Chris Warren-Smith, Frances Murphy & Alexandre Bailly
Morgan, Lewis & Bockius LLP



ICLG.com

Expert Analysis Chapters

- 1** **Collective Actions in the UK and EU One Year On – Has the Dam Burst Yet?**
Chris Warren-Smith, Scott Schutte, Peter Sharp & Joanna Christoforou, Morgan, Lewis & Bockius LLP
- 8** **International Class Action Settlements in the Netherlands**
Daan Beenders, Dennis Horeman & Machteld de Monchy, De Brauw Blackstone Westbroek N.V.
- 16** **Developments and Trends in Collective Actions**
Charles Balmain, Matthew Devine, Sonja Hoffmann & Sheldon Philp, White & Case LLP
- 23** **Estimating Harm in Invasion of Privacy and Data Breach Disputes**
Vildan Altuglu, Vikram Kumar, Vivek Mani & Sinan Corus, Cornerstone Research
- 29** **Monitoring and the Status of Uninjured Plaintiffs in Class Actions**
Robin Cantor, Andreas Groehn, Shireen Meer & Kelly Lear Nordby, Berkeley Research Group
- 34** **Payment Trends in Class or Collective Claims**
Loree Kovach & Lauren McGeever, Epiq
- 37** **Uncharted Waters: A Dutch Perspective on the Funding of Mass Claims**
Quirijn Bongaerts & Joost Edixhoven, Birkway
- 44** **European Class Actions: The Funder's Dilemma**
Jeremy Marshall, Anna-Maria Quinke & Maarten van Luyn, Omni Bridgeway

Q&A Chapters

- 51** **Australia**
Clayton Utz: Colin Loveday & Andrew Morrison
- 60** **Belgium**
Linklaters LLP: Xavier Taton & Gert-Jan Hendrix
- 71** **China**
Fangda Partners: Frank Li & Rebecca Lu
- 80** **France**
Delcade Avocats & Solicitors: Jérémy Bernard
Fidal: Jean-Louis Fourgoux & Leyla Djavadi
- 89** **Germany**
Clifford Chance Partnerschaft mbB: Tim Schreiber & Burkhard Schneider
- 100** **India**
Cyril Amarchand Mangaldas: Shaneen Parikh & Namita Shetty
- 109** **Japan**
Mori Hamada & Matsumoto: Masahiro Ueda, Kenta Minamitani, Toshiki Hitaka & Tetsushi Kamimura
- 118** **Netherlands**
De Brauw Blackstone Westbroek N.V.: Daan Beenders, Dennis Horeman & Machteld de Monchy
- 126** **Switzerland**
Eversheds Sutherland Ltd.: Peter Haas
- 134** **United Kingdom**
Pinsent Masons LLP: David Barker & Emilie Jones
- 143** **USA**
Norton Rose Fulbright: Daniel McClure & Matthew Dekovich

India

Cyril Amarchand Mangaldas



Shaneen Parikh



Namita Shetty

1 Class/Group Actions

1.1 Do you have a specific procedure or set of rules for bringing, handling, and/or legally resolving a series or group of related claims? If so, please outline this.

Various Indian statutes provide for bringing, handling and legally resolving a series of group or related claims, commonly referred to as representative or class actions.

Representative actions under the Code of Civil Procedure, 1908

The Code of Civil Procedure, 1908 (“CPC”) governs the procedure applicable to all civil actions before courts in India. Order 1 Rule 8 thereof permits a group of plaintiffs to collectively bring a claim to court in a representative capacity for the benefit of a group or class of persons, with the permission of the court. This provision carves out an exception to the general rule that all persons interested in a suit should be made parties, and enables a group or class of persons with common interest or grievance in a matter to bring an action through only a few named representative plaintiffs. Similar provisions enable a group of representative defendants to enter a defence on behalf of the entire group.

The court must give notice of institution of the suit to all persons interested, so that any person on whose behalf, or for whose benefit, the suit is instituted (or defended) may apply to be impleaded as a party. A decree passed is binding on all members of the group or class.

Additionally, under Section 91 two or more persons may apply to a court for permission to bring a collective action for relief in respect of any public nuisance or other wrongful acts affecting/likely to affect the public at large, even if no special damage has been caused to the persons bringing such action.

The Companies Act, 2013

Minority shareholder interests have been protected under the erstwhile Companies Act, 1956, as well as the Companies Act, 2013 (“Companies Act”), where redressal is available in relation to acts of oppression by the majority shareholders and/or mismanagement of the company by the controlling group.

The Companies Act formally brought into statute the concept of class action. Under Sections 241–246, members/depositors of a company (not including a banking company) may, either individually or as a class, seek redress and relief from the National Company Law Tribunal (“NCLT”). (The NCLT has been conferred with jurisdiction over all corporate/company law matters.) The numerical threshold which must be met is detailed in question 1.5 below.

Relief may be sought against the company, its directors, auditors, experts, advisers or consultants for any fraudulent, unlawful or wrongful act, including monetary compensation or damages for commission of fraudulent acts or those that are prejudicial to the interests of the company, or its members or depositors, or are against the public interest. Additionally, the NCLT may consolidate similar applications pending in different jurisdictions into a single application, upon which the class members or depositors may choose the lead applicant.

The Consumer Protection Act, 2019

The Consumer Protection Act, 2019 (“CP Act”) overhauled consumer protection law in India, introducing express provisions for class action in Section 35. Where one or more consumers have a common interest or grievance in relation to any goods or services provided, and seek the same relief on behalf of or for the benefit of the group, they may file a class action on behalf of the group. The action is maintainable with the permission of the relevant Consumer Dispute Redressal Commission (“Commission”). The Central and State Governments are also empowered to file a complaint either in their individual or representative capacity for the interests of consumers at large. Reliefs that may be granted include compensating the consumer for damages suffered, as well as punitive damages in egregious cases.

Representative actions under the Competition Act, 2002

Under Section 53N(4) of the Competition Act, 2002, an action may be filed by or on behalf of, and for the benefit of, a class of persons having the same interest who have suffered any loss or damage, due to any anti-competitive practice or abuse of dominant position in the market by an enterprise. The action lies before, and is subject to permission being granted by, the National Company Law Appellate Tribunal (“NCLAT”). Here also, the procedure under the CPC is required to be followed. (Note that to date, no such actions have been filed.)

Public interest litigation

While not, strictly speaking, a class action as it is normally understood, a public interest litigation (“PIL”) is another mechanism by which a person may seek redressal before a court, on behalf of and in the interest of the public at large. PILs can be filed for public benefit to enforce fundamental rights under Articles 32 and 226 of the Constitution of India. The petitioners themselves need not have directly suffered any legal injury or been a part of the affected class – this being an exception to the rule of *locus standi* (right to bring an action in court). The Supreme Court and High Courts of India take a liberal approach by entertaining PILs without mandating strict procedural compliance.

Representative actions under the Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 (“ID Act”) enables workmen to unite and make collective demands in a dispute either against employer(s) or other workmen, in relation to employment or labour conditions.

1.2 Do these rules apply to all areas of law or to certain sectors only, e.g., competition law, security/financial services? Please outline any rules relating to specific areas of law.

These rules are limited in their operation, as outlined in question 1.1 above.

1.3 Does the procedure provide for the management of claims by means of class action (where the determination of one claim determines the claims of the class), or by means of a group action where related claims are managed together, but the decision in one claim does not automatically create a binding precedent for the others in the group, or by some other process?

Insofar as actions taken by a collective group or class of plaintiffs are concerned, orders passed in the relevant action are binding on all members of the class for whose benefit the action has been initiated and conclusively determine the claims of the entire class.

Indian courts have the power to club or group together similar legal proceedings – which may cover similar issues or parties, so that they are heard together, for convenience or efficiency. Orders will, however, be passed in each of such actions individually, albeit they may be common orders, and as such will not necessarily be binding on all proceedings that may be so tagged or clubbed together.

1.4 Is the procedure ‘opt-in’ or ‘opt-out’?

The procedure is effectively ‘opt-in’, inasmuch as the relevant class or group of plaintiffs must specifically apply to have the action treated as a class action under the relevant statute.

In representative actions under the CPC, members of a class may also apply to implead themselves as part of the named plaintiff group in an action brought on their behalf.

Where a class action is instituted under the Companies Act, a member of the company is entitled to opt out of the action, with the permission of the NCLT. The member may also pursue an individual claim/action against the company, in any other forum or under any other law.

1.5 Is there a minimum threshold/number of claims that can be managed under the procedure?

Under the Companies Act, the minimum threshold of members required to bring a class action is mentioned below:

- i) In respect of a company with share capital:
 - a. the lesser of 5% of the total number of members of the company or 100 members; or
 - b. in a listed company – members holding at least 2% of the issued share capital; or
 - c. in an unlisted company – members holding at least 5% of the issued share capital.
- ii) In respect of a company without share capital – at least 1/5 of the total number of members;

- iii) In case of an action by depositors:
 - a. the lesser of 5% of the total number of depositors or 100 depositors of the company; or
 - b. such number of depositors to whom the company owes 5% of the total deposits.

Other statutes do not specify a minimum number and it is ultimately left to the court to determine whether the entire class is affected and appropriately represented. For instance, in *Ambrish Kumar Shukla v. Ferrous Infrastructure* [2016, NCDRC], the National Commission held that a complaint on behalf of only 10 out of 100 flat-buyers was not maintainable as a class action as it would not achieve the object thereof.

1.6 How similar must the claims be and what are the legal requirements for proceeding on a class or group basis? For example, in what circumstances will a class action be certified or a group litigation order made?

Class action provisions under the CPC, CP Act and Competition Act envisage the class as having the same interest in the proceedings. See *Chairman, Tamil Nadu Housing Board v. TN Ganapathy* [1990, Supreme Court] where it was held that members of a class must share a common interest or grievance for which they seek redressal. While the statutes themselves are silent as to the exact meaning of the term ‘same interest’, the CPC notes that it is not necessary that persons representing the class have the same ‘cause of action’.

Insofar as consumer claims are concerned, in *Ambrish Kumar Shukla (supra)*, the National Commission observed held that the term ‘persons so interested’ and ‘persons having the same interest’ refers to persons having a common grievance against the same service provider. Further, the complaint must necessarily be filed on behalf or for the benefit of all persons having a common grievance, seeking a common relief and consequently having a community of interest against the same service provider. Once an action is accepted by the relevant Commission as a class or group action, collective orders, binding the relevant class, may be issued.

Under the Companies Act, a class is formed by virtue of being members/depositors of the company concerned, and a class action can be filed if they consider that the management or company’s affairs are being conducted in a manner prejudicial to the interests of the company or the shareholders/depositors. Although the Companies Act avoids the term ‘same interest’, in accepting an application as a class action, the NCLT will consider various factors, including whether there are questions of law or fact common to the class, whether individual actions would create a risk of inconsistent decisions, whether collective adjudications would be dispositive of the interests of the members, among others.

1.7 Who can bring the class/group proceedings, e.g., individuals, group(s) and/or representative bodies?

Yes, such actions can be brought by an individual, a group of persons and/or a representative body/association on behalf of the entire class.

1.8 Where a class/group action is initiated/approved by the court, must potential claimants be informed of the action? If so, how are they notified? Is advertising of the class/group action – before or after court approval – permitted or required? Are there any restrictions on such advertising?

Where a representative action is filed under the CPC, the court must give notice of institution of the suit to all persons of a

class having same interest in the suit, either by personal service or public advertisement (where personal service is impractical). The provisions of the CPC, and therefore the notice requirement, also extend to class actions under the CP Act and the Competition Act.

Under the Companies Act, upon admission of the action the NCLT must also to serve a public notice to all members/depositors forming part of the class.

1.9 How many group/class actions are commonly brought each year and in what areas of law, e.g., have group/class action procedures been used in the fields of: Product liability; Securities/financial services/shareholder claims; Competition; Consumer fraud; Privacy; Mass tort claims, e.g., disaster litigation; Environmental; Intellectual property; or Employment law?

There is no empirical data available in this respect. Anecdotally, representative suits have been filed under the CPC in relation to securities/financial services claims. PILs have been filed in relation to environmental claims, including governmental action in relation to natural disasters, torts relating to public nuisance, governmental corruption, etc.

To date, the provisions for class action under the Companies Act have not yet been invoked.

The position under the CP Act is similar, although attempts were made by a consumer protection association to initiate a class action in the aftermath of the ‘Satyam scandal’ (when, in 2009, the Chairman of Satyam Computer Services Ltd. allegedly confessed to having manipulated the company’s accounts to the extent of INR 109 billion). The National Commission refused to hear the complaint, citing, among other reasons, that it was not equipped to deal with such cases. The action fell through.

1.10 What remedies are available where such claims are brought, e.g., monetary compensation and/or injunctive/declaratory relief, and what are the limitations on remedies, if any?

The relevant statutes entitle the applicants to seek compensation or damages for losses sustained, including punitive damages under the CP Act. Other forms of equitable relief in the form of injunctive or declaratory orders are also available.

Under the CPC, courts have extensive powers to grant interim relief, as a measure of protection pending the proceedings, to preserve some property or the rights of a party pending final disposal of proceedings, including:

- i. Prohibitory or mandatory injunctions.
- ii. Attachment before property.
- iii. Appointment of receiver.
- iv. *Status quo* order.
- v. Other reliefs – disclosure of assets/furnishing of security.

Under the Companies Act, relief in the form of compensation or damages may be granted by the NCLT against the company, its directors, auditors, experts, advisers or consultants for any fraudulent, unlawful or wrongful act(s) which are prejudicial to the interests of the company, its members or depositors, or to the public interest.

In a class action, the NCLT can pass wide-ranging orders, including:

- i. An order/injunction restraining the company from committing a breach of a provision of the company’s memorandum or articles.
- ii. Declaring a resolution altering the memorandum or articles of the company as void in certain cases.

- iii. An order/injunction restraining the company and its directors from acting on a resolution.
- iv. An order/injunction restraining the company from carrying out an act contrary to any other law in force in India.
- v. An order/injunction restraining the company from taking action contrary to any resolution passed by the shareholders.

1.11 Are there any limitations in your jurisdiction on global/cross-border class or group actions, including any limitation on the ability of international claimants to participate in such actions?

There is no preclusion on foreign claimants, whether individually or as a class, initiating legal action in an Indian court with appropriate jurisdiction. See also question 9.1 below.

2 Actions by Representative Bodies

2.1 Do you have a procedure permitting collective actions by representative bodies, e.g., consumer organisations or interest groups?

The CP Act enables a voluntary consumer association registered under Companies Act or under any other law to file a representative action on behalf of an individual or a group of consumers having the same interest (whether or not the consumers are members of the association) in relation to any goods sold or delivered, with the permission of the relevant Commission.

The ID Act also enables trade unions to file representative actions on behalf a group of workmen or even an individual workman in certain cases.

2.2 Who is permitted to bring such claims, e.g., public authorities, state-appointed ombudsmen or consumer associations? Must the organisation be approved by the state?

Under the CP Act, a registered consumer association may bring a collective claim on behalf of a class of consumers.

Under the ID Act, a registered trade union may represent the interests of workmen and bring a claim/action on their behalf.

2.3 In what circumstances may representative actions be brought? Is the procedure only available in respect of certain areas of law, e.g., consumer disputes?

See question 1.1.

Representative actions under the CPC are available in any area of law. Additionally, the PIL mechanism is available and has been invoked across a wide range of issues/law where the interest of the public at large is affected.

2.4 What remedies are available where such claims are brought, e.g., injunctive/declaratory relief and/or monetary compensation, and what are the limitations on remedies, if any?

The relevant statutes entitle the applicants to seek compensation or damages for losses sustained, including punitive damages under the CP Act.

Other forms of equitable relief in the form of injunctive or declaratory orders are also available.

See also question 1.10.

3 Court Procedures

3.1 Is the trial by a judge or a jury?

The jury system is not followed in India. All cases before a court are before a judge (single or division bench). Tribunals such as the NCLT and the Commissions have judicially appointed members who adjudicate cases filed therein.

3.2 How are the proceedings managed, e.g., are they dealt with by specialist courts/judges? Is a specialist judge appointed to manage the procedural aspects and/or hear the case?

Civil courts functioning under the CPC are presided over by judges, who are conferred with subject matter assignments by the Chief Justice of the relevant court.

Under the CP Act, consumer disputes and actions lie before the Commission at the District, State and national levels, and are dealt with by appointed members having special knowledge and experience in sectors including finance, business, law, accountancy and commerce.

All company-related disputes, including class actions, lie before the NCLT. Cases under the Competition Act lie before the NCLAT. Matters before the NCLT and NCLAT are dealt with by judicial members having experience in practising law, and technical members having special knowledge and experience in sectors including industrial finance, industrial management, investment and accountancy.

3.3 How is the group or class of claims defined, e.g., by certification of a class? Can the court impose a 'cut-off' date by which claimants must join the litigation?

The Companies Act, CP Act and Competition Act do not specifically define the term 'class', instead setting out the requirements for maintaining a claim/action on behalf of a class of persons.

Under the Companies Act, a minimum numerical threshold is required to be met and the NCLT will also consider other factors in admitting an action on behalf of a class of members/depositors (see questions 1.5 and 1.6). Additionally, while issuing notice to the members of the class, the NCLT must also notify a cut-off date by which any person may choose to opt out of the action or make any representation in relation to the matter.

Under the CPC, the permission or leave of the court is required to maintain a suit as a representative action. Additionally, while issuing notice to all persons interested in the suit, the court may provide a deadline or 'cut-off' date by which such persons may join the action.

The Central Consumer Protection Authority formed under the CP Act regulates matters relating to violation of consumer rights, unfair trade practices and advertisements which are prejudicial to public and consumer interests. A complaint made on behalf of consumers as a class will be examined by the Authority, which may pass orders such as recalling goods/services which may be unsafe, directing compensation to affected consumers, etc.

3.4 Do the courts commonly select 'test' or 'model' cases and try all issues of law and fact in those cases, or do they determine generic or preliminary issues of law or fact, or are both approaches available? If the court can determine preliminary issues, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided? If a judge determines certain preliminary factual issues, are those factual determinations binding on a later jury?

The statutes do not contain any specific direction in this regard, and it would be left to the relevant court to adopt such practice as would best meet the ends of justice.

The determination of issues by the court is binding on all class members.

3.5 Are any other case management procedures typically used in the context of class/group litigation?

The court may follow such procedure as would meet the ends of justice; for instance, allowing affected members of the class to make representations orally or in writing, grouping similar actions together, etc.

3.6 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

Courts hearing PILs often appoint experts to advise on technical issues and counsel to appear as *amicus curiae* on issues of law. The relevant statutes do not provide any specific directions in terms of procedure, nature or extent of the evidence. The expert owes his duty to the court.

3.7 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

Indian court procedure does not recognise the US style of 'depositions' as witness testimony used to gather information as part of the discovery process. Written witness statements and expert reports are generally exchanged prior to trial. Witnesses must testify under oath before the court and may be liable for the offence of perjury under the Indian Penal Code, 1860 if a witness testifies falsely.

Evidence is usually given by way of affidavit of examination-in-chief (direct evidence) although, if justified, the court may allow direct examination to take place orally in open court. The counterparty has the right to cross-examine the witness and the court also has the power to put questions to the witness. Re-examination of a witness is permissible only under limited circumstances and in relation to questions arising directly out of the cross-examination.

A witness outside the jurisdiction of or unable to attend court may be examined by way of a commission.

3.8 If discovery is permitted, do courts typically phase such discovery, such as bifurcating discovery between class discovery and merits discovery?

Discovery is carried out in relation to all evidence sought/disclosed in a case. There is no provision for bifurcation.

3.9 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

Each party is required to disclose, on an ongoing basis, all documents in its possession or control, referred to and relied upon by it (both in support of and/or against its case). The counterparty is entitled to take inspection of the documents disclosed. If a party's disclosure is inadequate, or the party does not provide inspection, the other party has the right to request the court to direct disclosure or inspection.

A party may also request the other party to provide further particulars, or to administer interrogatories in relation to statements made in the counterparty's pleadings.

3.10 Can the parties challenge the admissibility of expert testimony prior to or after a determination as to whether a claim can proceed on a class or group basis?

Expert testimony is filed at the evidentiary stage, which would be after the action is permitted to proceed as a class/group action. Any challenge to admissibility would be permissible at that stage.

3.11 How long does it normally take to get to trial?

The duration to reach trial varies from court to court and State to State, but can be between five and ten years for representative actions under the CPC, owing to the backlog of cases and formal procedures that apply.

For actions filed before the NCLT/NCLAT and Commissions, this timeframe is shorter – between one and three years.

That said, applications for interim relief, to protect subject matter of the dispute or rights of parties, can be decided within weeks, if not days, with *ad interim* and *ex parte* relief also being available in urgent cases.

3.12 What appeal options are available, including whether an appeal can be taken immediately of a decision certifying a class or entering a group litigation order?

There is no appeal on a decision granting permission to proceed as a class action.

Under the CPC, appeals lie from any final order/judgment/decree. Certain interim orders are also appealable.

The CPC, CP Act, Companies Act and the Competition Act contain similar provisions in relation to final orders/judgments and interim orders.

Specific appeal procedures and limitation periods apply in such cases.

Where no appeal is permitted, the alternate remedies of civil revision and review are nevertheless available to an aggrieved party.

Additionally, notwithstanding that there is no statutory right of appeal where there are important questions of law, the Supreme Court may be approached for special leave to appeal against any judgment or order of any court in India.

4 Time Limits

4.1 Are there any time limits on bringing or issuing court proceedings?

Yes; limitation periods for initiating legal proceedings are set out in the Limitation Act, 1963 (“**Limitation Act**”).

4.2 If so, please explain what these are. Does the age or condition of the claimant affect the calculation of any time limits and does the court have discretion to disapply time limits?

Unless specifically provided for in specific statutes, the limitation periods for court proceedings are set out in the Limitation Act, and depend on the date on which the cause of action arises. In most cases the limitation period is three years, including for cases under the CPC and the Companies Act.

Under the CP Act, a consumer complaint by way of a class action must be filed within two years from the date of the cause of action.

In certain cases, courts and specialised forums can condone delay, for instance in filing appeals. The Commissions may condone delay if the complainant establishes sufficient cause for such delay.

The limitation period of three years under the CPC and Companies Act is, however, final and delay cannot be condoned once limitation has expired.

4.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

Under the Limitation Act, limitation would stand extended and not begin to run until the plaintiff or applicant has discovered the fraud/concealment/misrepresentation that gives rise to the cause of action or could, with reasonable diligence, have discovered it.

4.4 Does the filing of a class or group lawsuit toll the limitation period by which any individual who falls within that class or group would have to bring his, her, or its own individual claims?

For individuals who opt out of the class action, limitation periods would continue to apply, such that they will have to initiate individual legal proceedings, if so desired, within the limitation period.

5 Remedies

5.1 What types of damage are recoverable, e.g., bodily injury, mental damage, damage to property, economic loss?

Under Indian law, damages may be granted by way of compensation for any loss or damage caused to the applicants, which naturally arose from the cause of action/acts complained of. Damages are not awarded for remote and indirect loss or damage sustained.

Accordingly, damages would be awarded to restore the complainant to the situation in which he would have been but for the wrongful act complained of, including bodily injury, mental damage, damage to property, and also economic loss if that is direct and foreseeable.

Under the Companies Act, relief in the form of compensation or damages may be granted by the NCLT against the company, its directors, auditors, experts, advisers or consultants for any fraudulent, unlawful or wrongful act(s) which is/are prejudicial to the interests of the company, its members or depositors, or to the public interest. Under the CP Act, compensation or damages for any loss suffered by the consumer due to the negligence of the counterparty, including punitive damages, may also be granted at the discretion of the relevant Commission. Further, the relevant Commission may direct the manufacturer

or seller to, *inter alia*, recall the defective product and/or replace the defective product, etc.

Under the Competition Act, the NCLAT may award compensation for any anti-competitive actions or abuse of dominant position in the market by an enterprise.

5.2 Can damages be recovered in respect of the cost of medical monitoring (e.g., covering the cost of investigations or tests) in circumstances where a product has not yet malfunctioned and caused injury, but it may do so in future?

Under the CP Act, the liability of the manufacturer or seller of any product or service arises only if any 'harm' is caused to a consumer by dangerous or defective products.

In our view, in certain egregious cases of defective products, courts would be competent to direct a reimbursement of such costs, by way of compensation or damages.

5.3 Are punitive damages recoverable? If so, are there any restrictions?

Punitive damages are specifically recoverable under the CP Act.

While they may also be granted in other cases, such as PILs, courts tend to exercise caution when granting such damages and they are often nominal in terms of quantum.

5.4 Is there a maximum limit on the damages recoverable from one defendant, e.g., for a series of claims arising from one product/incident or accident?

There is no maximum limit in this regard. Courts would take into account the level of contributory negligence or other actions resulting in the defective product and may split the damages between various defendants, such as the manufacturers of different parts of the whole.

5.5 How are damages quantified? Are they divided amongst the members of the class/group and, if so, on what basis?

There is no specific standard for quantification of damages, or their division among members of the group. The court has a wide discretion in this regard, and it would depend on the facts of each individual case, including the damages actually suffered.

5.6 Do special rules apply to the settlement of claims/proceedings, e.g., is court approval required? If so, what are those rules?

Parties to a representative action may settle the claims/proceedings, which will then be recorded by the court in a final ruling disposing of the action. However, prior thereto, the court must give notice of the proposed settlement to all interested persons forming part of the class. Any members of the class would be entitled to pursue an independent action should they not be satisfied with the proposed settlement.

The other statutes do not contain provisions for settlement of class actions, but the parties would nevertheless be entitled to bring *quietus* to the proceedings. The relevant forum would,

in such cases, follow a procedure that would ensure no prejudice is caused to members of the class and would likely give notice/invite objections before recording a settlement or permitting withdrawal of the action.

6 Costs

6.1 Can the successful party recover: (a) court fees or other incidental expenses; and/or (b) their own legal costs of bringing the proceedings, from the losing party? Does the 'loser pays' rule apply?

Indian law recognises the 'loser pays' rule and may award costs to reimburse the successful party's costs of litigation. While courts have wide discretion in deciding whether and what costs are payable, in practice it is unusual for actual costs to be awarded (save in purely commercial cases) and the court is more likely to award nominal costs, or such amount as it considers to be reasonable.

Under the CPC, a court may also award compensatory costs for false or vexatious claims or defences, subject to a maximum of INR 3,000 or an amount not exceeding the limits of pecuniary jurisdiction of the court, whichever is less.

Under the Companies Act, costs of a successful class action must be defrayed by the company or any other person responsible for any oppressive act. The NCLT may also direct an unsuccessful applicant to pay such costs to the opposite party if such an application is rejected as being frivolous or vexatious (subject to a cap of INR 100,000).

Under the CP Act, the relevant Commission has the power to award costs to the applicants. In the event a complaint is dismissed as being frivolous or vexatious, the complainant can be ordered to pay the opposite party costs not exceeding INR 10,000.

6.2 How are the costs of litigation shared amongst the members of the group/class? How are the costs common to all claims involved in the action ('common costs') and the costs attributable to each individual claim ('individual costs') allocated?

There is no specific mechanism provided for sharing costs amongst members of a class. The attribution would depend on the costs actually incurred by each member and the facts of each case.

6.3 What are the costs consequences, if any, where a member of the group/class discontinues their claim before the conclusion of the group/class action?

A class member may opt out of class action proceedings (with the permission of the NCLT where the action is under the Companies Act). There is no specific provision for attribution of costs in this regard.

6.4 Do the courts manage the costs incurred by the parties, e.g., by limiting the amount of costs recoverable or by imposing a 'cap' on costs? Are costs assessed by the court during and/or at the end of the proceedings?

There is no specific mandate for a court to manage costs incurred by parties, but in awarding costs, the court will consider whether the costs incurred were justified. See also question 6.1. Costs will be assessed at the end of the proceedings.

7 Funding

7.1 Is public funding, e.g., legal aid, available?

There are no provisions in relation to class actions being funded by legal aid. (The Legal Services Authority Act, 1987 provides free legal services/aid to economically and socially disadvantaged citizens.)

The Securities Exchange Board of India (“SEBI”) was formed to protect interests of investors in securities and to promote the development of and regulate the securities market. The Investor Protection and Education Fund (“IEPF”), established under the SEBI (Aid for Legal Proceedings) Guidelines, 2009, funds recognised investor associations seeking redressal against misstatement, misrepresentation, fraudulent and unfair trade practices, and market manipulation, in connection with securities transactions, etc.

The funding is available (by way of reimbursement up to 75% of the expenses incurred) only where 1,000 or more investors are affected, and is capped at INR 2 million for proceedings filed before the Supreme Court of India and at INR 1 million for proceedings filed before any other forum.

7.2 If so, are there any restrictions on the availability of public funding?

There are no provisions for public funding of such cases.

7.3 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

The Advocates Act, 1961, read with Rule 20 of the Bar Council of India Rules, 1975, prohibits Indian-qualified lawyers from charging conditional or contingency fees.

7.4 Is third-party funding of claims permitted and, if so, on what basis may funding be provided?

There exists no specific legislation or regulation dealing with third-party funding in India. Various court decisions (including by the erstwhile Privy Council) have recognised third-party funding arrangements over the years, although none specifically in the modern context of professional funders.

The CPC recognises that cases may be funded by a third party (inasmuch as certain States empower a court to implead a third-party financier in a suit as a plaintiff, in certain circumstances), and also requires the financier to give security for the payment of costs incurred by any defendant.

8 Other Mechanisms

8.1 Can consumers’ claims be assigned to a consumer association or representative body and brought by that body? If so, please outline the procedure.

There are no provisions for assignment of claims. Under Indian law, while it is lawful for a plaintiff in a pending suit/arbitration to assign the benefit which he may obtain under any decree/award that may be passed, a claimant cannot assign the claim itself – a

“mere right to sue” or a “right of action for recovering damages” is not assignable under the Transfer of Property Act, 1882.

8.2 Can consumers’ claims be brought by a professional commercial claimant which purchases the rights to individual claims in return for a share of the proceeds of the action? If so, please outline the procedure.

See question 8.1 above – claims cannot be assigned. It is, however, possible to assign a judgment or award in return for a share of the proceeds of recovery.

8.3 Can criminal proceedings be used as a means of pursuing civil damages claims on behalf of a group or class?

No, such recourse is not available.

8.4 Are alternative methods of dispute resolution available, e.g., can the matter be referred to an Ombudsman? Is mediation or arbitration available?

Alternate methods of dispute resolution (“ADR”) are always available, subject to agreement between the parties, as they are voluntary in nature. Mediation/conciliation and arbitration are commonly used.

Under the CPC, where a court believes that there exist elements of settlement that may be acceptable to the parties, it may formulate such terms and refer the parties to an ADR process.

There is no ombudsman set up for resolving class or group actions under Indian law.

8.5 Are statutory compensation schemes available, e.g., for small claims?

There are no specific compensation schemes provided for class actions.

Certain statutes, such as the CP Act or the Motor Vehicles Act, 1988, require payment of compensation to victims for any loss or injury suffered.

8.6 What remedies are available where such alternative mechanisms are pursued, e.g., injunctive/declaratory relief and/or monetary compensation?

See question 1.10. Parties may seek similar reliefs in an ADR process.

9 Other Matters

9.1 Can claims be brought by residents from other jurisdictions? Are there rules to restrict ‘forum shopping’?

Yes, claims can be brought by residents of other jurisdictions in any court where the cause of action has arisen and defendants reside/carry on business. Courts in their discretion have stayed or transferred proceedings if they believe another forum is more appropriate or if there is no real and substantial connection between the nature of the dispute and the jurisdiction.

While forum shopping is disparaged, apart from the provisions which specify the courts that are competent to exercise jurisdiction, there are no specific provisions to restrict forum shopping.

9.2 Are there any changes in the law proposed to promote or limit class/group actions in your jurisdiction?

No such changes are currently proposed.

Acknowledgment

The authors would like to acknowledge the contribution of Tushar Karkaria to the preparation of this chapter. Tushar is an Associate at Cyril Amarchand Mangaldas (LL.B., University of Mumbai).

Tel: +91 22 2496 4455 / Email: tushar.karkaria@cyrilshroff.com



Shaneen Parikh has over two decades of experience, is qualified to practise as an advocate and solicitor in India, and is also qualified as a solicitor in England & Wales.

Shaneen focuses on arbitration (both domestic and international), having represented clients in several industry sectors and a wide variety of disputes relating to commercial contracts, shareholder issues, infrastructure, power and construction projects, financial and structured products, and white-collar crime. She has represented parties in arbitrations under various institutional rules including those of the Singapore International Arbitration Centre ("**SIAC**"), International Chamber of Commerce, London Court of International Arbitration ("**LCIA**"), etc. as well as in UNCITRAL and *ad hoc* arbitrations.

Shaneen is appointed as a Member of the Court of Arbitration of the SIAC and the Council of the Mumbai Centre for International Arbitration. She is also an LCIA Users' Council Member, and an ambassador of the Asia Pacific Arbitration Group of the International Bar Association. Shaneen has been recommended by *Who's Who Legal* as a Future Leader in Arbitration (2020 and 2021) and ranked as "Most Highly Regarded (Partner)" 2021 for Arbitration in the Asia-Pacific Region.

Cyril Amarchand Mangaldas

Peninsula Chambers, Peninsula Corporate Park
GK Marg, Lower Parel
Mumbai – 400 013
India

Tel: +91 22 2496 4455
Email: shaneen.parikh@cyrilshroff.com
URL: www.cyrilshroff.com



Namita Shetty is a Principal Associate in the Dispute Resolution Team at the Mumbai Office of Cyril Amarchand Mangaldas. She has wide-ranging experience in corporate and commercial litigation and arbitration. Her practice area covers a wide range of disputes including those relating to joint ventures, shareholder agreements, private equity transactions, media rights contracts, general commercial contracts, construction projects, and securities and other regulatory litigation.

Cyril Amarchand Mangaldas

Peninsula Chambers, Peninsula Corporate Park
GK Marg, Lower Parel
Mumbai – 400 013
India

Tel: +91 22 2496 4455
Email: namita.shetty@cyrilshroff.com
URL: www.cyrilshroff.com

Cyril Amarchand Mangaldas ("**CAM**") is India's leading law firm, with a global reputation for being a trusted advisor to its clients. Tracing its professional lineage to 1917, CAM was founded to continue the legacy of Amarchand & Mangaldas & Suresh A. Shroff & Co. – whose pre-eminence, expertise and reputation of almost a century were unparalleled in the Indian legal fraternity. The firm advises a large and diverse set of clients, including domestic and foreign commercial enterprises, financial institutions, private equity funds, venture capital funds, start-ups, government and regulatory bodies. With 750 lawyers, over 150 Partners and offices in Mumbai, Delhi (NCR), Bengaluru, Ahmedabad, Hyderabad, Chennai, GIFT City and Singapore, CAM is the largest full-service law firm, enabling it to deliver truly multidisciplinary advice for its clients' business needs.

Recently the firm was awarded 'Law Firm of the Year' at the *IFLR1000* India Awards 2021 and 'India Deal Firm of the Year' at the *ALB* India Awards 2021.

www.cyrilshroff.com



cyril amarchand mangaldas
ahead of the curve

ICLG.com



Current titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms