

Class Actions

Contributing editors

Joel S Feldman and Joshua E Anderson



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GETTING THE
DEAL THROUGH 

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Taiwan

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1 Outline the organisation of your court system as it relates to collective actions. In which courts may class actions be brought?

The Taiwanese court system can be roughly divided into civil tribunals, criminal tribunals, administrative courts and intellectual property courts. Group actions can be brought in civil tribunals and intellectual property courts. A civil complaint should be filed with the district court for the first instance trial. Generally speaking, the decision rendered by the district court can be appealed to the high court, and the high court judgment can in turn be appealed to the Supreme Court.

2 How common are class actions in your jurisdiction? What has been the recent attitude of lawmakers and the judiciary to class actions?

As explained in question 3 below, in Taiwan, group actions are divided into four different types based on the legal basis on which the group action is initiated. Of the four, joinder of parties is the most common type of group action.

In order to resolve disputes arising from contemporary lifestyle and business transactions, the group action system was introduced by the Consumer Protection Act in the 1990s. Subsequently, the group action system under the Code of Civil Procedure (the CCP) was expanded in 2003 to include Types C and D group actions. (Please see our response to question 3 for each type of group action under the CCP.) The judiciary has been fairly neutral towards group actions – group actions are permitted by the court as long as the statutory requirements are met.

3 What is the legal basis for class actions? Is it derived from statute or case law?

Taiwan adopts the civil law system and therefore the legal bases for group actions are stipulated in statutory laws. Below is a brief description of the four types of group actions permitted by the CCP. As can be seen below, the system in Taiwan is different from that in the United States in that Taiwan adopts an opt-in mechanism where the express consent of each de facto claimant to join the lawsuit is required. For the avoidance of confusion, throughout this document, we will refer to Taiwan's system as 'group actions', rather than 'class actions'.

Type A – joinder of parties

Article 53 of the CCP provides that two or more persons may be a party to the same lawsuit in certain situations, namely:

- where the rights or obligations that are the claims of the suit are common to them;
- where the rights or obligations that are the claims of the suit are based on the same factual or legal grounds; or
- where the rights or obligations that are the claims of the suit are of the same type and the factual or legal grounds on which the claims are based are also the same type; provided, however, that the domiciles of the defendants must be located in the jurisdiction area of the same court or the suit must be subject to a common court as provided by articles 4 to 19 of the CCP.

Type B – lawsuit brought by appointees

According to article 41 of the CCP, multiple persons having a common interest may appoint one or more persons from among themselves as

the appointees to institute a lawsuit on behalf of the appointees and appointers.

In the event of a Type B group action initiated owing to public nuisance, traffic accidents, product defects or by claimants who have a common interest due to the same factual grounds, the court may, after obtaining consent from the appointees, or pursuant to the motion of the appointees that the court finds appropriate or application by other persons with a common interest, publish a notice requesting other persons with a common interest to apply to join the suit by specifying the facts, evidence and relief sought within a specified period of time (article 44-2 of the CCP). The persons who come forward and make an application based on the public notice of the court are deemed to have made an appointment under article 41 of the CCP.

Type C – lawsuit brought by an appointed incorporated non-profit association

Pursuant to article 44-1 of the CCP, members of the same incorporated non-profit association who have a common interest may appoint such association to institute a lawsuit to the extent consistent with the purpose of said association as stated in its charter documents.

Type D – representative lawsuit

Article 44-3 of the CCP provides that with the approval of the competent authorities and to the extent consistent with the purpose stated in its charter documents, an incorporated non-profit association or foundation may institute a lawsuit against a person who has infringed upon the rights of multiple persons to seek injunctive relief prohibiting specific acts. In order to obtain approval from the competent authorities to initiate a suit under article 44-3, an incorporated non-profit association or foundation must satisfy the following conditions:

- the incorporated non-profit association must have 500 or more members; the value of the registered assets of the foundation must be NT\$10 million or higher;
- the initiation of a suit for injunctive relief is consistent with the purpose of the association stipulated in its charter documents and has been approved by its board of directors; and
- at least 20 people are alleged to have been harmed by the defendant's actions.

In addition to the above, there are rules on group actions for specific areas of laws such as protection of consumers and securities and futures investors.

Consumer Protection Act

Similar to article 44-2 of the CCP, article 54 of the Consumer Protection Act provides that when multiple persons who have suffered damages owing to the same consumer relationship appoint one or more persons to institute a lawsuit pursuant to article 41 of the CCP, the court may, after obtaining the consent of the appointees, publish a notice requesting other victims to join the suit by submitting an application to the court specifying the facts, evidence and relief sought.

Articles 49 and 50 of the Consumer Protection Act provide that a qualified consumer protection organisation may institute a lawsuit in its name after at least 20 consumers who have suffered from the same factual grounds assign their rights to claim to such consumer protection organisation. To be a qualified consumer protection organisation,

the organisation must have been established for two years or longer, retained a staff for consumer protection matters and been given a rating of 'excellence' in an appraisal by the Executive Yuan. The consumer protection organisation must engage legal counsels for this type of lawsuit. The suit would not be affected if during the proceeding any of the consumers terminate the assignment and as a result the consumer protection organisation receives assignments by fewer than 20 consumers. When a qualified consumer protection organisation institutes a suit based on article 50 of the Consumer Protection Act, the court fees for the portion of the claim in excess of NT\$600,000 should be exempted.

Article 53 of the Consumer Protection Act states that a consumer protection officer or qualified consumer protection organisation may petition the court for injunctive relief for a material violation of consumer protection regulations by business operators. Legal representation is also required for a suit brought under article 53 of the Consumer Protection Act. The qualification requirements for the consumer protection organisation are the same as those stated in the preceding paragraph. The plaintiff of this type of lawsuit is exempted from paying court fees.

Securities Investors and Futures Traders Protection Act

With regard to securities investments, according to article 28 of the Securities Investors and Futures Traders Protection Act (the SIFTPA), in order to protect public interest, the Securities and Futures Investors Protection Centre, a 'protection institute' established under the SIFTPA, may initiate a lawsuit or arbitration in its name after receiving authorisation from 20 or more securities or futures investors who have suffered damage owing to the same cause.

4 What types of claims may be filed as class actions?

There are no laws prohibiting certain types of claims being filed as a group action under the CCP, except for a Type D group action, which can be instituted only for seeking injunctive relief.

5 What relief may be sought in class proceedings?

As noted above, a Type D group action may be brought to seek injunctive relief. The law does not impose any restriction on the type of relief that may be sought by Type A, B and C group actions or a group action under the Consumer Protection Act. As such, they can be initiated for seeking monetary damages, restitution or even injunctive relief.

6 Is there a process for consolidating multiple class action filings?

A Type A group action by its nature is a consolidation of claims. There are no rules requiring the consolidation of two or more separate suits with the same factual bases but pending in different courts.

In addition, as indicated in our reply to question 3 above, when the alleged victims of public nuisance, traffic accidents, product defects or persons who have a common interest owing to the same factual grounds appoint one or more persons to initiate a Type B group action, the court may, with the consent of the appointees or at the motion of the appointees that the court finds appropriate or the motion by a person with a common interest, publish a notice requesting other people having a common interest to make a written submission specifying the facts, reasons, evidence and relief sought in order to apply for joining the suit. A similar mechanism is included in the Consumer Protection Act, as described in our reply to question 3.

7 How is a class action initiated?

A group action is initiated by filing a civil complaint with the court, as is the case for civil lawsuits in general. The plaintiff is not required to provide the defendant with an opportunity to cure the breach prior to filing the complaint.

8 What are the standing requirements for a class action?

Types A and B group actions can be brought by individuals, while Type C group actions must be brought by an incorporated non-profit association; and Type D group actions must be initiated by an incorporated non-profit association or a foundation.

Group members must have a right to claim under the law owing to damage to their property or personality rights or owing to the death of their parents, spouse or children.

9 Do members of a class have to opt in or opt out of the action? Are class members notified that an action has been commenced on their behalf and, if so, how?

The members have to opt in for a group action. Because it is an opt-in system, the court would not notify the members that any action has been instituted on their behalf.

10 What are the requirements for a case to be filed as a class action?

Please refer to our reply to question 3. There is no requirement on the minimum number of persons to be included in the group actions brought forth under the CCP. For group actions initiated based on article 50 of the Consumer Protection Act and article 28 of the SIFTPA, the nominee claimants (the consumer protection organisation or the Securities and Futures Investors Protection Centre) must have received assignment of claims from or been authorised by at least 20 people to institute the group action.

11 How does a court determine whether the case qualifies for a collective or class action?

It is the court's responsibility to examine whether the group action satisfies the necessary elements under the law. As noted above, article 249 of the CCP provides that if there is any procedural defect of the complaint (eg, the elements of a group action are not met), the court may ask the plaintiff to rectify such defects first. The counterparty may also challenge whether the group action meets the legal requirements. The nominal party representing the group bears the burden to prove that its claim qualifies for a group action. The court may or may not hold a hearing just for discussing this issue. More often than not, this issue will be addressed together with other disputed issues in the judgment, unless the court finds it appropriate to make an interim decision as the suit progresses or decides to dismiss the suit altogether because the procedural requirements of a group action are not met.

12 How does discovery work in class actions?

In Taiwan, there is no discovery procedure where each party is required to present the evidence that it has collected before the court proceeding commences.

13 Describe the process and requirements for approval of a class-action settlement.

Approval of the court is not required for a class-action settlement. Once a settlement is reached, the plaintiff would revoke the suit.

Pursuant to article 55 of the CCP, in a Type A group action, a settlement reached by one person of the co-parties with the counterparty does not bind the rest of the co-parties. Therefore, any one of the co-parties is free to enter into a settlement with the counterparty.

For Types B and C group actions, according to article 44 of the CCP, an appointee has the right to conduct all acts of litigation for the appointers; provided, however, that the appointors may impose restrictions on the appointee's right to revoke or abandon the claim, make concessions or enter into a settlement.

For a Type D group action, once the incorporated non-profit association or foundation institutes a claim for injunctive relief, it may not settle the case without approval from the competent authority.

14 May class members object to a settlement? How?

Please see our response to question 13.

In addition, for a Type A group action, if only one or a few of the co-parties reach a settlement with the other party, the suit will continue to the extent related to the co-parties who have not settled with the counterparty. In other words, unless all the co-parties settle, the suit will not be closed. With regard to Type B and C group actions, as explained in our response to question 13, pursuant to article 44 of the CCP, if the members did not restrict the appointee's ability to settle, such members cannot object to the settlement once the settlement is reached.

A Type D group action does not have any member and thus this question is not applicable.

15 What is the preclusive effect of a final judgment in a class action?

For a Type A group action, the final judgment is binding upon the parties of the suit, including the co-parties, as they are all de facto and de jure parties to the suit. For Type B and C group actions, the appointees who have duly made the appointment of the nominee party will be bound by the judgment. In other words, because Taiwan adopts an opt-in system, any person who has not made the appointment is not bound by the judgment. In a Type D group action, any judgment received by the incorporated non-profit association or foundation does not affect the de facto claimants' rights to initiate a new suit on the same matter against the defendant.

16 What type of appellate review is available with respect to class action decisions?

Taiwan adopts a three-tier system for civil proceedings. Generally speaking, a civil complaint should be filed with the district court for the first instance trial, and can be appealed to the high court in the second instance. Only cases with claim amounts higher than NT\$1.5 million can be appealed to the Supreme Court. The first and second instance courts would review the facts of the case while the third instance court would review only the legal issues involved.

17 What role do regulators play in connection with class actions?

The regulators involved in a dispute depend on the nature of the claim. For instance, for an environmental dispute, the regulators involved will likely be the Environmental Protection Administration or the local environmental protection authority. Because the judiciary is independent from the administrative power, the regulators tend to stay neutral in a private dispute. However, in certain circumstances, the administrative authorities do provide litigation aid. See our response to question 21. If a party would like to access the regulator's files, it can motion for the court to order the files, to the extent that the files are related to the party making the request or the dispute.

Generally speaking, a group action settlement does not have any direct effect on pending or future regulatory action. However, the regulators may take into account if a settlement has been reached when determining whether to impose any penalty or punishment on the violator.

18 What role does arbitration play in class actions? Can arbitration clauses lawfully contain class-action waivers?

As a rule of thumb, the parties to a dispute are free to submit the dispute to arbitration on the condition that there is an arbitration agreement in place or it is specifically provided for by the law. Because the arbitration agreement is reached based on the parties' consensus, we are of the view that a group action waiver would not be deemed null and void. Nonetheless, the legality of such waiver is subject to test in court.

In Taiwan, arbitration is playing a more important role than before in resolving disputes over financial products. As noted above, according to the SIFTPA, the Securities and Futures Investors Protection Centre may initiate a litigation or arbitration proceeding after receiving authorisation from 20 or more securities or futures investors who have allegedly suffered from the same cause.

19 What are the rules regarding contingency fee agreements for plaintiffs' lawyers in a class action?

According to the ethical rules for lawyers, Taiwanese lawyers may not charge contingency fees for family cases, criminal cases and juvenile cases. Because group actions are unlikely to fall within these three types of cases, there is no restriction on contingency fee arrangements.

20 What are the rules regarding a losing party's obligation to pay the prevailing party's attorneys' fees and litigation costs in a class action?

According to article 78 of the CCP, the losing party should bear the litigation costs. In the event that each party prevails in part, the court would determine the allocation of the litigation costs. Nonetheless, in such a situation the court may still order one party to bear the litigation costs in its entirety. Attorneys' fees are usually not treated as litigation costs and each party has to bear its own attorneys' fees except in special situations. However, according to the CCP, a reasonable amount of

the attorneys' fees for the third instance should be deemed part of the litigation costs and borne by the defeated party pursuant to the court's decision. For instance, according to the relevant regulation published by the Judicial Yuan in 2003, for a property right dispute, the reasonable attorneys' fee for the third instance to be borne by the defeated party should be capped at 3 per cent of the claim amount or NT\$500,000, whichever is lower.

21 Is third-party funding of class actions permitted?

Legal aid provided by the Legal Aid Foundation

The Legal Aid Foundation provides legal advice and representation to individuals that lack the financial means. Any person who is involved in a dispute but does not have the financial capability to retain a lawyer may submit an application to the Legal Aid Foundation. The Legal Aid Foundation will evaluate the merit of the case and the financial condition of the applicant and decide whether to assign a lawyer to the applicant and waive the attorneys' fees in whole or in part or reject the application. However, if the applicant prevails in the lawsuit and receives compensation of NT\$500,000 or more, the Legal Aid Foundation may request compensation for the attorneys' fees in whole or in part, depending on the amount of the compensation.

Legal aid provided by the Legal Aid Foundation is not available for the following types of civil matters:

- election litigation;
- small claims and the compulsory execution proceedings thereof;
- retrials; and
- representation in trademark or patent matters.

Temporary exemption or reduction of court fees

Article 107 of the CCP provides that when a party who is a Taiwanese national is unable to pay the court fees, the court should, at the party's motion, grant temporary exemption of the court fees; however, such rule does not apply when it is clear that the party has no prospect of prevailing in the case. When examining the party's financial capability, the court should take into account the basic need of the party and his or her family members who live with the party. If a temporary exemption of court fees is granted, before the suit is concluded, the applicant will be temporarily exempted from: paying court fees or other litigation expenses that need to be advanced; providing security for litigation expenses; and compensating attorneys appointed by the court pursuant to the law.

In addition to the general rules provided in the CCP, there are other forms of litigation aid provided by governmental authorities. For example, for disputes arising from termination of employment or major labor disputes, local labor authorities provide subsidies for court fees, attorneys' fees, fees for compulsory enforcement and cost of living to qualified workers.

The Consumer Protection Act provides that in certain circumstances, the court fees of a case instituted by a consumer protection organisation or consumer protection officer may be waived or subject to a fee cap. For instance, the court fee may be waived if a consumer protection officer or consumer protection organisation initiates a suit for injunctive relief against a material breach of the Consumer Protection Act by a business enterprise.

22 Can plaintiffs sell their claim to another party?

According to article 297 of the Civil Code, the right over a debt may be assigned by the creditor to a third party; provided, however, such assignment is not binding upon the debtor unless the debtor has been notified of the assignment by the assignor or assignee. Therefore, the plaintiffs may sell their claim to a third party with the exception that according to paragraph 2 of article 195 of the Civil Code, with respect to a claim for damages for infringement of personality rights, the claimant may not transfer its claim to a third party unless it has entered into an agreement with the tortfeasor for the damages or instituted a suit for its claim (note that however, such claims may be transferred to a consumer protection organisation under article 50 of the Consumer Protection Act). Upon the transfer of the claim, the plaintiffs should notify the defendant of the sale in order for such transfer of claim to be binding on the defendant.

Paragraph 1 of article 254 of the CCP provides that the transfer of the legal relationship that is the claim of a dispute pending in court would not have any impact on the litigation proceeding; and, if agreed

by the parties or approved by the court, the third party transferee may succeed to the transferor in the suit.

23 If distribution of compensation to class members is problematic, what happens to the award?

For a Type A, B or D group action, distribution of compensation would not be an issue. As to a Type C group action or a group action under the Consumer Protection Act or the SIFTPA, there is no statutory provision providing for the handling of the undistributed amount. The undistributed amount would not revert to the defendant. The court does not have the authority to award the undistributed amount to a charity or consumer group. If the nominee party has difficulties in making distribution, it could deposit the undistributed amount with the court and if no one claims such amount, it may be forfeited to the state.

Note that, however, paragraph 2 of article 44-1 of the CCP provides that in a Type C group action that is a claim for damages, if the entire body of the appointers enter into a written agreement stating its consent to receive a lump sum judgment and consensus on the distribution method of the damages awarded, the court may grant a lump sum judgment without determining the amount to be distributed to each de facto plaintiff. The party that is awarded damages (eg, an incorporated non-profit association) should be responsible for making the distribution to the persons on behalf of whom or for whose benefit the suit was brought based on the agreement on a lump-sum judgment if it exists or the decision of the court.



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