



# ICLG

The International Comparative Legal Guide to:

## **Class & Group Actions 2013**

**5th Edition**

A practical cross-border insight into class and group actions work

Published by Global Legal Group, in association with CDR, with contributions from:

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URL: www.glgroup.co.uk

#### GLG Cover Design

F&F Studio Design

#### GLG Cover Image Source

iStockphoto

#### Printed by

Ashford Colour Press Ltd  
October 2012

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No photocopying

ISBN 978-1-908070-38-8

ISSN 1757-2797

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## General Chapters:

1	<b>EU Developments in Relation to Cross-border Actions for Collective Redress –</b> Alison Brown, Arnold & Porter (UK) LLP	1
2	<b>International Class Action Settlements in the Netherlands since <i>Converium</i> –</b> Ruud Hermans & Jan de Bie Leuveling Tjeenk, De Brauw Blackstone Westbroek N.V.	6
3	<b>Emerging Issues in the International Growth and the Internationalisation of Class Actions and Other Forms of Collective Redress: Lessons from the Domestic Front? –</b> Michael Kotrly, Sylvie Rodrigue, Norton Rose Canada LLP & Tricia Hobson, Norton Rose Australia	12
4	<b>Competition Law Private Actions in England &amp; Wales: Access to Collective Redress &amp; Plans to Reform –</b> Mark Clarke & Lorraine McLinn, Ashurst LLP	20
5	<b>Recent Trends in US Securities Class Actions against Non-US Companies –</b> Robert Patton, NERA Economic Consulting	28

## Country Chapters:

6	<b>Argentina</b>	Bulló – Tassi – Estebenet – Lipera – Torassa – Abogados: Gustavo J. Torassa & Mariano E. de Estrada	35
7	<b>Australia</b>	Clayton Utz: Colin Loveday & Andrew Morrison	41
8	<b>Austria</b>	Fiebinger Polak Leon & Partner Rechtsanwälte GmbH: DDr. Karina Hellbert	49
9	<b>Belgium</b>	Linklaters LLP: Joost Verlinden & Stijn Sabbe	55
10	<b>Brazil</b>	TozziniFreire Advogados: Patricia Helena Marta Martins	60
11	<b>Bulgaria</b>	Georgiev, Todorov & Co.: Alexander Katzarsky & Georgi Georgiev	64
12	<b>Canada</b>	Stikeman Elliott LLP: David R. Byers & Adrian C. Lang	71
13	<b>England &amp; Wales</b>	Arnold & Porter (UK) LLP: Alison Brown & Ian Dodds-Smith	79
14	<b>France</b>	August & Debouzy: Dominique de Combles de Nayves & Benoît Javaux	89
15	<b>Israel</b>	Yigal Arnon & Co.: Barak Tal & Ruth Loven	99
16	<b>Italy</b>	Gianni, Origoni, Grippo, Cappelli & Partners: Daniele Vecchi & Federica Cinquetti	106
17	<b>Japan</b>	Anderson Mōri & Tomotsune: Nobuhito Sawasaki & Toshishige Fujiwara	112
18	<b>Lithuania</b>	LAWIN: Rytis Paukštė & Rimantė Tamulytė	120
19	<b>Mexico</b>	Ríos-Ferrer, Guillén-Llarena, Treviño y Rivera S.C.: Ricardo Ríos-Ferrer & Juan Pablo Patiño	126
20	<b>Poland</b>	Wierzbowski Eversheds Sp.k.: Iwo Gabrysiak	132
21	<b>Portugal</b>	Campos Ferreira, Sá Carneiro & Associados: João Pimentel & José Maria Júdice	137
22	<b>Romania</b>	Pachiu & Associates: Corina Radu & Adelina Somoiağ	143
23	<b>Russia</b>	Quinn Emanuel Urquhart & Sullivan: Ivan Marisin & Vasily Kuznetsov	153
24	<b>Sweden</b>	Vinge: Krister Azelius & Maria Maaniidi	159
25	<b>Switzerland</b>	Eversheds Ltd.: Peter Haas & Grégoire Mangeat	166
26	<b>Taiwan</b>	Lee and Li, Attorneys-at-Law: Alan T. L. Lin & Michael T. H. Yang	172
27	<b>USA</b>	Michael Best & Friedrich LLP: Paul E. Benson & Joseph Louis Olson	180

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# Sweden



Krister Azelius



Maria Maaniidi

## Vinge

### 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. The Group Proceedings Act (2002:599) (the “Act”), which entered into force on 1 January 2003, is a specific act available for all civil claims. The Act is purely procedural and thus does not affect the contents of substantive law. A claim under the Act must be brought by one single claimant as a representative of a group of individuals and/or legal persons. For claims based on environmental law, the Environmental Act (1998:808) contains special provisions governing group proceedings.

Further and of much more practical importance, the Code of Judicial Procedure and case law pertaining thereto has demonstrated a relatively liberal approach to joint adjudication of similar cases brought by several claimants. Since joint adjudication in accordance with the Code of Judicial Procedure is of great practical importance, we will make references to that procedure along with the Act where relevant below. In this context, it should be noted that an action may not be brought under the Act unless the majority of the claims to which the action relates cannot equally well be pursued by individual claims that are jointly adjudicated under the Code of Judicial Procedure (see Section 8 of the Act).

#### 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 Act is not restricted to certain areas of civil law. Accordingly, any legal claim that can be litigated in courts of general jurisdiction according to the Code of Judicial Procedure can also be litigated as group proceedings pursuant to the Act provided that other provisions in the Act are fulfilled. Certain labour and marketing law claims, which are dealt with by special civil courts, are excluded from application of the Act.

#### 1.3 Does the procedure provide for the management of claims by means of class action (whether 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?

The Act (Section 29) provides that determination of one claim leads

to determination of the class.

Under the more commonly used procedure for joint adjudication in accordance with the Code of Judicial Procedure, a decision is not formally a binding precedent for the others in the group.

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

Actions under the Act are opt-in through a personal notice to the court by each group member (Section 14).

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

The Act does not specify any fixed threshold, although it does provide that the number of claims shall be factored in when deciding on whether a class action should be permitted (Section 8).

#### 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 Act provides, *inter alia*, that the claims shall be “founded on circumstances that are common or of a similar nature” (Section 8). Upon deciding how strict this requirement is, it shall be considered if a group action is the only way for the group to get access to justice. In the case *Aer Olympic*, compensation regarding airplane tickets to various destinations were considered similar enough, even though the tickets were purchased at different times, in different ways and at different prices.

According to the Code of Judicial Procedure, claims between different parties *shall* be joined if they concern the same matter at issue and *may* also, at the discretion of the court, be joined together if it will aid the adjudication of the claims.

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

According to the Act, there are three different kinds of group actions allowed. These are:

1. private group actions, which may be instituted by any natural person or legal entity that has a claim that is subject to the action (Section 4);
2. organisation group actions instituted by non-profit organisations (Section 5); and
3. public group actions instituted by public authorities (Section 6).



**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?**

The Act provides that anyone covered by the instigator of the group's description of the group shall be informed of the action (Section 13). Such information shall normally be given by the court (but under certain circumstances also by a party) by personal service or in any other suitable way. Thus, advertising is permitted but not required. There are no legal restrictions on such advertising made by the court or any party, but it should be noted that members of the Swedish Bar Association are subject to rules restricting so-called "ambulance chasing".

**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?**

The Act has been in force for almost ten years, but has yet to be utilised to any greater extent. At the last reliable complete review of the number of cases in 2008, twelve actions in total had been brought under the Act. Of these, eleven were private group actions and one a public group action brought by the Swedish Consumer Agency. Thus, no organisation group action at all had been brought to court. Of the twelve actions, no more than two can be considered as within the same field.

There are no statistics available as regards claims where a number of similar claims brought by a group of claimants are jointly adjudicated under the Code of Judicial Procedure. However, it is clear that such cases are much more common than claims under the Act.

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

All remedies available under the Code of Judicial Procedure are available for claims brought under the Act (Section 2). Accordingly, monetary compensation, specific performance, declaratory as well as injunctive relief are all available as remedies.

## 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, there are two such forms of initiating a group action under Swedish law: organisation group action; and public group action.

**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?**

An organisation group action may be instituted by non-profit associations that, in accordance with their statutes, protect *either* the interests of consumers or wage-earners in disputes between

consumers and business operators *or* seek to protect nature conservation and environmental protection interests or by an association of professionals in the fishing, agricultural, reindeer or forestry industries.

Contrary to what was initially suggested during the legislative procedure, there is no requirement on how long the non-profit association must have existed before starting a claim. Accordingly, the non-profit association may be founded solely for the purpose of instituting the group claim. The non-profit association does not have to be approved by the state.

A public group action may be instituted by certain public authorities (chosen in advance by the Government) that, taking into consideration the subject of the dispute, are suitable to represent the members of the group in question. To date, the Consumer Ombudsman and the Environment Protection Agency are the only authorities approved to initiate claims through public group actions.

According to the preparatory works, a public group action should only be commenced if a private or organisation group action is not likely to be brought or if there is a particular public interest in starting a group action.

**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?**

An organisation group action shall, as a general rule, concern either consumer law or environmental law. In consumer law, the dispute must regard goods, services or another utility that a business operator offers to consumers. However, in special cases these conditions for bringing an organisation group action may be applied less strictly, provided there are significant advantages attendant upon the disputes being jointly adjudicated taking into consideration the adjudication of the claim and other circumstances.

A public group action raised by the Consumer Ombudsman can only concern consumer disputes. According to the specific instructions given by the Government, such a claim may only be raised if it is in the public interest. If the consumer is ordered by the court to pay for legal costs in such cases, the state will bear the costs.

The Environmental Protection Agency has the authority to raise claims regarding damages in the environmental courts. Bringing the claims must be necessary in order to satisfy urgent public environmental interests.

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

In consumer disputes, there are no limitations in respect of the available remedies (see further under question 5.1 below). In environmental disputes, the available remedies are injunctions and damages.

## 3 Court Procedures

**3.1 Is the trial by a judge or a jury?**

No special provisions apply for group proceedings. Three judges is the general rule, but in less complicated matters, cases may also be tried by a single judge. Special provisions apply in the environmental courts (see question 3.2 below).

**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?**

Certain district courts (21 in total) are designated by the Government as competent to examine cases under the Act. Group actions based on environmental law are examined by the district courts that are environmental courts (five in total). In the environmental courts, the court consists of environmental experts in addition to ordinary judges.

All district courts (48 in total) are competent to try cases that are jointly adjudicated under the Code of Judicial Procedure.

**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?**

Pursuant to the Act, the claim form must contain details concerning the group to which the action relates, as well as the names and addresses of all members of the group, the latter if necessary managing the case (Section 9). Accordingly, the group can be described individually by names and addresses or collectively such as "all persons that bought shares in X Company during 2012".

If the group, taking into consideration the size, ambit and otherwise is appropriately defined, the court shall consider the group action (Section 8). Thus, the court does not make any decision on certification of the class.

Each member of the group must then give notice to the court in writing, within the period of time determined by the court, that he or she wishes to be included in the group action. In the absence of such notice, the member shall be deemed as having withdrawn from the group (Section 14).

New group members can join the litigation at a later stage provided this can be done without causing any significant delay to the determination of the case and without any other substantial inconvenience for the defendant (Section 18).

**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?**

The use of 'model' cases is possible under the Act (Section 20) as well as under the Code of Judicial Procedure. If so, the judgment of the court is not formally binding as regards the parties not comprised by the 'model' case. However, 'model' cases are not common in practice.

Determination of preliminary issues is more commonly used in complex cases. Preliminary issues may relate to matters of law as well as matters of fact. In cases tried under the Act, a special form of determination of certain issues may be used (Section 27). Under that provision, the court may issue a judgment that, for some members of the group, constitutes a final determination of the substantive matter but for other members of the group involves the postponement of the consideration of a particular issue.

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

No. This may be explained by the relatively low number of cases brought before the courts under the Act to date.

**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?**

The provisions regarding court appointed experts in the Code of Judicial Procedure apply equally to cases tried under the Act.

The court may appoint experts to deliver an opinion on an issue which requires special professional knowledge. Before the court may appoint an expert, the parties are invited to state their views and if the parties agree upon one expert then that person is duly appointed. However, the court also has the opportunity to appoint an additional expert. The expert shall be examined orally if one party so requests. In practice, it is rare for the court to appoint experts.

A more common procedure in Swedish courts is that the parties present their own expert evidence such as written statements combined with an oral examination of the expert witness.

There are no restrictions on the nature or extent of 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 are not required to present themselves for pre-trial deposition.

Expert witness statements/expert reports are usually exchanged prior to trial.

No witness statements are submitted for witnesses of fact. However, parties are not allowed to present any new facts not previously invoked in submissions through the hearing of a factual witness.

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

There are no obligations to disclose documentary evidence before court proceedings are commenced.

All documentary evidence that a party wants to invoke must be disclosed as part of the pre-trial procedures. Parties are not required to disclose all documentary evidence in their possession unless the counterparty requests disclosure of certain, identified pieces of evidence. Such a request may only be granted if the piece of evidence is deemed by the judge to be of significance for the adjudication of the case.

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

It normally takes 1.5-2 years in the district court and another 1-1.5 years in the court of appeal, but considerably longer times in complex cases with many claimants/group members are not unheard of.

**3.10 What appeal options are available?**

A district court judgment can be appealed to the court of appeal by the claimant or defendant within three weeks from the

pronouncement of the judgment regardless of whether the case is tried under the Act or as joined cases under the Code of Judicial Procedure. Permission to appeal is required.

According to the Act, a group member is entitled to appeal a judgment or a final decision either on behalf of the group or individually (Sections 47 and 48). If the appeal is made individually, the case will not be handled under the Act in the court of appeal.

## 4 Time Limits

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

There are no procedural rules containing time limits, although there are numerous time limits under substantive law which may affect the access to court proceedings.

### 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?

Most substantive law time limits mentioned in question 4.1 above do not entail that the claim must be brought to the courts before a certain time, but rather that the claim must be presented to the other party within a certain period of time. Failure to give such timely notification does not result in the claim being barred from being tried in the courts but rather that the claim will not be upheld by the court. A court will only consider such time limitation issues if invoked by the defendant.

The age or condition of the claimant does not affect the calculation of any time limits.

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

Issues of concealment or fraud, etc. under substantial law (see question 4.2) might lead to the time limits being extended or completely disregarded.

## 5 Remedies

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

Since the Act is purely procedural, there is no difference between the types of damage recoverable for claims brought as group or class claims and regular individual claims under Swedish contract or tort law. As a general rule, all kinds of quantifiable damages except punitive damages are available in theory.

### 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?

It is possible that such costs may be recoverable either as damages or legal costs. However, Swedish law does not provide a general rule. Therefore, claims must be assessed on a case-by-case basis.

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

They are not recoverable, with the exception of infringements of intellectual property law.

### 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 time limit.

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

As a general rule, damages are awarded only for proven economic losses (including the value of damaged property). With regard to personal injury, case law indicates that the amounts awarded normally closely follow a standard prepared by the Swedish Road Traffic Injuries Commission.

The court may not award a lump sum as damages to be divided amongst the group members. Thus, the judgment must specify the amount awarded to each claimant or group member.

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

Under the Act, group members are not bound by a settlement made by the claimant (group representative) unless it is approved by the court (Section 26). The court shall approve the settlement unless it is discriminatory against some group members or is otherwise obviously unreasonable.

For joined claims under the Code of Judicial Procedure, a settlement is legally binding regardless of court approval. However, in such cases, individual settlements must be entered into with each claimant.

## 6 Costs

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

In this respect, the same rules apply regardless of whether a case is handled under the Act or as a normal civil case. The losing party will, as a main rule, be obliged to pay all costs, e.g. issuance fees, the cost of witnesses and legal counsel. Accordingly, the 'loser pays' rule applies.

### 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?

Under the Act, the claimant (the individual group representative or the organisation/authority) is responsible for the costs if the case is lost. The other members of the group are, as a general rule, not considered to be parties and are therefore not responsible (Section 33).

As an exception, group members can be held liable according to the



same rules as apply for civil matters if they have caused a cost through their actions (Section 35).

In the special event that the claim is successful and the defendant is ordered to compensate the claimant (group representative) for litigation costs and the defendant cannot pay, each member of the group is liable to pay his or her share of the costs to the claimant (Section 34).

For cases adjudicated jointly under the Code of Judicial Procedure, losing claimants are normally ordered to pay the defendant's costs jointly and severally.

### **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?**

If a member of the group under the Act who is not a group representative discontinues its claim, the main rule regarding group members' responsibility for litigation costs applies (see question 6.2 above). Hence, if a group member discontinues the claim, there are no costs consequences. A former claimant (group representative) who has been replaced as no longer appropriate to represent the group may, however, under certain circumstances be responsible for litigation costs (Section 31).

For cases adjudicated jointly under the Code of Judicial Procedure, withdrawal of an individual claim before the conclusion of the proceedings will, as a general rule, be considered as losing the case.

### **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 cap imposed on costs, save for minor actions. The court does not otherwise manage the parties' costs during the proceedings. At the end of proceedings, the court will determine whether the winning party's litigation costs may be deemed reasonable.

## **7 Funding**

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

The legal aid system in Sweden is subsidiary to the private insurance system. Governmental legal aid is not granted if the claimant has, or should have had, insurance covering the matter. Most private home insurances cover the legal costs when a claimant initiates an action under the Act. Legal aid granted through an insurance policy includes liability to pay the costs of the counterparty, but is always restricted to a certain relatively low maximum insurance amount. For cases under the Act, only the claimant (group representative) can be granted legal aid from the state or the insurance company, i.e. not every group member. In practice, this entails that the funding available only covers a very small portion of the actual costs associated with a claim brought under the Act.

All private home insurance policies in Sweden cover legal costs for regular civil claims adjudicated together in accordance with the Code of Judicial Procedure. Normally, each claimant in those cases receives legal aid from its insurance company. Thus, there is normally much better funding available for cases adjudicated together than for a group action brought under the Act.

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

Public legal aid is restricted to claimants unable to fund the legal costs themselves. Hence, persons with a certain annual income do not have the right to such funding and, depending on how close to the threshold you are, the larger proportion of the costs you must fund yourself. When state legal aid is granted, it normally only compensates 100 hours of legal work and does not cover the counterparty's costs if the case is unsuccessful.

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

The main rule as specified in the Code of Conduct of the Swedish Bar Association is that contingency fees are not allowed. Examples of certain cases where contingency fees could be allowed are group actions and other cases where access to justice may be denied if contingency fees are not allowed. However, exceptions are very seldom allowed in practice.

The Act regulates fee arrangements (Sections 38-41), called risk agreements. The rules state that the claimant can conclude an agreement with an attorney that the fees for the attorney shall be determined having regard to the extent to which the claims of the members of the group is successful. However, the agreement may only be asserted against the members of the group if it has been approved by a court.

The risk agreement is not binding towards the defendant.

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

No, it is not 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.**

As mentioned above, the Consumer Ombudsman or a consumer non-profit organisation may represent a consumer in court without acquiring the claims. See section 8.2 regarding assigned claims.

### **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.**

The purchase of and pursuit of claims in relation to disputes is not prohibited under Swedish law regardless of the cost share. However, such purchased claims will be handled as normal civil claims in the courts. As far as we are aware, no such large scale purchasing of consumer claims have ever taken place in Sweden.

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

The injured party's claim for damages may be handled in a criminal proceeding, but a group action regarding damages to injured parties cannot be handled in a criminal proceeding. However, if there is a

group of injured parties, they can apply for their claims to either be handled as group litigation under the Act or joined in accordance with the Code of Judicial Procedure after their claims have been separated from the criminal matter.

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

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Disputes between a consumer and a company can be resolved by the National Board for Consumer Disputes. Such disputes may also be brought as group actions by the Consumer Ombudsman. The National Board for Consumer Disputes is not a court and its recommendations are not legally binding or enforceable. The procedure at the board is based solely on written submissions. Hence, there is a minimal risk of large procedural costs. Furthermore, the dispute has to concern a certain minimum value (approximately €50-200).

There is also a possibility to pursue third-party voluntary mediation in a private dispute according to the Mediation Act (2011:860).

As in other disputes, arbitration may be used to solve consumer disputes if the parties agree to it. However, there is no special consumer or group arbitration procedure available.

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

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They are only available for claims arising as a result of a crime.

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

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With the exception of arbitration and court sanctioned settlements, no legally binding remedies are available under the alternative dispute resolution methods described under question 8.4 above.

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**9 Other Matters**

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

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Yes, claims can be brought by residents from other jurisdictions. The general rule in Sweden is that the legal residence of the respondent determines the jurisdiction. However, other facts such as the place where the damage occurred can determine jurisdiction.

The rules in Sweden to restrict forum shopping regarding group actions are the same as in individual civil cases, e.g. 'Brussels I' and the Lugano Convention. Furthermore, Swedish courts may choose not to assume jurisdiction in cases with only minor or no connection to Sweden.

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

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In 2008, an official evaluation of the Act was conducted. The evaluator proposed minor changes to the Act. None of these proposed changes have been decided so far. As far as we are aware, no other changes are planned.

The European Commission is currently examining how common legal principles on collective redress could fit into the EU legal system and hence be appropriate for EU legislation. It seems likely that no changes will be implemented by the Swedish government before this examination is complete.





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