
EDITORIAL

Welcome to the tenth edition of *The International Comparative Legal Guide to: Class & Group Actions*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of class and group actions.

It is divided into two main sections:

Three general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting class & group actions, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in class and group actions in 18 jurisdictions.

All chapters are written by leading class and group actions lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Ian Dodds-Smith and Alison Brown of Arnold & Porter Kaye Scholer LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Class/Group Actions

1.1 Do you have a specific procedure for handling a series or group of related claims? If so, please outline this.

Yes, Taiwan's Civil Code provides two methods: (1) plaintiffs bring suit together as co-plaintiffs at their own initiative, with the selection of representative(s) for the underlying suit; and (2) plaintiffs incorporate themselves into an entity, which will bring the suit.

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.

The rules apply to all civil proceedings.

1.3 Does the procedure provide for the management of claims by means of class action (where the determination of one claim leads to the determination 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?

By means of class action, where the determination of one claim leads to the determination of the class.

1.4 Is the procedure 'opt-in' or 'opt-out'?

The procedure is opt-in.

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

There is no minimum threshold.

1.6 How similar must the claims be? For example, in what circumstances will a class action be certified or a group litigation order made?

The plaintiffs must have a "common interest", and the case must be based on common facts and application of law. In addition,

there must be a common relation between the plaintiffs and the defendant(s) as a matter of law.

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

As set out in question 1.1 above, there are two methods, and there is no restriction on who can bring the class/group proceedings. It is a matter for the class member to decide. Generally, the plaintiffs choose their representative(s) to bring the action on behalf of the 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 permitted or required? Are there any restrictions on such advertising?

Where the plaintiffs gather together to bring the action jointly, and the class action is approved by the court, the class action shall be announced publicly by the court at the court's expense through government gazette and the media to notify the potential claimants, if: (1) the court inquires with the class representative and obtains his/her/its consent; (2) the class representative petitions to the court for a public announcement; and (3) other interested claimants petition to the court for a public announcement. Such public announcement is deemed a 20-day notice to the potential claimants.

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; Mass tort claims, e.g. disaster litigation; Environmental; Intellectual property; or Employment law?

Generally, class actions are rare in Taiwan. The number of class actions each year has remained below 10 since the relevant law was enacted. Most of the class actions are in the area of securities/shareholders' claims, environmental protection and consumer protection.

1.10 What remedies are available where such claims are brought e.g. monetary compensation and/or injunctive/declaratory relief?

All remedies in civil proceedings are available in class actions.

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?

Yes, an interested group (such as environmental, consumer protection groups, shareholder protection association) may bring collective actions for the purpose of preserving the public interest.

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?

Any group that is validly established may bring such claims, as long as the claims are in the public interest.

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?

Any group that is validly established may bring such claims, as long as the claims are in the public interest. The law does not classify in which areas the procedure is available. The rationale of the legislation is to preserve and advance the public interest.

2.4 What remedies are available where such claims are brought e.g. injunctive/declaratory relief and/or monetary compensation?

All remedies in civil proceedings are available.

3 Court Procedures

3.1 Is the trial by a judge or a jury?

By judge(s). There is no jury trial in Taiwan.

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?

The proceedings are managed and dealt with by judges in the ordinary course of court assignment.

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 plaintiffs must be certified by court as a class. In line with the public announcement set out in question 1.8 above, the cut-off date is 20 days from the date of the public announcement.

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 order 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?

Both approaches are available. The proceedings will be treated, in effect, as ordinary civil proceedings.

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

No, the proceedings will be treated, in effect, as ordinary civil proceedings.

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?

Generally speaking, parties have the option to present expert evidence. The court, however, does have the power and authority to seek expert evidence in support of the case. There is no restriction on the nature or extent of the expert evidence.

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?

Witnesses must give testimony in the court hearing in person.

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

Under Taiwan law, there is no discovery of evidence between the parties. The plaintiffs have the burden of proof, for which the defendant has no duty to disclose or provide.

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

In general, it takes approximately four to eight months to get to trial.

3.10 What appeal options are available?

Under Taiwan law, there are three instances. The parties may appeal to the High Court after the District Court enters into the judgment. After the High Court gives its decision on appeal, the parties may appeal to the Supreme Court for final judgment.

4 Time Limits

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

Yes, the time limit for civil claims applies.

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?

Statutory limitations apply to the institution of court proceedings. The age or condition of claimants is generally not a ground for altering the time limit, but the court has the discretion to disapply time limits in case of fraud or abuse of process. Please see the answer to question 4.3 below.

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

Under Taiwan law, where either party is found to have been involved in abuse of process or fraudulent actions, it has the authority to disapply the statutory limitation.

5 Remedies

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

All damages in civil proceedings are recoverable; however, where the damages arise from damages to personal property, the plaintiff is not entitled to claim for mental distress and pain & suffering. In principle, under Taiwan law, damages to personal property do not give rise to a cause of action for pain & suffering of the property owner.

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?

The burden of proof is on the plaintiffs, and so are the costs arising from the proof. However, if the court takes the initiative to seek evidence, all costs incurred shall be borne by the losing party.

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

Punitive damages are generally recoverable if the parties have agreed on such punitive damages in the agreement. The court has the discretion to decide whether such punitive damages as agreed by the parties are reasonable, and may reduce the punitive damages if the court regards the agreed amount as too high. In the absence of the agreement by the parties, the court can only award punitive damages where the applicable law provides the legal basis. For example, in cases involving infringement of a trade secret, the disgruntled party may recover punitive damages up to three times of the amount claimed.

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 on the damages recoverable from one defendant.

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

There are two scenarios: (1) the court, in principle, still has to decide the damages of the plaintiff on each account; and (2) if the members of the class agree upon the amount to be allocated to each individual member by themselves, then the class representative may petition to the court for a “lump sum” order, and the court may order the total amount recoverable by the class, without having to assess the amount to be awarded to each individual class member.

5.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required?

There is no special rule for settlement of the claims; provided, however, that in some cases where the class representative’s authority to settle on behalf of the class is limited by other interested party/parties, the representative cannot settle with the defendant.

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?

The winning party may recover court fees, costs and expenses incurred in the procurement of evidence, and witnesses’ travel expenses. Attorney fees are only recoverable by the winning party in appeals before the Supreme Court.

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?

This would be decided by the members among themselves.

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?

This would be decided by the members among themselves.

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?

No, the courts do not manage the costs incurred in the proceedings.

7 Funding

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

Yes, funding is available through legal aid.

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

Public funding is available to those who fit into the class or criteria, such as income threshold, family status, etc.

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

The Legal Aid Foundation shall review each applicant's case (e.g., family income and number of family members) and determine the funding available to each applicant. In some cases, such review may be exempted where the claimants fit into a particular class, e.g., minority claimants or aboriginals without legal representation. There is no distinction between conditional and contingency fees.

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

In the absence of conflict of interest, third party funding is permitted.

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.

Yes, it may be assigned to the consumer association or representative body and brought by that body. There is no specific procedure for such assignment. These associations or representative bodies may take the initiative to bring actions against the defendant. However, there is a threshold of 20 consumers, who must assign their claims to the consumer association or representative body first, before legal proceedings can be instituted.

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.

Yes, as above.

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

Yes, they can. Generally speaking, when initiating a criminal complaint, the plaintiffs will file a civil claim for monetary damages at the same time, and the court will decide on the criminal liability of the defendant, as well as assess the damages.

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

Yes, both mediation and arbitration are available as alternative methods of dispute resolution.

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

No, there is no such scheme under Taiwan law.

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

Monetary damages are available as an alternative method. Injunctive and declaratory relief can only be awarded by the a court of law.

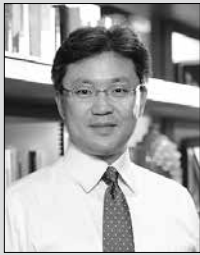
9 Other Matters

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

No. Plaintiffs must file the suit at the place with nexus, generally in the place where the defendant is located. Forum shopping will generally be rejected.

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

No, there have been no proposed changes in the law.

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Lin & Partners was founded in 2002 by Dr. George Lin, who has nearly 30 years of experience in law practice. With the core concept that an independent, boutique law firm best serves both local and multi-national clients with custom, high-quality legal services at reasonable costs, Lin & Partners has received numerous international recognitions as one of the best law firms in Taiwan. Many of the firm's clients are multi-national conglomerates, and the firm works closely with major law firms in other jurisdictions, particularly in cross-border dispute resolution cases. Due to its independent status, Lin & Partners has become one of the top choices for international law firms without presence in Taiwan when seeking dispute resolution advice.

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