

# ITALY

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## OVERVIEW OF CLASS/COLLECTIVE ACTIONS AND CURRENT TRENDS

### 1. WHAT IS THE DEFINITION OF CLASS/COLLECTIVE ACTIONS IN YOUR JURISDICTION? ARE THEY POPULAR AND WHAT ARE THE CURRENT TRENDS?

#### Definition of class/collective actions

The members of a “class” can bring a “class action” to seek compensation for damages and/or restitution. For the definition of “class” see *Question 5, Definition of class*.

Class actions differ from the following:

- **Cumulative actions.** These are actions initiated jointly by multiple claimants against one or more defendants which do not require (unlike class actions) that claimants belong to the same class.
- **Representative actions.** These are actions started by consumer associations under Article 140 of Legislative Decree no. 206/2005 (Consumer Code) to seek injunctive relief, and not compensation or restitution, in favour of all consumers.

#### Use of class/collective actions

Class actions are not yet very popular in Italy because:

- They were only recently introduced in the Italian system (the relevant provisions came into force on 1 January 2010).
- The statutory rules on class actions are designed in such a way that they reduce the incentive to bring such an action:
  - the legislator’s choice of the opt-in model (*see Question 2*), which is commonly seen as a less powerful instrument than the alternative opt-out model adopted in other jurisdictions because there is no automatic mechanism to include in the class a potentially very large number of plaintiffs;
  - the restrictions to the rights that can be enforced and the claims that can be protected with class actions (*see Question 3*); and
  - the potentially non-refundable costs of the proceedings (*see Question 14*).

#### Current trends

There are no official databases on class actions in Italy. However, unofficial statistics (covering approximately 50 class actions started to date) show that only a limited number

of these actions passed the preliminary admissibility test and only two have been decided on the merits (*Tribunal of Naples, ruling of 7 January 2013, and Tribunal of Torino, ruling of 28 March 2014*).

A few class actions concern alleged unfair banking practices and, more specifically, unlawful bank account charges.

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## REGULATORY FRAMEWORK

### 2. WHAT ARE THE PRINCIPAL SOURCES OF LAW AND REGULATIONS RELATING TO CLASS/COLLECTIVE ACTIONS? WHAT ARE THE DIFFERENT MECHANISMS FOR BRINGING A CLASS/COLLECTIVE ACTION?

#### **Principal sources of law**

Class actions in Italy are governed by Article 140 *bis* of the Consumer Code, which was introduced with Law no. 244 of 24 December 2007 (*Legge Finanziaria*) and subsequently amended, most recently by Article 6 of the *Decreto Liberalizzazioni* enacted by Law no. 27 of 24 March 2012.

#### **Principal institutions**

The tribunal located in the capital of the Italian region where the defendant has its registered office has jurisdiction over the class action. However, not all regions have their own class actions court, and for some of them the competent judge is located in a neighbouring region. The tribunal adjudicates in a panel composed of three judges.

#### **Different mechanisms**

Class actions can be initiated by one or more consumers or users (promoters) (*Article 140 bis, Consumer Code*). Other consumers or users with "homogenous" or similar rights can later join the relevant action by filing, even without the assistance of a lawyer, a written application and evidence supporting their claim (opt-in model) (*see Question 3*).

### 3. ARE CLASS/COLLECTIVE ACTIONS PERMITTED/USED IN ALL AREAS OF LAW, OR ONLY IN SPECIFIC AREAS?

Law no. 27/2012 has recently broadened the scope of application of class actions beyond product liability claims. Class actions are currently applicable (only) in the following areas:

- Contractual rights of consumers and users who find themselves in a similar (homogeneous) situation in relation to the same defendant, including due to agreements entered into through standard terms and conditions.
- Similar claims (homogeneous rights) that end-users of a certain product may have in relation to the manufacturer, even in the absence of a direct contractual relationship (product liability).

- Similar claims (homogeneous rights) to compensation for the prejudice suffered by consumers and users as a consequence of the same unfair business practises or anti-competitive conduct.

**Product liability**

Product liability claims fall within the Italian class action system.

**Environmental law**

Class actions cannot be brought for matters concerning environmental law, as these do not form part of the main areas under Law no. 27/2012. Some commentators, however, consider that class actions should be allowed to protect the health of a given class of individuals harmed by conduct causing pollution.

**Competition law**

Class actions can be brought for matters concerning unfair business practices or anti-competitive conduct.

**Pensions disputes**

Class actions may also concern pensions disputes. A class action has been recently brought against the Italian Social Security Authority (*Istituto Nazionale della Previdenza Sociale*) (INPS) by a women's association seeking compensation for damages allegedly deriving from the wrong calculation of the pensions pursuant to Law no. 243/2004, which, subject to certain conditions, allows women to retire at the age of 57.

**Financial services: consumer redress**

Class actions can be brought in connection with disputes regarding consumer financial services rendered under agreements entered into by and between consumers and suppliers of financial services through standard agreements or distance marketing, which are also governed by provisions of the Consumer Code.

**Other areas of law/policy**

Class actions can also interact with other areas of law/policy, such as:

- Consumer protection law (the provisions regarding class actions are included in the Consumer Code, which sets forth all main provisions in the area of consumer protection).
- Data privacy.
- Criminal law (facts constituting criminal offences and giving rise to criminal proceedings can also serve as the basis for seeking damages through class actions).

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## LIMITATION

### 4. WHAT ARE THE KEY LIMITATION PERIODS FOR CLASS/COLLECTIVE ACTIONS?

Limitation periods vary according to the relevant cause of action. The key limitation periods commonly applicable to claims that can be brought through class actions are:

- Contractual liability claims: ten years from the date on which the relevant right can be exercised, except if the law specifically provides for a shorter limitation period (for example, in case of insurance claims).
- Tort claims: five years from the date on which the relevant unlawful act occurred and the injured person has become, or should have become, aware of the damage and of the relevant causality link. Product liability claims, however, must be brought within three years from the moment the injured person has become, or should have become, aware of the damage, the defect of the product and the identity of the defendant (*Article 125, Consumer Code*).

Any limitation periods can be interrupted by the service to the (potential) defendant of (*Article 2943, Italian Civil Code*):

- A formal notice with the requirements of the *atto di messa in mora* (a formal notice, typically by means of a registered letter, stating the will to enforce a given right and providing a detailed request of payment/restitution).
- A writ of summons or a deed of appointment of arbitrator. In the case of valid interruption, a new limitation period starts to run from the date on which the interruption occurred.

If a right to compensation or restitution arises from a criminal offence which is subject to a longer limitation period, this limitation period also applies to the related civil action (*Article 2947 (paragraph 3), Italian Civil Code*).

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## STANDING AND PROCEDURAL FRAMEWORK FOR BRINGING AN ACTION

### STANDING

### 5. WHAT ARE THE RULES FOR BRINGING A CLAIM IN A CLASS/COLLECTIVE ACTION?

#### **Definition of class**

Italian law does not provide a specific definition of class. However, there is some guidance in the Consumer Code: a class can only include “consumers or users” whose similar (homogeneous) rights (*see Question 3*) were violated by the conduct of a “business entity” (*Article 140 bis, Consumer Code*). A business entity may be an individual, a corporation or other legal entity acting in furtherance of its business. For the definition of consumers or users see below, *Potential claimant*.

The concept of homogeneous rights was introduced only recently into Article 140 *bis*. Previously, the narrower standard to identify a class was one of “identical” rights (in practice, identical claims). The older standard caused most class actions to be declared inadmissible due to the absence of a properly defined class.

According to some commentators, homogeneous rights relevant for the purpose of class actions are those rights that stem from the same cause of action and that lead to the same type of claim (compensation or restitution), irrespective of the amount of damages actually suffered by each claimant. Indeed, the actual existence of homogeneous rights is crucial to the preliminary assessment of admissibility of any class actions (*see Question 6*).

### **Potential claimant**

Class actions can be initiated only by “consumers or users”, defined by the Consumer Code as “any individual who is acting outside a trade, business or profession”. A single consumer or user (promoter) can also file an action by delegating an association or committee of which he is a member. Class actions cannot be initiated by businesses or professionals, or by entities other than individuals.

In general, under Italian law actions brought by individuals who are not the holders of the right in dispute or do not have an interest in the claim are inadmissible. Accordingly, class actions must be brought by or on behalf of individuals who have been affected by the conduct of the defendant. Class actions are only admissible if the claimant declares him or herself to be the holder of the right or interest in question.

Aside from the class action, the following list of representative bodies can also start representative actions to obtain injunctive relief under Article 140 of the Consumer Code:

- Consumers’ and users’ associations registered with the Italian Ministry of Economic Development pursuant to Article 137 of the Consumer Code.
- Independent organisations recognised by an EU member state as having standing to request injunctions for the protection of collective interests, and whose name is published in the *EU Official Journal*.

### **Claimants outside the jurisdiction**

Italian Courts have jurisdiction if the defendant is domiciled in Italy (*Article 140 bis, Consumer Code*). As a result, foreigners can bring class actions before the Italian courts if the defendant is domiciled in Italy.

In relation to independent organisations from other EU member states see above, *Potential claimant*.

### **Professional claimants**

The assignment of consumers’ claims to professional commercial claimants is not common in Italy. It is, however, in principle admissible in Italy, as it is only restricted where the:

- Relevant claim is not determined or otherwise determinable.
- Claim to be assigned is of a strictly personal nature.
- Assignment has been excluded by the parties or is forbidden by the law.

## QUALIFICATION, JOINDER AND TEST CASES

## 6. WHAT ARE THE KEY PROCEDURAL ELEMENTS FOR MAINTAINING A CASE AS A CLASS ACTION?

**Certification/qualification**

A key procedural step in a class action is the preliminary assessment of its admissibility (*giudizio di ammissibilità*).

The court undertakes this assessment during the first hearing, when it determines whether the action meets all the essential legal requirements. In particular, a class action may be regarded as inadmissible if:

- It appears *prima facie* to be unfounded.
- A conflict of interests exists, particularly between the representative consumer association and the defendant.
- The different claims are not sufficiently similar (homogeneous) (*see Question 3*).
- The promoter appears incapable of protecting the interests of the class.

If the class action is considered admissible, the competent court will:

- Set the conditions to ensure (for example, through appropriate publicity) the timely opt-in by other consumers or users.
- Define what claims are covered by the relevant action, specifying the criteria under which other consumers or users may be considered part of the class.
- Set a deadline, not exceeding 120 days from the completion of the publicity, to file an application to opt in.
- Set a timetable for the case and provide guidance to ensure the fair, efficient and prompt management of the case.

If the class action is considered inadmissible, the court will decide on costs and order the publication of the judgment at the claimant's expense.

**Minimum/maximum number of claimants**

There is no minimum number of consumers or users to bring a class action (*Article 140 bis, Consumer Code*). Therefore, even a single promoter can bring a class action and manage to get it through its preliminary assessment of admissibility.

**Joining other claimants**

Under the opt-in model, claimants with homogenous rights (as determined by the court in its decision declaring the action admissible), may opt-in by filing an application with the same court (*see above, Certification/qualification*).

Applications must be filed, with or without legal assistance, within the mandatory deadline set by the court in the admissibility ruling, and in any event no later than 120 days from the moment the relevant admissibility decision is made public.

The application can also be filed by certified mail, e-mail or fax. This application will entail the withdrawal of any individual actions of the applicant based on the same cause of action.

### Test cases

Italian courts do not use test or model cases.

## TIMETABLING

### 7. WHAT IS THE USUAL PROCEDURAL TIMETABLE FOR A CASE?

The promoter, acting individually or through a consumer association, may initiate a class action by serving a writ of summons on the defendant at least 90 days before the first hearing (see *Question 6, Certification/qualification*). The date of the first hearing is set by the promoter in accordance with the Italian Civil Procedure Code, and may be rescheduled by the court according to its own timetable. The writ of summons must also be served on the public prosecutor (*pubblico ministero*), who is entitled to intervene at the admissibility stage.

Within ten days from service, the writ of summons and the relevant documentation supporting the claim must be filed with the competent court.

If the action is declared admissible at the first hearing, the court sets:

- Firstly, a deadline for the parties to ensure adequate publicity for the class action.
- Secondly, another deadline (no later than 120 days after completion of the publicity) for consumers or users willing to opt-in.

The court's decision on admissibility can be challenged before the competent Court of Appeal within 30 days from its notification to the interested party. The Court of Appeal must issue its decision within 40 days from the moment the appeal is filed (this deadline, however, is not binding).

First instance proceedings last on average two to three years, mainly depending on the duration of the procedural phase dedicated to the collection of evidence. The final judgment on the merits becomes enforceable 180 days after its adoption.

## EFFECT OF THE AREA OF LAW ON THE PROCEDURAL SYSTEM

### 8. DOES THE APPLICABLE PROCEDURAL SYSTEM VARY DEPENDING ON THE RELEVANT AREA OF LAW IN WHICH THE CLASS/COLLECTIVE ACTION IS BROUGHT?

The same procedural rules apply to all class actions, regardless of the relevant causes of action and of the areas of law in which a particular class action is brought (see *Question 3*).

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## FUNDING AND COSTS

### FUNDING

#### 9. WHAT ARE THE RULES GOVERNING LAWYER'S FEES IN CLASS/COLLECTIVE ACTIONS?

The rules governing lawyer's fees in class actions are the same as those applicable to individual actions. Accordingly, lawyers and their clients can freely determine the fees and general expenses and may also agree on contingency or success fees, provided that:

- The relevant agreements are formalised in writing.
- Lawyers' fees are proportional to the type and complexity of the assistance provided to the client.

Moreover, lawyers cannot receive a portion of the disputed asset or claim in full or partial settlement of their fees (*divieto del patto di quota lite*). However, this prohibition has been much debated in the light of the parties' ability to agree with their counsel contingency or success fees determined as a percentage on the value of the relevant claim.

Absent a fee agreement and when the amount of the legal fees is disputed between a party and its counsel, the amount of fees is determined, on request, by the competent court on the basis of the parameters set forth in Ministerial Decree no. 55/2014. This decree identifies a range of fees applicable on the basis of the value of the claim and in connection with each procedural phase, that is:

- Study of the case.
- Initial phase.
- Phase dedicated to the collection of evidence.
- Final phase.

#### 10. IS THIRD PARTY FUNDING OF CLASS/COLLECTIVE ACTIONS PERMITTED?

Third party funding is admissible although not frequent in Italy, due to different factors, such as the:

- Lack of pre-trial discovery that often entails high costs for the claimant.
- Longer proceedings and a less predictable outcome when compared to common law jurisdictions.
- Relatively limited amount of legal fees.

#### 11. IS FINANCIAL SUPPORT AVAILABLE FROM ANY GOVERNMENT OR OTHER PUBLIC BODY FOR CLASS/COLLECTIVE ACTION LITIGATION?

Italian law does not provide for any financial support specifically targeted to class/collective actions.

More generally, legal aid in Italy is available in all litigation matters and is regulated by Law no. 134 of 29 March 2001, as amended by Presidential Decree no. 115 of 30 May 2002.

An individual may be eligible for legal aid if the taxable income resulting from the most recent tax returns is below a certain level.

A party eligible for legal aid must submit an application to the secretary of the local Lawyers' Bar, which then assesses the soundness of the claim and decides, within ten days from the filing of the petition, whether the requirements for the admission to legal aid are met. If legal aid is granted, the beneficiary may choose his lawyer from a dedicated list and all costs will be borne by the state.

#### 12. ARE OTHER FUNDING OPTIONS AVAILABLE TO CLAIMANTS IN CLASS/ COLLECTIVE ACTIONS?

Additional funding options may be available for individual claimants through consumer associations.

#### COSTS

#### 13. WHAT ARE THE KEY RULES FOR COSTS/FEEES IN CLASS/COLLECTIVE ACTION LITIGATION?

The leading claimant or promoter bears the costs involved with the initiation of the class action. Consumers or users who join later may be requested to pay a joining fee.

The same "loser pays" rule applies to class actions as to other ordinary civil proceedings. The legal costs are set by the court in its final judgment, on the basis of parameters set forth in Ministerial Decree no. 55/2014. For class actions, ordinary lawyer's fees may be tripled.

Generally, the court's decision on costs does not take into account actual costs incurred by the winning party, or any fee agreements between the parties and their lawyers. Moreover, if no party wins, or in exceptional circumstances, the judge may decide to order each party to bear (in full or in part) its own costs.

#### KEY EFFECTS OF THE COSTS/FUNDING REGIME

#### 14. WHAT ARE THE KEY EFFECTS OF THE CURRENT COSTS/FUNDING REGIME?

Incentives to bring a class action are fairly limited because:

- All litigation costs are in principle borne by the promoter until the final decision.
- Costs may not be recovered in full even in the case of a successful outcome.
- The promoter may be also ordered to pay damages to the defendant pursuant to Article 96 of the Italian Civil Procedure Code, where the court determines that the action was brought in bad faith or due to gross negligence (those orders have also become rather frequent since Italian courts have been empowered to issue those orders on their own initiative).

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## DISCLOSURE AND PRIVILEGE

### 15. WHAT IS THE PROCEDURE FOR DISCLOSURE OF DOCUMENTS IN A CLASS/ COLLECTIVE ACTION?

The rules on the disclosure of evidence are the same for class actions and for ordinary civil proceedings. In particular, on a party's request the court, subject to certain limitations, may order:

- Disclosure of specifically identified documents to the other party or to another person.
- Personal inspections or inspection of things in possession of the parties and/or third parties.

Italian law does not provide for pre-trial discovery, nor does it envisage the possibility of requesting the disclosure of entire categories of documents. In addition, the court may order the parties, or a third party, to submit to a technical assessment by an expert witness.

Parties intending to apply for a disclosure order must submit to the court a specific petition within the deadline set by the court for the filing of the evidence. The disclosure order must only concern documents deemed to be necessary for the proceedings. With it, the court also sets the timing, the place and the method of the relevant disclosure. If the disclosure order involves a third party, the court must balance the applicant's interests with the rights of the third party. The court may also decide to hear that third party before the adoption of the disclosure order. Costs related to the disclosure must be borne in any case by the applicant.

No specific restrictions apply to the use of documents disclosed under a disclosure order. These documents can also be used in other proceedings.

As disclosure normally pertains to the merits of the case, the relevant decisions are adopted by the court after the class action has been deemed admissible.

### 16. ARE THERE SPECIAL CONSIDERATIONS FOR PRIVILEGE IN RELATION TO CLASS/ COLLECTIVE ACTIONS?

In Italy there is no statutory concept of legal privilege. Therefore, in the context of ordinary civil proceedings as well as of class actions, the parties cannot refuse the disclosure of documents on account of their "privileged" nature to resist a court order for disclosure (in Italy there is no general obligation of disclosure; discovery is very limited (*see Question 15*)).

In practice, however, a court should not order the disclosure of the correspondence between an attorney and his client. Indeed, under Articles 118 and 210 of the Italian Civil Procedure Code, the court's power to order inspections and/or disclosure of documents is subject to restrictions intended to protect the parties concerned from serious damages and to avoid breaches of professional secrecy (the closest under Italian law to the protection of what is otherwise known as legal privilege, particularly in common law countries) or to guarantee other forms of protection set forth in criminal law.

The disclosure of confidential (or privileged) information by a lawyer in breach of his duty to preserve the secrecy of information obtained in the course of a client's representation is, in any case, prohibited under criminal law (*Article 622, Italian Criminal Code*). This prohibition is also found in the Italian ethics rules for lawyers, under which lawyers must:

- Keep confidential facts and circumstances learned in the exercise of their professional activity and related to their clients (*Article 13*).
- Refrain from filing with the court confidential correspondence exchanged with other lawyers in the context of a client's representation (*Article 48*).
- Refrain, except in extraordinary cases, from giving witness testimony or reporting to the court facts or circumstances learned in the exercise of their professional activity and related to their clients (*Article 51*).

#### 17. WHAT IS THE PROCEDURE FOR FILING FACTUAL AND EXPERT WITNESS EVIDENCE IN CLASS/COLLECTIVE ACTIONS?

The rules about witness testimony and expert witness reports in class actions are those of ordinary civil proceedings.

Under the applicable civil procedure rules, witnesses can only respond to questions put to them by the court. There is no direct interrogation of witnesses by the parties, nor any form of cross-interrogation. Witness testimony may only concern facts, not personal opinions.

The party who intends to rely on witness testimony must submit an application to the court, specifically listing for each witness the questions that it would like the court to ask. It is then for the court to decide which questions are admissible and relevant for the lawsuit. If the application is granted, in full or in part, the court schedules one or more hearings for the acquisition of the witness testimony.

The parties may also file without notice expert witness reports or request that the court appoints a technical expert witness (for example, to assess the amount of damages). The court may also appoint expert witnesses on its own initiative, if the case requires the resolution of specific technical issues. If the court appoints an expert, each party is entitled to appoint its own, to challenge or comment on the former's findings.

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## DEFENCE

#### 18. CAN ONE DEFENDANT APPLY TO JOIN OTHER POSSIBLE DEFENDANTS IN A CLASS/COLLECTIVE ACTION?

##### **Joining other defendants**

The rules concerning the joinder of third parties in class actions are those of ordinary civil proceedings. Accordingly, the defendant can apply to join third parties to the proceedings if he believes that the claim also involves a third party or intends to be guaranteed by a third party. This application must be made by the defendant with its initial defence brief.

Under Italian Law, each party to a civil litigation may also apply for a joinder of proceedings that are already simultaneously pending before the same court and are related to the same claim or connected claims (for example, in the context of product liability claims, when there are two separate proceedings against the manufacturer and the seller of a defective product). This general rule can also apply to class actions.

In contrast to the regime applicable to ordinary civil proceedings, a third party cannot intervene in any pending class action proceedings. Article 140 *bis* of the Consumer Code

specifically excludes the application of the general regime of third parties' intervention in civil proceedings (*intervento del terzo*) set forth by Article 105 of the Italian Civil Procedure Code.

### **Rights of multiple defendants**

As a general rule, each defendant is entitled to appoint its own lawyer and to file its own defence briefs. However, multiple defendants are allowed to appoint the same lawyer, to file joint defence briefs and to appoint joint experts. Multiple defendants who have appointed different lawyers may also enter into joint defence agreements or similar arrangements for sharing information on the defence and on the strategy without restrictions. The use of confidential information exchanged among lawyers is, in any case, subject to the restrictions set forth in the lawyers' deontological (rule-based) code of conduct, which among other things provides that a lawyer must refrain from filing, mentioning in the defence briefs or otherwise reporting to the court confidential correspondence or information exchanged with colleagues (*Articles 48 and 51*).

## 19. WHAT IS THE MEASURE OF DAMAGES UNDER NATIONAL LAW IN THE FIELD OF CLASS/COLLECTIVE ACTIONS?

### **Damages**

As a rule, Italian law only allows for the recovery of the actual damage, both:

- Economic (pure economic loss, out-of-pocket expenses and loss-of-profit).
- Non-economic (moral damage, health damage and other non-pecuniary loss).

No punitive or multiple damages can be awarded under Italian Law. This principle has been firmly acknowledged by the Italian Supreme Court (see, for example, *ruling no. 1183/2007*). However, bringing or defending an action in bad faith or due to gross negligence may lead the judge to award a specific additional compensation to the other party (*Article 96, Italian Civil Procedure Code*).

No caps apply to damage compensation. However, in the field of contractual liability, claimants can only recover the damage that was "foreseeable" when the contract was entered into (this limitation is obviously not present for tort cases).

The court determines and apportions damages among the claimants on the basis of the evidence provided by each of them.

### **Recovering damages**

A defendant that is ordered to pay damages may subsequently bring a contribution claim against any third parties deemed to be jointly (and severally) liable for the unlawful conduct. This independent (follow-on) action may allow to recover, at least in part, the damages already paid, based on the actual contribution of the third party to the unlawful conduct.

### **Interest on damages**

As a general rule, claimants in civil actions are entitled to interest on the damages determined by the court. Absent specific agreements among the parties, interest is determined at the legal rate set forth by Article 1284 of the Italian Civil Code. The starting

date for the calculation of interest may vary depending on the type of claim. However, pursuant to a recent reform (*Law 162/2014*), which came into force on 11 November 2014, the higher interest rate set forth under D. L.vo 231/2002 (equal to the base interest rate set every six months by the Italian Ministry of Economy and Finance plus 8%) applies to all civil claims as of the starting date of the relevant judicial or arbitral proceedings (provided that these proceedings have been commenced after 11 December 2014).

This rule also applies to class actions, except that no interest is due on sums paid within 180 days from the ruling on the merits (*Article 140 bis, Consumer Code*).

## 20. WHAT RULES APPLY TO DECLARATORY RELIEF AND INTERIM AWARDS IN CLASS/COLLECTIVE ACTIONS?

### **Declaratory relief**

Declaratory relief is not available in the context of class actions. Although extending the reliefs available for class actions is debated among commentators, they currently only cover the ascertainment of the defendant's liability in conjunction with a damages award or restitution claim.

### **Interim awards**

Under Italian law, judges may adopt interim decisions if they deem appropriate to decide early on in the case preliminary issues raised by the parties (for example, objections regarding lack of jurisdiction or bans due to the applicable statute of limitations) or claims not requiring additional evidence, without deciding in full the merit of the case. This general rule also applies to class actions, in relation to which any interim decisions would likely follow the preliminary assessment of admissibility of the relevant class action.

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## SETTLEMENT

## 21. WHAT RULES APPLY TO SETTLEMENT OF CLASS/COLLECTIVE ACTIONS?

### **Settlement rules**

Parties to a class action can waive their claims and/or reach a settlement. Waivers and/or settlements are only binding for the parties that have expressly accepted them (*Article 140 bis, Consumer Code*). Settlements are not subject to the approval of a set percentage of claimants and/or the court, or other authorities.

### **Separate settlements**

If there is more than one defendant, separate settlements are possible. If only some of the defendants settle, the proceedings continue against those that have not settled.

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## APPEALS

### 22. DO PARTIES HAVE A RIGHT TO APPEAL DECISIONS RELATING TO CLASS ACTIONS, SUCH AS A DECISION GRANTING OR DENYING CERTIFICATION OF A CLASS ACTION?

The preliminary decision on the admissibility of a class action may be challenged before the competent Court of Appeal within 30 days from its notification to the relevant party. If the preliminary decision declared the class action admissible, the appeal against it does not suspend the main proceedings. The appeal against the admissibility decision should be decided by the Court of Appeal within 40 days from its filing (though the deadline is not binding).

As for ordinary civil proceedings, judgments on the merits in class action cases may be appealed within six months from when the ruling is made available to the parties at the court's registrar. If the winning party serves on the other party a copy of the judgment, the appeal must be filed within 30 days from the service notice.

On the appellant's request, the Court of Appeal may suspend the enforceability of the lower court ruling if the suspension is justified by serious reasons to be assessed by balancing the reciprocal interests of the parties and by also taking into account the potential insolvency of one or more parties. Accordingly, if, for example, the enforcement of a lower court ruling may likely cause the insolvency of the defendant and much lesser inconvenience for the claimant, the court may suspend the enforceability.

The appeal judgment may be subject to a further appeal before the Supreme Court solely on points of law.

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## ALTERNATIVE DISPUTE RESOLUTION

### 23. IS ALTERNATIVE DISPUTE RESOLUTION (ADR) AVAILABLE IN CLASS/COLLECTIVE ACTIONS?

The parties to a class action may, at any time, seek settlement through ADR.

Article 141 of the Consumer Code expressly refers to legally recognised ADR bodies and institutions dedicated to consumer disputes, providing among others that:

- Consumers or professionals may also start, electronically, out-of-court procedures for the resolution of consumer disputes.
- Irrespective of the outcome of any out-of-court procedures, the consumer cannot be prevented from commencing legal proceedings.

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## PROPOSALS FOR REFORM

### 24. ARE THERE ANY PROPOSALS FOR REFORM CONCERNING CLASS/COLLECTIVE ACTIONS?

#### **Bill to reform class action system**

In May 2015 a bill aimed at reforming the current class action system was approved by the Parliamentary Commission for Justice (*Commissione Giustizia della Camera*). Under the bill, the use of class actions would be broadened. The bill also sets out special incentives to encourage individuals to bring class actions. Based on the information publicly and currently available, the main features of this reform are the following:

- Class actions could be brought, without any limitation, to protect any homogeneous individual rights irrespective of the relevant causes of action.
- Consistently with the broadening of the scope of the class action system, the provisions regulating class action would appear in the Civil Procedure Code rather than the Consumer Code.
- Class actions should be brought before the specialised Companies Courts (*Tribunale delle Imprese*), which have special competence for cases concerning IP rights, anti-trust claims and claims involving corporate entities and corporate relationships (for example, liability claims against directors and auditors, transfers of shares, shareholders' agreements, companies' control and direction).
- The opt-in rights could be exercised after the adoption of the final ruling on the merits of any particular class action.
- The court would appoint a common representative (*rappresentante comune*) of all claimants.
- If the class action damages claim is successful, the court could order the defendant to pay a special fee to the common representative of the claimants and also to the claimants' lawyers.

At present, it is not possible to predict whether and to what extent this reform would be approved and come into force, or when it would ever come into force, considering the strong opposition already shown by the industrial unions.

#### **Implementation of EU private damages directive**

At present there is no particular bill for the implementation of the EU private damages directive. The authors do not expect any such implementation in Italy to radically modify the class action system, in its present form or in any modified form following the introduction of the bill currently pending before the Parliament.

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## ONLINE RESOURCES

### CLASSACTION

**W** [www.classaction.it](http://www.classaction.it)

**Description.** The website gives a general overview of relevant class action statutes in Italy and contains information on pending class actions as well as comments and contributions on the matter. The website also gives consumers or users the possibility to report or highlight collective damage cases.

The website is also available in English.

#### CODACONS

**W** [www.codacons.it/aree/classaction](http://www.codacons.it/aree/classaction)

**Description.** This is the official website of *Codacons*, one of the most important consumer associations in Italy. The website has a specific area containing news and updates on pending and potential class actions.

#### MINISTRY OF INTERNAL AFFAIRS

**W** [www.interno.gov.it/amministrazionetrasparente/servizi-erogati/class-action](http://www.interno.gov.it/amministrazionetrasparente/servizi-erogati/class-action)

**Description.** This is the official website of the Ministry of Internal Affairs, and contains information on pending class actions and updates in this respect.